

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION (DEFINITION OF TREATIES) (ECONOMIC
PARTNERSHIP AGREEMENTS AND TRADE AGREEMENT) (EASTERN AND
SOUTHERN AFRICA STATES, SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY STATES, GHANA AND ECUADOR) ORDER 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument is intended to specify the following agreements as EU Treaties by Order in Council in accordance with section 1(3) of the European Communities Act 1972 (ECA):
- Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador
 - Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States of the other part
 - Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part
 - Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part
- 2.2 Each of the four Agreements are Multi Party FTAs and are “mixed agreements” with some elements of competence within the Agreement falling under the exclusive competence of EU Member States. Consequently, each Agreement requires ratification by all Member States before it can fully enter into force and become legally binding on all parties. This is because these elements are an unexercised shared competence where the EU has not yet exercised its competence.
- 2.3 Each of the Agreements are already being provisionally applied. The Ecuador accession agreement was signed on 11 November 2016 and has been provisionally applied since 1 January 2017. The SADC EPA was signed on 10 June 2016 and has been provisionally applied since 10 October 2016. The ESA EPA was signed on 29 August 2009 and has been provisionally applied since 14 May 2012. The Ghana Interim EPA was signed on 28 July 2016 and has been provisionally applied since 15 December 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 As each of the Agreements are “mixed agreements” to which the UK is party, they need to be specified as EU Treaties by Order in Council in accordance with section 1(3) of the ECA. The effect of the Order is that the Agreements are conclusively to be regarded as an “EU Treaty” as a matter of law. At this stage, it appears that no other legislation or other implementation is required for the UK. The Treaty will also be laid before Parliament under the provisions for treaty ratification within the Constitutional Reform and Governance Act 2010.
- 4.2 Powers to make subordinate legislation may be exercised under s 2(2) to, for example, to give effect to any obligations falling on the UK under the agreement. Section 2(2) of the ECA can usually only be relied upon if a treaty is specified as an “EU treaty” as per s 1(3). Where the UK is a separate party to an agreement, as in the case of Ecuador and the three EPA agreements, the agreement will not be considered an “EU Treaty” unless it is specified under s 1(3).
- 4.3 The parts of mixed agreements in respect of which the EU has exercised its competence form part of EU law and may also give directly effective rights to individuals. The specification of each of the Agreements under s 1(3) also means that these directly effective provisions become law in the UK .
- 4.4 At the European level, the Commission has already previously presented proposals for Council Decisions on the conclusion of each Agreement by the Council of the European Union.
- 4.5 The European Parliament has already given its consent to each of the four Agreements. It gave its consent to the Ecuador accession protocol on 12 December 2016, to the SADC EPA on 14 September 2016, to the ESA EPA on 17 January 2013 and to the Ghana Stepping Stone EPA on 1 December 2016. As detailed above each agreement is already being provisionally applied following signature of all parties to each Agreement.
- 4.6 The Decision on conclusion will only be adopted by the Council and the Representatives of Governments of the Member States once all Member States’ parliamentary procedures for ratification of each Agreement are complete. Only then will the Agreements fully enter into force and become legally binding on the Parties.
- 4.7 In accordance with parliamentary procedures, Explanatory Memoranda on the conclusion and signature of each of the four separate Agreements were cleared from scrutiny by the EU Parliamentary Committees in both Houses.

In relation to the Ecuador accession protocol, an Explanatory Memorandum (EM 7614/16 and 7616/16) was submitted by the former Department for Business, Innovation and Skills (BIS) on 28 April 2016. This was cleared from scrutiny by the House of Commons European Scrutiny Committee, after the Minister provided further information to the committee, on 22 March 2017 and the House of Lords Select Committee on the European Union cleared it at sift on 3 May 2016.

In relation to the SADC EPA, an Explanatory Memorandum (EM 5608/16 and 5571/16) was submitted by the Department for International Development (DFID) on

10 February 2016. This was cleared from scrutiny by the House of Commons European Scrutiny Committee on 4 May 2016 and the House of Lords Select Committee on the European Union cleared at sift on 23 February 2016.

In relation to the ESA EPA, an Explanatory Memorandum (EM 17476/08 and 5112/09) was submitted by DFID on 29 January 2009. This was cleared from scrutiny by the House of Commons European Scrutiny Committee on 13 February 2009. The House of Lords Select Committee on the European Union sifted the EM on 11 February 2009 and cleared from scrutiny on 25 February 2009.

In relation to the Ghana Stepping Stone EPA, an Explanatory Memorandum (EM 11852/08 and 11862/08) was submitted on 11 August 2008 by DFID on draft Council Decisions to sign, provisionally apply and conclude the Ghana EPA was cleared from scrutiny by the House of Commons European Scrutiny Committee in their 32nd report (Session 2007-08) and the House of Lords Select Committee on the European Union on 30 October 2008.

- 4.8 Each of the Agreements is published in full in four separate Command Papers along with an accompanying Explanatory Memorandum in each case.
- 4.9 An impact assessment has been prepared for each of the agreements (see Impact section below).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister for Trade Policy at the Department for International Trade has made the following statement regarding Human Rights.

“In my view the provisions of the European Union (Definition of Treaties) (Economic Partnership Agreements and Trade Agreement) (Eastern and Southern Africa States, Southern African Development Community States, Ghana and Ecuador) Order 2018 are compatible with the Convention of rights”.

7. Policy background

What is being done and why

- 7.1 The principal effect of declaring each of the four Agreements to be EU Treaties is that section 2(2) of the ECA (which provides for the general implementation of EU Treaties) may be exercised in relation to each of the four Agreements. This allows, for statutory instruments, to be made under section 2(2) if needed for the UK to implement each Agreement.
- 7.2 The four Agreements presented in this instrument represent the outcomes of the trade negotiations undertaken by the European Commission (acting on behalf of the European Union and its Member States) in respect of each of the four separate Agreements. The Agreements deliver on the original negotiating directives approved by the Council.
- 7.3 The European Parliament actively monitored each of the negotiations and communicated its opinions to the Commission.

- 7.4 The objective of each of the four Agreements is to increase trade and investment opportunities. The EPAs also have the objective of promoting development.
- 7.5 The Agreements are in line with the Commission's agenda for growth and jobs, the Europe 2020. strategy, boosting growth through external competitiveness and the participation in open and fair markets worldwide.
- 7.6 The advantages of EPAs, which the UK supports as a tool of EU trade policy, are for businesses and communities across developing countries providing duty and quota-free access for exports to the EU; more integrated regional markets; more flexible, simpler rules of origin; no undue competition and a context of wider reforms and helping to address broader trade issues such as technical barriers to trade and labour rights. EPAs also benefit consumers and workers in Europe by the removal of trade barriers, the promotion of exports from developing countries resulting in wider choice, lower prices, better value and wider ethical choice options. Boosting trade and increasing efficiency is likely to have a positive impact on jobs overall.
- 7.7 The UK believes that the final agreed text of all four Agreements represent a balanced outcome of negotiations and one that is fully consistent with the UK's policy on FTAs and beneficial for the UK overall as we prepare to leave the EU.
- 7.8 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until 29 March 2018 the UK remains a full member of the European Union and all rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply European Union legislation.
- 7.9 The UK Government is very supportive of the agreements and is fully committed to supporting these and other EU agreements whilst we remain an EU Member State. The UK Government is committed to seeking continuity in its current trade and investment relationships post exit, including those covered by EU FTAs or other EU preferential arrangements.
- 7.10 The UK's ratification of each of these four agreements, would provide a practical demonstration to the EU of the UK's commitment to support EU free trade activity whilst still a Member State.
- 7.11 The UK and European Commission negotiating teams have agreed, and reflected in the draft Withdrawal Agreement, that the UK is to be treated as a Member State for the purposes of international agreements during the Implementation Period. The EU will formally notify other parties of this approach in due course.

Consolidation

- 7.3 This Order does not amend another instrument and so does not create the need for a consolidated text.

8. Consultation outcome

- 8.1 The Parliamentary Scrutiny and Select Committees have been consulted on the proposals relating to signature, provisional application and conclusion of each of the four Agreements.
- 8.2 Throughout each of the negotiations, DIT and its predecessor departments (including the Department for Business, Innovation and Skills (BIS)) actively engaged and consulted with business, with overseas officials, with British Non-Governmental

Organisations (NGOs) and across Government and has represented agreed UK policy to the European Commission.

8.3 The Devolved Administrations were informed and consulted via the circulation of Explanatory Memoranda.

8.4 We are also consulting separately with the Crown Dependencies and Gibraltar on relevant aspects of the four Agreements.

8.5 No consultations were required for the drafting of the Order itself.

9. Guidance

9.1 Neither of the four Agreements will lead to any new regulatory measures. Consequently, there is no need for new regulatory guidance.

9.2 Her Majesty's Revenue and Customs (HMRC) and the International Trade and Investment Unit within DIT are working with British companies across all sectors to ensure that they take full advantage of each of the four Agreements. The Government is also looking at the best way to maximise the opportunities for the UK after we leave the EU under any transitional and future agreements.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be beneficial in relation to each of the four agreements. The UK supports the EPAs as part of EU trade policy, though the Government acknowledges there have been criticism of these agreements. UK businesses will benefit in each case from reduced tariffs and the removal of existing trade barriers that restrict free and efficient trade, thereby resulting in increased export opportunities for UK businesses and creating greater competition, lower prices, more innovation, more jobs and a greater variety of goods and services for consumers. In the case of the Ecuador's accession to the EU-Andean agreement, our best estimate is that the agreement could result in an increase of £24m to UK GDP once the agreement is fully implemented.

10.2 Each of the agreements is expected to increase UK exports in goods and services in certain business sectors. In the case of Ecuador the European Commission's analysis estimates that the Trade Agreement will lead to the following bilateral trade effects by 2035:

- EU's exports to Ecuador will increase by 42%, most notably in chemicals and machinery.
- EU's imports from Ecuador will increase by 30%, most notably in vegetables, fruit and other food products.
- UK firms will almost certainly account for some of this increase as the expected increase in exports is most notable in sectors which represent a large portion of current UK exports. However, the exact portion of new trade that UK firms and consumers contribute to total EU-Ecuador trade is uncertain and will depend on both the behavioural choices by UK firms and competition from non-UK firms.

Across the EPAs we expect £35m increased UK exports to SADC EPA States, £3.6m increased exports to ESA countries, and £6.2m of increased exports to Ghana.

- 10.3 The impact on the public sector is not immediately measurable in each case, however it should be noted that the Ecuador protocol of accession includes a chapter on public procurement.
- 10.4 The Department for International Trade has, in line with current Better Regulation Policy, prepared an impact assessment on Ecuador's accession to the EU-Andean Agreement which has been reviewed by the Regulatory Policy Committee (RPC) of the costs and benefits associated with ratifying the Ecuador accession protocol. This IA assessing the Ecuador accession protocol agreement is submitted with this Memorandum and will be published alongside the EM on the legislation.gov.uk website.
- 10.5 Impact Assessments for the three Economic Partnership Agreements have been prepared and are also published alongside this Memorandum. However, given that the economic impact of each the three EPAs Agreements is much smaller and are estimated to cost businesses less than £5 million per annum, there is no requirement for the IAs to receive prior approval by the RPC.

11. Regulating Small Business

- 11.1 The legislation applies to activities that are undertaken by small businesses. None of the four Agreements will lead to any new regulatory measures and there are no regulatory impact burdens on small business. Each of the four separate ratification Impact Assessments completed for each agreement includes a Small and Micro Business Assessment (SaMBA) noting that small businesses are not exempt from the terms or any specific chapters of each agreement. Firms that use imports from the relevant third party countries are likely to benefit, as the cost of existing imports is likely to fall. Some uncompetitive firms may be adversely affected from competition by overseas firms, however the net impact on small businesses is expected to be positive.
- 11.2 Each of the Impact Assessments estimate the proportion of small businesses likely to be trading in the context of each agreement. In the EPAs this is 65% of firms covered by the agreements.

12. Monitoring and Review

- 12.1 There are no review provisions in the Order.

13. Contact

- 13.1 Any queries regarding the instrument can be directed to Simon Lillford-Wildman in Trade Policy Group in the Department for International Trade. His contact details are as follows:

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