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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 8 July 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2016) 4167 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 8.7.2016
amending Annex I to Council Regulation (EC) No 1528/2007 applying the
arrangements for products originating in certain states which are part of the
African, Caribbean and Pacific (ACP) Group of States provided for in
agreements establishing, or leading to the establishment of, Economic
Partnership Agreements

Delegations will find attached document C(2016) 4167 final (Kenya).

Encl.: C(2016) 4167 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 8.7.2016

amending Annex I to Council Regulation (EC) No 1528/2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EC) No 1528/2007 (Market Access Regulation) governs the EU duty-free quota-free import regime for 27 African, Caribbean and Pacific countries that have negotiated Economic Partnership Agreements with the EU. The Regulation is a bridging solution for countries which have concluded negotiations on Economic Partnership Agreements but have not yet ratified them. In order to avoid a disruption in trade, the Market Access Regulation anticipates the duty-free quota-free access that the EU offers in these agreements while the countries concerned move towards ratification.

Kenya had not taken the necessary steps towards ratification of its interim Economic Partnership Agreement concluded in 2007 and consequently, in accordance with Article 2(3) of Regulation (EC) No 1528/2007, and in particular point (b) thereof, pursuant to Regulation (EU) No 527/2013 ceased to be covered by the market access arrangement permitted under Regulation (EC) No 1528/2007, as from 1 October 2014.

However, Kenya, the European Union and its Member States concluded negotiations on an Economic Partnership Agreement on 16 October 2014. Kenya thus met the condition of Article 2(2) of the Regulation and was consequently added to Annex I to the Market Access Regulation as from 25 December 2014, thereby regaining duty-free quota-free market access into the European Union.

To ensure that countries can be removed from Annex I to the Market Access Regulation after ratification of an agreement which has permitted a region or state to be included in Annex I has not taken place within a reasonable period of time such that the entry into force of the agreement is unduly delayed, the power to adopt delegated acts swiftly was delegated to the Commission in accordance with Articles 2(3)(b) and 24a of the Market Access Regulation.

As stated in the explanatory memorandum of Commission Delegated Regulation (EU) No 1387/2014, the addition of Kenya to Annex I to the Market Access Regulation has been subject to the conditions of Article 2(3) of the Regulation, in particular point (b) thereof. The Commission would take appropriate action to remove Kenya from Annex I if it had not ratified its agreement, initialled in 2014, by 1 October 2016. Kenya will have failed to ratify its Agreement by 1 October 2016. Consequently, in accordance with Article 2(3) of Regulation (EC) No 1528/2007, and in particular point (b) thereof, Kenya will be removed from Annex I to that Regulation.

The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on this delegated act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Articles 2(3)(b) and 24a of the Market Access Regulation empower the Commission to adopt a delegated act to amend Annex I to this Regulation so as to remove a state from the ACP Group of States, whose ratification of an agreement which has permitted such a state to be included in Annex I, has not taken place within a reasonable period of time such that the entry into force of the agreement is unduly delayed.

COMMISSION DELEGATED REGULATION (EU) .../...

of 8.7.2016

amending Annex I to Council Regulation (EC) No 1528/2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements¹, and in particular Article 2(3)(b) thereof,

Whereas:

- (1) The list of beneficiary countries of the EU duty-free quota-free import regime is established by Annex I to Regulation (EC) No 1528/2007.
- (2) Kenya had not taken the necessary steps towards ratification of its interim Economic Partnership Agreement concluded in 2007 and consequently, in accordance with Article 2(3) of Regulation (EC) No 1528/2007, and in particular point (b) thereof, ceased to be covered by the market access arrangement permitted under Regulation (EC) No 1528/2007, as from 1 October 2014. This removal resulted from Regulation (EU) No 527/2013.
- (3) However, Kenya, the European Union and its Member States concluded negotiations on a comprehensive Economic Partnership Agreement on 16 October 2014. Kenya, therefore, met the condition of Article 2(2) of the Regulation and was consequently, through Regulation (EU) No 1387/2014, added to Annex I to the Market Access Regulation as from 25 December 2014.
- (4) The Commission is empowered to adopt delegated acts in accordance with Article 24a of Regulation (EC) No 1528/2007 to amend Annex I to that Regulation so as to remove a region or state from that Annex. In particular, that applies where the ratification of an agreement which has permitted a region or state to be included in Annex I has not taken place within a reasonable period of time so that the entry into force of the agreement is unduly delayed.

¹ OJ L 348, 31.12.2007, p. 1.

- (5) By 1 October 2016 Kenya will have benefited from the market access arrangement permitted under Regulation (EC) No 1528/2007 for an additional twenty-two months. However, Kenya has not yet ratified its comprehensive Economic Partnership Agreement. Consequently, Kenya will, in accordance with Article 2(3) of Regulation (EC) No 1528/2007, and in particular point (b) thereof, cease to be covered by the market access arrangement permitted under Regulation (EC) No 1528/2007,

HAS ADOPTED THIS REGULATION:

Article 1

The Republic of Kenya is removed from Annex I to Regulation (EC) No 1528/2007.

Article 2

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

It shall apply from 1 October 2016 or from the day of entry into force, whichever is later.

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

Done at Brussels, 8.7.2016

For the Commission
The President
Jean-Claude JUNCKER