Economic Partnership Agreement between the European Union and Southern African Development Community Group (SADC EPA)

FAQs

QUESTIONS AND ANSWERS

No. 2
2018

What is the SADC EPA?

SADC EPA is an agreement between the European Union (EU) and the Southern African Development Community (SADC) EPA Group[1] member states (Botswana, Eswatini, Lesotho, Namibia and South Africa, all of which are members of the Southern African Customs Union (SACU) as well as being members of SADC; and Mozambique).[2] Angola is a member of the SADC EPA Group, but has not signed or ratified the Agreement; it can accede to the Agreement at a future date.

The SADC EPA was originally designed as a comprehensive partnership agreement, to cover trade in goods, trade in services, investment, competition, intellectual property and public procurement, as well as specific development provisions pertaining to support that the EU will make available to the SADC EPA member states. However, the Agreement that was concluded and signed on 10 June 2016 in Kasane, Botswana, covers only trade in goods (including disciplines such as tariffs, rules of origin, customs and border management and related disciplines), and development provisions (pertaining, for example, to support for SADC EPA member states' development of quality infrastructure).

When did the SADC EPA enter into force?

The Agreement is being provisionally applied since 16 October 2016. Although the United Kingdom (UK) is implementing the agreement, it will not ratify it, following the UK's decision to leave the EU (Brexit). The SADC EPA will officially enter into force once it has also been ratified by all the EU member states.

[1] Other SADC member states (Comoros, Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Tanzania, Zambia and Zimbabwe) are negotiating EPAs with the EU as part of other groupings (Central, Eastern and Southern Africa). Angola has an option to accede to the SADC EPA.
[2] The SADC EPA Agreement is available at https://www.tralac.org/documents/resources/sadc/epa/979-sadc-eu-epa-consolidated-text-and-annexes-september-2016.html.

What does the SADC EPA cover?

SADC EPA deals primarily with trade in goods. In addition, there are also development provisions. The Agreement also includes a rendezvous clause for future cooperation in other trade-related disciplines including trade in services, investment, competition policy, intellectual property rights and public procurement.

What tariff liberalisation is provided for?

The SADC EPA is a reciprocal but asymmetrical trade agreement. Under the Agreement, the EU has offered duty and quota free access (full liberalisation) to Botswana, Eswatini, Lesotho, Mozambique and Namibia. That is, Botswana, Eswatini, Lesotho, Mozambique and Namibia's products (except arms and ammunition) will enter the EU market duty and quota free.

The EU has offered to South Africa full liberalisation of 95% of tariff lines, partial liberalisation of around 3% of tariff lines (mostly on agricultural products) and excludes from liberalisation about 2% of tariff lines. Thus, about 96% South African products will enter the EU market duty and quota free, 3% will have access subject to reduced tariffs (some of which are subject to tariff rate quotas)[3], and 1% will not subject to tariff reduction.

To the EU, SACU countries (Botswana, Eswatini, Lesotho, Namibia and South Africa) have offered to fully liberalise around 85% of their tariff lines, partially liberalise 13% of their tariff lines, and exclude from liberalisation 2% of their tariff lines. Mozambique has offered to remove customs duties on 74% imports from the EU, while duties will remain on 26% of the EU imports to Mozambique.

Which products are subject to tariff rate quotas under the SADC EPA?

Under the SADC EPA, specific South African products have preferential tariff rate quota (TRQ) market access into the EU market. TRQ provides access, for certain quantities of a product, to markets at duty free or reduced tariff rates – products within the quota allocation, are charged the lower import duty (in some cases, duty free) while products outside the quota face a duty. The allocation of these TRQ are administered by the South African Revenue Services on first-come, first-served basis or by the Department of Agriculture, Forestry and Fisheries by issuing annual export permits.[4]

The EU, in return, has been granted new TRQ commitments by SACU on selected tariff lines in the fields of pork, offal, butter, cheese, cereals and ice cream, and its fish exports have also been fully liberalised.

[3] A tariff rate quote provides that a specific quantity of a product can enter a market duty free, but when this quota is fully allocated, a tariff will apply to further imports.
[4] See www.gpwonline.co.za/Gazettes/Gazettes/41148_29-9_AgricForFisheries.pdf.

Table 1: TRQs under the SADC EPA

South African products with TRQs market access to the EU	Quota/volume subject to TRQ	How the TRQ is administered?
Skimmed milk powder	500 metric tons enter duty free	First-come first-served
Butter	500 metric tons enter duty free	First-come first-served
Raw and refined sugar	duty free access for 50 000 tons of refined sugar and 100 000 tons of raw sugar for refinery	First-come first-served
White crystalline powder	500 metric tons enter duty free	First-come first-served
Citrus jams	100 metric tons enter at 50% of the MFN applied tariff	First-come first-served
Non-tropical canned fruit	57156 tons enter at 45% of the MFN applied tariff which will be reduced by a further 4% annually until duty free	First-come first-served
Frozen orange juice	1057 tons enter duty free, the in-quota quantity increases annually by 21 tons	Annual export permits
Apple and pineapple juice	3595 tons enters at 50% of the MFN applied tariff, the in-quota quantity increases annually by 117 tons for the first 10 years and thereafter by 70.5 tons	Annual export permits
Active yeast	350 tons enter duty free	First-come first-served
Bottled wine	77741300 litres enter duty free	Annual export permits
Bulk wine	33317700 litres enter duty free; from 1 September each year, bulk wine can enter under the remaining quota for bottled wine for the remainder of the year	Annual export permits
Ethanol	80000 tons enter duty free	Annual export permits

What are the rules of origin in the SADC EPA?

Rules of Origin (RoO) are laws, regulations and administrative procedures that enable customs officials to determine a product's country of origin. The rationale for RoO is to determine whether a product qualifies for preferential treatment under trade agreement/s.

Protocol 1 of the SADC EPA incorporates different methodologies to determine origin: wholly obtained; sufficiently worked or processed; and cumulation.

Wholly obtained means that the products must be entirely obtained in the SADC EPA State (like South Africa) or the EU. For example, South African natural or raw products from agriculture, fishing and mining exported without any further processing to the EU, are clearly wholly obtained.

Sufficiently worked or processed allows non-originating materials or components to be sufficiently worked or processed in order to obtain originating status. Annex II to Protocol 1 of the SADC EPA contains a list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status. This is typically determined in two ways.

One way is to determine how much value the non-originating materials can have in the final value of the product (ex-works price). For instance, to make a motor vehicle, South Africa may import material from China comprising up to 40% of the value of the final ex-works price of the product, but not more. In other words, processing in the country itself needs to account for 60% or more of the value of that product. Another way is to demand a change in the tariff classification of a product. Each traded product has a tariff code.

Cumulation allows originating products of **e.g**. Zimbabwe to be further processed or added to products originating in e.g. South Africa, just as if they had originated in South Africa.[5] The end product would have the origin of South Africa. Cumulation of origin allows the fruit to be harvested in one SADC EPA state and then preserved and canned in another. In other words, two countries (or more) can try and meet the rules of origin for an industrial or agricultural product together rather than one country having to do it all by itself. This can be done without losing the preferential market access to the EU.

SADC EPA contains various types of cumulation: bilateral, diagonal or full, and global cumulation.

- *Bilateral cumulation* – between SADC EPA State and EU; **e.g**. Materials originating in the EU may be used as materials originating in South Africa, provided the materials must go minimal working or processing in South Africa.
- *Diagonal cumulation* – SADC EPA State/South Africa could further process originating products and materials in the African, Caribbean and Pacific (ACP) EPA States or EU's Overseas Countries and Territories (OCTs). Diagonal cumulation requires the prior conclusion and notification of administrative cooperation agreements between countries, particularly between the SADC EPA States and ACP EPA States and OCTs.
- *Global cumulation* –
  - (a) SADC EPA State/South Africa can source materials from country's benefitting from GSP/EBA beneficiaries and consider them as their content for purposes of absorbing them into their local qualifying products.[6]
  - (b) SADC EPA State/South Africa can source materials anywhere in the world, provided such materials are subject to MFN zero access to the EU, as its own local content absorbing them into local SADC EPA State/South Africa qualifying product without need to substantially transform them.

The RoO *'list rule'* for Chapter HS87 products, including motor vehicles, requires that no more than 40%

[5] For SADC EPA cumulation provisions, see https://www.tralac.org/discussions/article/12626-cumulation-provisions-in-the-sadc-epa.html

[6] GSP allows vulnerable developing countries to pay fewer or no duties on exports to the EU, giving them vital access to the EU market and contributing to their growth. EBA scheme grants least developed countries full duty free and quota free access to the EU Single Market for all products (except arms and armaments).

of the value of materials used be non-originating based on the ex-works price of the product (i.e. the remainder must be 'local' content). That is, for example, a South African motor vehicle assembly plant may source goods and materials from the EU (*bilateral cumulation*), eventually from other ACP EPA States (*diagonal cumulation*), from third countries benefiting from GSP/EBA preferences, and from other countries where such materials are already duty and quota free into the EU (*global cumulation*); these together may make up the 60% local content requirement and in effect become absorbed as South African originating products provided that some significant processing activity still takes place locally, and that the value added in South Africa is higher than that of individual third (cumulation) partner countries.

However, South African or GSP products that cannot be exported to the EU duty and quota free cannot be cumulated; Goods subject to anti-dumping or countervailing duties when exported to the EU; SADC FTA goods not enjoying duty and quota free access to SACU under the SADC Trade Protocol; Tuna products (HS Chap 3 and 16) sourced from Pacific states.

For clothing manufacturing, a local making up of a garment is sufficient to confer origin status, irrespective of where the fabric originates.

What is the relationship between the SADC EPA and TDCA and how has market access changed since the TDCA?

The Trade Chapter of the Trade, Development and Cooperation Agreement (TDCA)[7] (concluded between the EU and South Africa and implemented since 2000) has been replaced by the SADC EPA. In comparison with the TDCA,[8] the SADC EPA has introduced improved changes to trade and trade-related matters.[9] South Africa succeeded in improving on the market access it has already been accorded under the TDCA. The upgrade consists of full liberalisation of the fish sector, something that was not yet accomplished under the TDCA, and South Africa has also been successful in getting new duty-free and improved commitments from the EU on selected tariff lines under TRQs for sugar, wine, fruits, fruit juices, canned fruit, flowers, dairy products, jams and ethanol.[10]

Further, three agricultural products and food stuffs (honey bush tea, rooibos tea and Karoo lamb) and 38 wine (including wine of origin Western Cape and Philadelphia) GIs of South Africa was added to the TDCA list of GI protection (now a total of 105 South African GIs) in the EU market.[11] South Africa can

[7] The text of the TDCA is available at https://www.tralac.org/documents/resources/sadc/epa/1178-trade-development-and-cooperation-agreement-between-the-european-community-and-south-africa-signed-11-october-1999.html.
[8] The remaining part of the TDCA covers political dialogue; trade and trade-related issues; economic cooperation; development cooperation; and cooperation in areas including science and technology, environment, culture, social issues and health.
[9] See https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-epa-the-significant-changes.html
[10] See https://www.tralac.org/news/article/10734-south-africa-s-transition-from-tdca-to-epa.html.
[11] See https://www.tralac.org/discussions/article/11816-recognition-and-protection-of-geographical-indications-in-the-eu-sadc-economic-partnership-agreement.html.

also add an additional 30 GIs for future protection. In return, South Africa has offered to protect *251 European GIs including wine, foodstuffs, beers and spirits.* GIs are the names of products 'that originate in the territory of a particular country, region or locality where a quality, reputation or other characteristic is closely linked to the product's geographical origin'.

How are trade disputes resolved under the SADC EPA?

The SADC EPA contains a detailed dispute avoidance and settlement chapter. Parties to a dispute are required to settle their disputes through consultation, or mediation, if the former is not successful. If they fail to settle disputes these mechanisms, arbitration will be initiated. In the arbitration process, a panel of three arbitrators will rule on the dispute and the party complained against will have to take any steps necessary to comply with this ruling. In case of non-compliance the other party will have the right for compensation or will be allowed to take appropriate measures, which could mean an increase in duties.

What are the trade defence/remedies measures under the SADC EPA?

SADC EPA allows state parties to adopt trade deference/remedies or safeguards to protect their domestic industries against unfairly traded or subsidised imports as well as increased and harmful trade flows. The measures include antidumping and countervailing duties as well as safeguard measures. Anti-dumping measures are special duties imposed by an importing country to offset the price effect of dumping (the sale of a product in another country at less than its normal value) that has been determined to be materially harmful to domestic producers. Countervailing measures are additional duties imposed by an importing country to offset government subsidies in an exporting country, when the subsidised imports cause material injury to domestic injury in the importing country. Unlike anti-dumping and countervailing measures which are directed at unfair trade practices, safeguards are safety-valve measures to counter consequences of unexpected surges in imports resulting from trade liberalisation. Safeguards allow an importing country to temporarily suspend reduced import duties or increase duties to protect a specific domestic industry from a sudden increase in imports which causes serious injury to its domestic industry. SADC EPA offers a number of safeguards: *bilateral, specific agricultural, food security, infant industry* and *transitional safeguards*.[12]

- *General bilateral safeguards* – If the implementation of a SADC EPA obligation (including tariff concessions) leads to such an increase in imports causing serious injury to a like domestic industry, or market disturbances in a like sector leading to a serious economic deterioration, or market disturbances in a like agricultural product. In the case of any of these circumstances,

[12] See https://www.tralac.org/discussions/article/12513-safeguard-measures-in-the-sadc-eu-economic-partnership-agreement.html

further tariff reductions can be suspended, or duties can be increased, or tariff quotas can be introduced to remedy the serious injury.

- *Specific agricultural safeguards* – SACU member states can implement specific agricultural safeguards (an import duty), on 23 specified agricultural products imported from the EU. When the designated trigger volume of edible offal, worked cereals, meat preparations, long-life milk, preserved cucumbers and olives and chocolate is exceeded, the import duty can be increased for the remainder of the calendar year, or 5 months (whichever is longer).
- *Transitional safeguards* – Botswana, Eswatini, Lesotho and Namibia (BLNS) have access to a transitional safeguard (for 12 years after the date of entry into force of the EPA) if increased EU imports cause injury to any of the domestic industries producing one of 64 'sensitive' products.
- *Infant industry protection* – Botswana, Eswatini, Lesotho, Namibia and Mozambique (BLNMNS) have access to an infant industry protection safeguard (temporary suspension of tariff reductions or a tariff increase) if increased EU imports impact the establishment of an infant industry or cause disturbances to the operations of an existing infant industry.
- *Food security* – If the removal of trade barriers, required by the EPA, leads to the general or a local shortage of foodstuffs or another product needed for food security in any of the SADC EPA states a safeguard can be applied.

Table 2 (below) reveals that the SADC EPA safeguard provisions differ in terms of product coverage, duration of the measure, duration of the provision and the nature of the measure.

Table 2: Safeguard measures under SADC EPA

	Bilateral	**Agricultural**	**Food security**	**Transitional**	**Infant industry**
Beneficiaries	All parties	SACU	SADC EPA group	BLNS countries	BLNMS countries
Products covered	All products	23 Agricultural tariff lines	All products	60 tariff lines	Infant industry products
Measure	• Suspension of further reduction of the duty • Increase in duty up to MFN rate; or • Introduction of tariff quotas	A duty which shall not exceed 25% of the current WTO bound tariff of 25 percentage points, whichever is higher. Such duty shall not exceed the MFN rate	Not specified	Increase in duty up to the MFN rate or a zero duty TRQ, with duty outside the quota not exceeding the MFN rate	Suspend further reductions of the duty or increase in duty up to the MFN rate

	Bilateral	Agricultural	Food security	Transitional	Infant industry
Duration of the measure	• For the EU, 2 years with possible 2-year extension • For SADC EPA countries, 4 years with a possible 4-year extension	For the remainder of the calendar year or 5 months, whichever is the longer	As soon as the circumstance leading to its adoption cease to exist	4 years, with a possible 4-year extension	8 years
Duration of the provision under SADC EPA	Indefinite	12 years from entry into force	Indefinite	12 years from entry into force	As long as injury is a result of a reduction of the duties

Which industries are likely to benefit the most from the SADC EPA?

Agriculture, fishing and wine industries stand to benefit significantly from the SADC EPA.[13] Agriculture sector can benefit from the improved market access and agricultural provisions under the SADC EPA. In particular, agricultural products such as sugar, dairy products, canned fruits, flowers and fisheries will benefit from the allocation of TRQs. Other agricultural products like Rooibos, Honeybush and Karoo lamb will benefit from GI protection in the EU. Wines will benefit from GI protection and through the allocation of TRQ.[14]

The fish industry will benefit from duty and quota free access. Under the SADC EPA, all tariff lines related to fish have been liberalised save for some sensitive fish tariff lines which the parties have agreed to gradually phase out over time.

The clothing industry will benefit from the RoO which allow the clothing SADC EPA states producers to source inputs from countries across the global economy that have duty free access to the EU (those that are beneficiaries of the Everything but Arms arrangement or the EU's Generalised System of Preferences or that have a preferential agreement with the EU providing for duty free access of the specific product in question).

[13] See https://www.tralac.org/discussions/article/12512-export-opportunities-for-south-african-producers-under-the-new-market-access-conditions-in-the-sadc-eu-epa.html.
[14] See https://www.tralac.org/discussions/article/11932-overview-of-south-africa-s-wine-opportunities-under-the-eu-sadc-economic-partnership-agreement.html.