



**EU-SADC EPA:
Implementation
and Notification**

**EC/tralac Seminar
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OVERVIEW

- What is Implementation about?
- Is this a Rules-based Agreement?
- What are the Obligations?
- Who are the Parties? Who must implement?
- What subsequent scope for adjustment/flexibility?
- How will disputes be settled?
- Notification: Duties and Institutions
- Where do private parties and firms fit in?

What is Implementation about?

- **Art. 31(1) Vienna Convention – Law of Treaties:**
- *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
- Clarity
- Certainty & Predictability
- Building blocks & follow-up
- Institutions & Legislation
- Transparency
- Domestic and regional dimensions
- We are still in drafting stage

Is this a Rules-based Agreement?

- Does it matter whether it is rules-based?
- Yes – for all Parties, traders, firms, institutions, Investors
- If rules-based, then discretions are out
- This dimension has Int. and domestic implications
- Existing rights and obligations under WTO – Preamble
- This is an FTA under Art. XXIV GATT
- The legalese tells us something...
- National Constitutional Implications (Remember TDCA)
- Domestic effect and enforcement
- Language: The Parties *recognise...., agree to...., shall.....*
- Trade Remedies
- Dispute settlement

What are the Obligations?

- It is about the functioning of a sui generis FTA under WTO rules, grafted on a complicated regional arrangement (of which some part is a century old); while the multilateral context is undergoing fundamental change, the Doha Round is stuck and the world economy is in a crisis
- Trade in goods and?
- Tariff elimination over time, market access, remedies...
- The language in specific provisions
- *The Parties and the Signatory SADC EPA States shall adopt any general or specific measures required for them to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives laid down in this Agreement.*

Who are the Parties? Who must implement?

- Onto what is this EPA grafted? SACU and SADC
- Lesotho is an LDC
- When is it a particular state? When is it a collective? Who is this collective on the SADC side? (EC OK)
- .. *the Parties shall mean South Africa, Botswana, Lesotho, Namibia, Swaziland, Mozambique, Angola, referred to as the "SADC EPA States", on the one part, and the European Community or its Member States ..hereinafter referred to as the "EC Party", on the other.*
- ..*the SADC EPA States agree to act collectively. In cases individual action is provided for or required to exercise the rights or comply with the obligations under this Agreement reference is made to the "Signatory SADC EPA States".*

What subsequent scope for adjustment/flexibility?

- There is a general exception clause
- Security exceptions
- Exceptions are justiciable
- *Each Party and the Signatory SADC EPA States shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any trade matter covered by this Agreement are promptly published or made publicly available and brought to the attention of the other Party.*
- Trade remedies require national, regional institutions
- Remember ongoing deeper integration

How will Disputes be settled?

- *...this Part shall apply to any dispute concerning the conformity of measures with chapters [X] ..except as otherwise expressly provided...*
- Consultation, mediation, arbitration (Panels), time frames
- The arbitration panel shall notify its ruling to the Parties and to the Joint EPA Implementation Committee within 150 days
- *Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.*
- Disagreement between the Parties concerning the compatibility of any measure...to Panel.

Dispute settlementcontinued

- *The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The Joint EPA Implementation Committee shall make the arbitration panel rulings publicly available unless it decides not to do so.*
- *Nothing in this Agreement shall preclude a Party or Signatory SADC EPA State from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. Nothing in the WTO Agreement shall preclude Parties from suspending benefits under this Agreement.*

Dispute settlementcontinued

- *This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, and, on the other hand, to the territories of the [Signatory] SADC EPA States. References in this Agreement to "territory" shall be understood in this sense.*

Notification: Duties and Institutions

- *Without prejudice to specific transparency provisions in this Agreement, the information referred to under this Article shall be considered to have been provided when the information has been made available by appropriate notification to the WTO or when the information has been made available on the official, publicly and fee-free accessible website of the Party or of the Signatory SADC EPA State concerned.*
- Notifications (of ratification) shall be sent to the Secretary General of the Council of the European Union, who shall be the depository of this Agreement.
- several still to be established for this EPA as part of a new arrangement

Where do private parties and firms fit in?

- Trade Remedies
- Before which institutions?
- Awareness and assistance