



Negotiating Services in the SADC EPA

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OVERVIEW



- ▶ **Where do we stand?**
- ▶ **Trend in African EPAs**
- ▶ **ESA**
- ▶ **EAC**
- ▶ **SADC EPA and implications for SACU**
- ▶ **CARIFORUM**
- ▶ **Other legal Issues**
- ▶ **Way forward**
- ▶ **Annexes: Arts 105 and 67 SADC IEPA**

Where do we stand?



1. Art 37 Cotonou Agr. – WTO compatible FTAs; trade in goods
2. WTO waiver only covered goods; expired 31.12.08
3. Art. 41(4): “...objective of extending...to encompass the liberalization of services in accordance with the GATS...”
4. Regional Integr. is a pillar and benchmark in Cotonou
5. Will EPAs promote deeper regional integration?
6. EC adopted a Regulation to ensure uninterrupted importation of ACP goods (Omnibus Regulation)
7. Interim EPAs to become “full” EPAs – further negotiations on services
8. Where do we stand with national/regional service policies?
9. Interim EPAs must enter into force; Art 105 SADC IEPA
10. Namibian reservations



Trend in African EPAs



1. There are 4 African EPAs – do not coincide with RECs
2. The AU philosophy on integration
3. Special problems of SADC IEPA, who will be parties?
4. Implications for SACU and SADC
5. Own regional arrangements starting to deal with services (COMESA and SADC)
6. Own regional integration to be promoted – will EPAs do so?
7. Enthusiasm for EPA service negotiations mixed
8. Domestic and regulatory structures and policies still in infancy
9. However – de facto trade in services happens all the time



ESA



1. Chapter IV: *Economic Development Cooperation*
2. Its general provisions include regional integration
3. To be based on ESA Development Cooperation Strategy
4. Development Matrix is an Annex to Agreement
5. Art 37: Structural transformation of ESA economies, competitiveness, trade capacity, investment etc.
6. Art. 38: Lists the specific areas and includes “*Services including tourism.*”
7. Rendezvous clause in Art 53; but no cut off date mentioned.
8. Note Art. 59: Relation between interim and final EPAs



EAC



1. Chapter V lists “*Areas for future Negotiations*”
2. Art 37 states: “*Building on the Cotonou Agreement and taking account of the progress made in the negotiating of a comprehensive EPA text the parties agree to continue negotiations in the following areas.....Trade in services....*”
3. Art 37 is also the Rendezvous Clause, but no cut off date
4. Some major areas outstanding and detailed negotiations still to be conducted
5. Art 43: “*This Agreement shall remain in force until the comprehensive EPA enters into force.*”
6. Entry into force of interim EPA dealt with in Art 45
7. Note Art 49: Relationship with other agreements
8. The EAC states will act together (Art 44(2)).



SADC IEPA and implications for SACU



1. Not all SADC states in this EPA; implications for RISDP
2. SA has own agreement with EC (TDCA) and did not initial
3. Namibia added reservations to initialling
4. Uncertainties introduced re regional integr. in existing Orgs.
5. Mozambique not member of SACU
6. SA: no services in EPA; but what about them in TDCA?
7. Will SADC EPA promote deeper integration? In terms of what objectives and criteria?
8. SADC IEPA Art 67
9. Namibian reservations must first be sorted out

CARIFORUM EPA Text



1. Which way there future econ development? Services NB
2. Had focused and consistent negotiating structure
3. Detailed Service, Investment and E-Commerce Chapters
4. Structure: General provisions in text for modes and sectors; schedules for member states
5. Asymmetry and variable geometry principles accepted
6. Art V: coverage here is a negative list but exceptions for each state in the Schedules
7. Several definitions – for each title (e.g. “commercial presence”)
8. Regional MFN again included
9. Dispute settlement; but not like WTO
10. Still to enter into force (Signature and ratification)



Other legal Issues



1. What does “initial” mean? Signature and ratification to follow
2. Namibian reservations
3. MFN implications (Brazilian reaction --- Enabling Clause)
4. If DFQF is the ceiling, why this MFN clause?
5. General exception clauses but cluttered safeguards
6. They contain dispute settlement provisions
7. They have to be notified under Art V GATS
8. Detail in the Schedules
9. Transparency Mechanism
10. Remember GATS and Doha developments
11. Study the EC offer on services



Way Forward



- ▶ Sort out Namibian reservations : regional MFN, export taxes, free movement of goods, infant industry protection.
- ▶ Study impact of services on integr in SACU and SADC – cause for concern
- ▶ SADC FIP Protocol and Protocol on services
- ▶ We have neglected both services and deeper integration
- ▶ Link between services and integration into global economy
- ▶ Get national and regional houses in order; otherwise no joint strategy for own development and integration
- ▶ Implementation challenges – assistance?
- ▶ Effective negotiating structures essential
- ▶ Start early and do natl. exercises
- ▶ Have we learned any lessons?



Art 105 SADC IEPA



- ▶ **Entry into force**
- ▶ 1. *This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures.*
- ▶ 2. *This Agreement shall enter into force the first day of the second month following the deposit of the last instrument of ratification, acceptance or approval.*
- ▶ 3. *Notifications shall be sent to the Secretary General of the Council of the European Union, who shall be the depository of this Agreement.*



Art 105 continued



- ▶ 4. *Pending entry into force of the Agreement, the European Community, the EC Party and the SADC EPA States agree to apply the provisions of this Agreement which fall within their respective competences ("provisional application"). This may be effected either by provisional application where possible or by ratification of the Agreement.*
- ▶ 5. *Provisional application shall be notified to the depositary. The Agreement shall be applied provisionally 10 days after the latter of the receipt of notification of provisional application from the European Community or of ratification or provisional application from all the SADC EPA States.*
- ▶ 6. *Notwithstanding paragraph 3, the European Community, the EC Party and SADC EPA States may unilaterally take steps to apply the agreement, before provisional application, to the extent feasible.*



Art 67 SADC IEPA



- ▶ ***Second stage of negotiations***
- ▶ *The Parties agree to continue negotiations in 2008 to extend the scope of the present Agreement. For the purpose of this Title, the SADC EPA States will be constituted of Botswana, Lesotho, Mozambique and Swaziland. The remaining SADC EPA States may join the process of negotiation on a similar basis. To this end, they will notify in writing the EC Party and the other SADC EPA States.*



Art 67 continued



▶ **I. a) Trade in Services**

- ▶ 1. *The Parties recognise the growing importance of trade in services for the development of their economies and reaffirm their respective rights and obligations under the General Agreement on Trade in Services (GATS).*
- ▶ 2. *No later than 31 December 2008 the Parties will complete negotiations on services liberalisation, on the basis of the following:*
 - ▶ - *liberalisation schedule for one service sector for each participating SADC EPA State;*
 - ▶ - *commitment to a standstill as specified in Article V.1.b(ii) GATS, for all services sectors;*
 - ▶ - *agreement to negotiate progressive liberalisation with substantial sectoral coverage within a period of three years following the conclusion of the full EPA.*



Art 67 continued



- ▶ ***I.b) Cooperation in Services***
- ▶ 1. *The Parties recognise that trade capacity building can support the development of economic activities, in particular in services sectors. To this end, the EC Party agrees to support capacity building aimed at strengthening the regulatory framework of the participating SADC EPA States.*
- ▶ 2. *By the time of laying down the necessary arrangements for the liberalisation of trade in services, the Parties will define the specific cooperation objectives, principles and procedures that will accompany trade liberalisation.*



Art 67 continued



- ▶ **II.a) Investment**

- ▶ 1. *The Parties agree to negotiate an Investment chapter, taking into account the relevant provisions of the SADC Protocol on Finance and Investment, no later than 31 December 2008.*

- ▶ **II.b) Cooperation on Investment**

- ▶ 1. *The EC Party agrees to provide adequate technical assistance to facilitate negotiations and implementation of the Investment chapter.*

- ▶ **III. Competition and Government Procurement**

- ▶ 1. *The EC Party agrees to cooperate with a view to strengthening regional capacity in these areas. Negotiations will only be envisaged once adequate regional capacity has been built.*



Namibian concerns in SADC IEPA



1. Regional MFN
2. Export taxes
3. Free movement of goods
4. Infant Industry protection
5. Why did this happen? What now?
6. A problem of formulation?
7. Art 34(6)(b):



Exercise



- ▶ Article 34 (6) (b) SADC IEPA forms part of a detailed safeguard arrangement and is the controversial provision. It states:
- ▶ *A SADC EPA State may take safeguard measures as provided for in paragraph 2, where a product originating in the EC Party as a result of the reduction of duties is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. Such provision is applicable for a period of twelve years for Botswana, Namibia and Swaziland or fifteen years for LDCs from the date of entry into force of this Agreement. This application period can be further extended on review by the Joint Council, in view of the overall level of development achieved by the SADC EPA States. Measures must be taken in accordance with the procedures laid down in paragraph 6 to 9.*

