

EPA CONTENTIOUS ISSUES MATRIX: STATE OF PLAY, KEY PROBLEMS AND RECOMMENDATIONS

SYNOPSIS

The document contains a matrix of 21 contentious issues pertaining to the goods negotiations in the EPAs. For each issue, the 'best' language (i.e. least damaging language) from the various EPA texts is identified. The problems posed by these contentious issues are then highlighted, and some recommendations provided. These 21 issues include the standstill clause; review clause, rendez-vous clause; market access offer (substantially all trade); community levies; prohibition of quantitative restrictions; MFN clause; rules of origin; export taxes; general exceptions; multilateral safeguard; bilateral safeguard; definition of parties; development assistance; modification of tariff commitments; free circulation of goods; food security clause; infant industry protection; subsidies; agricultural export subsidies; non-execution clause.

The recommendations should be read in the context of attempts at 'damage control'. In as far as the EPA forces on countries a high level of liberalization, watering down some clauses can lessen but not eliminate the damage that is likely to result.

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**EPA CONTENTIOUS ISSUES MATRIX:
 KEY PROBLEMS AND RECOMMENDATIONS**

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I. INTRODUCTION

1. The EPAs being negotiated between the European Union and African, Caribbean and Pacific countries are highly problematic. Tariffs are a critical policy instrument for the development of local industries – both in the agricultural and industrial sectors. Yet the majority of countries' tariffs are being dismantled in the EPA. There are also other 'contentious issues' which have been seen by the ACP countries as being highly problematic – the standstill clause; elimination of export taxes; EU's refusal to deal with domestic supports; weak bilateral safeguard; MFN clause etc.
2. The document contains a matrix of 21 contentious issues pertaining to the goods negotiations in the EPAs. For each issue, the 'best' language (i.e. least damaging language) from the various EPA texts is identified. The problems posed by these contentious issues are then highlighted, and some recommendations provided.
3. The recommendations should be read in the context of attempts at 'damage control'. In as far as the EPA forces on countries a high level of liberalization, watering down some clauses can lessen the damage. However, the best solution for African and Pacific countries struggling in the negotiations with the EU is still to find alternatives outside the EPAs, until such time these countries are better equipped to compete with European companies on a more equal footing.

II. CONTENTIOUS ISSUES COVERED

Contentious issue	What is the 'best' language (i.e. least damaging language) thus far?	What is problematic?	Recommendation(s)
1. Standstill clause	<p>Most EPAs prohibit any increase in applied tariffs for products subject to liberalization.</p> <p>In the ESA EPA, this clause was worse than what was provided in other EPAs as it covers all products - those to be liberalized and those in the sensitive list not subject to liberalization. As a result, ESA proposed similar language as already contained in the other EPAs (see Annex IV for ESA renegotiated texts).</p>	<p>Even the best clause implies binding of current applied tariffs for products subject to liberalization.</p> <p>Some EPAs prohibit introduction of new duties (e.g. existing SADC text). That is, new products have to be bound at 0%¹.</p> <p>There are some cases when the actual applied tariff rate is higher than what has been listed in the EPA liberalization schedule. This means that the country is penalized by having to liberalise immediately to the lower level scheduled, and it is doing more than what it is given credit for.</p>	<ul style="list-style-type: none"> • Remove this clause. A dynamic trade policy is needed for industrialization. • A much less ideal alternative is as follows: <ol style="list-style-type: none"> 1) avoid immediate liberalization 2) countries should use an earlier MFN applied rate so that they start reducing from a higher base duty (eg. MFN rate when EPA negotiations started; or use their MFN schedule notified to the WTO which is sometimes higher than current tariff rates as they may be 2-3 years old) 3) it should be made explicit that customs duties should be allowed for new products.
2. Review clause	CARIFORUM Joint Declaration: comprehensive review every 5 years (see Annex I for full text)	Thus far, no African EPA has a review clause	<ul style="list-style-type: none"> • Adopt a similar provision as the CARIFORUM EPA but improve upon it with clear review criteria, and conditions so that if a country does not arrive at certain development markers, the

¹ For example, as result of tariff reclassification of update of the tariff nomenclature

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			<p>obligations of African/Pacific EPA Parties can be modified eg. the implementation can be suspended or reversed, or other appropriate action taken.</p> <ul style="list-style-type: none"> • Make explicit that the review clause is to review existing obligations and their impact, but not for further liberalization of negotiations on new issues. • This clause does not substitute for development benchmarks, but is an expression of good treaty practice.²
<p>3. Rendez-vous clause</p>	<p>European Commission officials publicly stated several times that countries not wanting the inclusion of trade-related issues (IP, public procurement, services and competition) would not be asked to negotiate them.</p>	<p>Despite these public statements and assurances, the EC has continued to pressure African countries to negotiate these issues, often lobbying even non-governmental players in capitals.</p> <p>All rendez-vous EPA clauses aim at having a comprehensive EPA with the inclusion of these trade-related issues.</p>	<ul style="list-style-type: none"> • It is best not to have a rendez-vous clause since this is likely to lead to further obligations. Countries already have the Cotonou Agreement till 2020 for non-trade issues. • If there must be a rendez-vous clause, include only capacity building and development issues. Trade-related issues are not required for WTO compatibility.
<p>4. Market access offer (Substantially all Trade)</p>	<p>West Africa offer: 69.69% liberalization (in value) over 25 years</p>	<p>Other EPAs have offers that liberalise more: Eg EAC has 82.6% liberalization ESA has demanded 70% over 20</p>	<ul style="list-style-type: none"> • There must be Special and Differential Treatment for African countries (since Article XXIV negotiations are not finalized).

² In domestic regulations, especially when they are complex, inclusion of a review or revision clause is considered a good regulatory practice.

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		<p>years.</p> <p>This is one of the main problems of the EPA for ACP countries. The way in which the EC has interpreted GATT Article XXIV 'substantially all trade' - that ACP countries have to liberalise 80% of their tariff lines (or imports from EU) means that countries give up their ability to use effective trade policies to industrialise and also to develop their agricultural sectors.</p>	<p>African countries should not commit to liberalization levels that will compromise their industrialization, agriculture and regional trade.</p> <ul style="list-style-type: none"> • Peg liberalization commitments to development benchmarks. Only when countries have reached x level of development should they liberalise $y\%$ of tariff lines. • Base market access offer on recent trade data, e.g. 2007 and 2008. Many of the offers were based on old trade data. In some cases, the liberalization offer when plugged into the new data has meant higher liberalization percentages. • In order to safeguard current levels of regional integration, exclude products currently produced and traded in the region and for which EU is a net exporter.
<p>5. Community levies</p>	<p>ECOWAS Trade Commissioner has said that 'This is a non-negotiable question'.</p>	<p>EU wants these Community levies eliminated as part of custom duty elimination. This is now a major issue in the West Africa EPA negotiations and no agreement has been reached.</p>	<ul style="list-style-type: none"> • Charging Community levies which West Africa has used to finance the regional machineries is an excellent practice and could even be adopted by other sub-regions. Therefore, EPA must allow for this.

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<p>6. Prohibition of quantitative restrictions (QRs)</p>	<p>Agreed SADC-EU language in Swakopmund (but not yet incorporated into signed text): "The Parties to this Agreement may apply quantitative restrictions provided such restrictions are applied in conformity with the WTO Agreement" (Annex IIIa).</p>	<ul style="list-style-type: none"> • All signed EPA (including existing SADC EPA) language lead to the loss of WTO's GATT Article XI (General Elimination of Quantitative Restrictions) exceptions (e.g. ESA) dealing with agricultural/ food security issues. • All initialed and signed EPAs: loss of the use of QRs in circumstances where it would have been allowed in the WTO (e.g. balance of payment difficulties, general exception, Agreement on Import Licensing). • EU stated that QRs are not an appropriate tool to address environmental protection³ 	<ul style="list-style-type: none"> • Incorporate Swakopmund language in the main text of the EPAs to bring in line with African/ Pacific countries' commitment in WTO. • Clarify with EU the use of QRs to address environmental concerns. The Ban Amendment to the Basel Convention, implemented by EU (but not ratified) uses the policy tool of QRs to prevent waste shipments to developing countries. Yet EU has told ESA they cannot use QRs for environmental protection.
<p>7. MFN Clause</p>	<p>Similar language in all EPAs. Generally does not apply between African countries</p> <p>EAC text states that better treatment given by EAC Parties to ACP and other African countries need not be provided to the EU.</p>	<p>The MFN Clause carves out Africa's resources and markets for the EU, in line with EU's Global Europe Strategy.</p> <p>Forcing EPA Parties to provide equal treatment to EU as what they might in the future provide to India, China and Brazil, impedes</p>	<ul style="list-style-type: none"> • Remove this provision

³ ESA senior official meeting, 28 August 2009

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		<p>South-South trade and undermines (future) negotiation positions with these other developing countries (but also US and other major economies).</p> <p>Furthermore, it makes it difficult for LDCs to get Duty Free Quota Free market access from other developing countries.</p>	
<p>8. Rules of Origin (RoO)</p>	<p>No agreement has been reached on this point. For instance, the West Africa subgroup on RoO has expressed 'grave preoccupations due to lack of progress on this question'.</p>	<p>Different and discriminatory RoO for ACP countries. The previously broad cumulation provisions for the ACP under the Cotonou are no longer in place, undermining the objective of regional economic integration.</p>	<ul style="list-style-type: none"> • Request for all ACP cumulation • Harmonize the RoO regime for all African/ ACP countries • Include the principle of asymmetry in the rules of origin to take account differences in the level of development between EU and African countries • EPA RoOs should be an improvement on the Cotonou RoO • Simplify the concepts and methods for determining origin • The 2006 LDC Group proposal on RoO, laying dormant at the WTO⁴, could be transformed into an African/ ACP proposal
<p>9. Export taxes</p>	<ul style="list-style-type: none"> • Generally, existing export duties are allowed 	<p>The principle in all EPAs remains 'no export duties'.</p>	<ul style="list-style-type: none"> • Remove this provision • Removal will bring it in line with

⁴ WTO document TN/AG/GEN/20 (also TN/CTD/W/30 and TN/MA/W/74)

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	<ul style="list-style-type: none"> • Some EPAs seem to allow increase of existing duties (e.g. EAC, ESA) (since it is not explicitly prohibited). • New temporary export duties allowed under strict conditions - always need agreement from or consultation with EU (EAC, art. 15, SADC, art. 24) 	<p>Texts make it impossible (e.g. existing ESA text) or difficult to introduce new export taxes.</p> <p>Export duties, taxes or other charges are completely legitimate under WTO's GATT. It is a historically proven instrument for industrialization and diversification.</p>	<p>WTO rules where export taxes are allowed.</p>
10. General exceptions	<p>In most EPAs, 3 general exceptions potentially useful for Africa have been expunged, amongst others on commodity agreements.</p>	<p>This contravenes the African Group proposal submitted to the WTO Committee on Agriculture at 7 June 2006, supported by the G90, Bolivia and Venezuela.⁵</p>	<ul style="list-style-type: none"> • Align EPA General Exceptions with WTO's GATT General Exceptions (Article XX)
11. Multilateral Safeguard	<p>Language similar across EPA texts allowing Parties the use of WTO safeguards, including Article 5 of the Agreement on Agriculture (the Special Safeguard provision -SSG).</p>	<p>Only 38 developed and developing countries have access to the SSG (Article 5 of the Agreement on Agriculture) at the WTO. The EU does. Of sub-Saharan African countries only Botswana, Namibia, South Africa and Swaziland have access to the SSG. This creates an imbalance since the EU can potentially use the SSG against African countries in the EPA,</p>	<ul style="list-style-type: none"> • Developing countries are currently negotiating a Special Safeguard Mechanism (SSM) in the WTO which aims to be a similar instrument as the SSG. The EU should support developing countries in the SSM negotiations. • The EPA text should explicitly allow the use of the SSM when the SSM instrument comes into force.

⁵ WTO document TN/AG/GEN/18

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		<p>whilst most African countries do not have a similar instrument.</p> <p>Whilst all Parties have access to the normal WTO Safeguard Agreement, developing countries have found this difficult to use because of its onerous data and prove of injury requirements.</p>	
<p>12. Bilateral safeguard (remedy and procedural requirements)</p>	<p>Similar procedures in applying a bilateral safeguard across all EPAs</p> <p>SADC text (SADC EPA Article 34.4b) allows for the remedy to reach the WTO bound tariff level. All the other EPAs allow for the remedy to only reach the applied duty.</p>	<p>Difficult to implement as the invocation conditions are very burdensome and this could prevent African countries from using it in an effective and timely manner.</p> <p>The EPA bilateral safeguard requires 'thorough examination of the situation, with a view to seeking a solution acceptable to the parties concerned' (e.g. art. 34.8c SADC EPA). Many countries will find it difficult to provide comprehensive, accurate and timely data to argue their case.</p> <p>At the WTO, a key reason to negotiate the SSM for agriculture is the onerous procedural requirements of the existing WTO</p>	<ul style="list-style-type: none"> • Simplify procedural requirements eg. Delete Article 34.8c (SADC EPA) and the equivalent clause in other EPAs. • Adopt language used in Article 16 of the TDCA on agricultural safeguard (see Annex II) which only asks the Council of the two parties to 'consider the matter to find an appropriate solution... tak(ing) into account the interests of both Parties'.

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		Safeguard Agreement	
<p>13. Definition of parties</p>	<p>SADC proposed text in Swakopmund (which the EC did not agree to): "The Contracting Parties recognise that the SADC EPA States cannot act collectively as a legally constituted regional entity in all circumstances under this Agreement." (..) (see Annex IIIb for full text).</p> <p>Their proposal allows them to bear obligations resulting from the EPA individually. They can act jointly if and when appropriate.</p>	<p>The current SADC EPA (Article 97) requires states to bear collective obligations in some circumstances e.g. in the dispute settlement. Therefore, even if a country may not be in violation of its obligations but its neighbours are, all are implicated.</p> <p>It is important to note that collective action in each EPA grouping in all areas may not be possible. More so for EPA groupings which do not yet constitute customs unions.</p>	<ul style="list-style-type: none"> • The SADC proposals are recommended as they clarify the collective and individual responsibility of States within a sub-region • Despite having no agreement on this issue, the EU included a unilateral clause on definition of parties in their internal EU document (see EC 2009 'Note for the members of the ACP Working Party' Doc. No. 109/09 ACP reproduced in Annex IIIa). EPA regions, especially SADC, should similarly craft a unilateral declaration, based on the SADC drafting options (Annex IIIb), otherwise it could be misunderstood in the future that the EC option has already been agreed to, as noted by the EC. EC's Doc no. 109/09 states that 'Delegations will find attached the texts that were agreed with SADC in Swakopmund...'
<p>14. Development assistance</p>	<p>West African EPA Protocol on the modalities of the EPA Development Assistance Programme (EPADP) and its implementation.</p>	<p>Development co-operation provision in all EPAs is limited to best endeavour language.</p>	<ul style="list-style-type: none"> • Include a costed and prioritised development matrix to support EPA implementation and provide resources according to a legally

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	<p>The programme insists that "EPA provisions must thus be tailored to address the development objectives of the region. In parallel, accompanying measures and development assistance to build capacity, implement the EPA and support domestic reforms must be provided." The programme calls for [€9.54bn] to be provided over an initial period of five years; with two thirds earmarked for trade-related infrastructure, such as rehabilitation of energy, road and telecommunications networks.</p>	<p>It is not legally binding and not operable (with no schedules or time lines of disbursements). There is also no new money (no mobilization of additional resources) for EPA implementation and adjustment costs and other costs such as infrastructure for enhancing productive capacities.</p> <p>A West African official has warned that the PAPED should not be a 'plats a rechauffer' (no recycling of 'old money' or funds that have previously already been earmarked).</p>	<p>binding and operable schedule.</p> <ul style="list-style-type: none"> Phasing in of trade liberalisation should be linked to the achievement of clear development benchmarks. Countries can reach these benchmarks through development cooperation.
<p>15. Modification of tariff commitments</p>	<p>The only EPA with a modification of tariff commitments' provision is the CARIFORUM (Article 16.6). ESA has proposed a draft text allowing them, because of their 'special development needs' to modify tariff schedules (Yet to be incorporated and confirmed text in Annex IV).</p> <p>In situations of 'serious difficulties' the liberalisation time-table can be suspended for up to a year even if the EC does not provide approval in the EPA Committee.</p>	<p>The major drawback is the requirement for EC approval if an ESA country wants to modify the schedule beyond a year when in 'serious difficulties.'</p>	<ul style="list-style-type: none"> Adopt modification of tariff commitments in all EPAs. It exists in the WTO for MFN trade (although a country might have to provide compensation if the affected WTO Party is negatively impacted). To overcome the downside with this clause, add the following language 'If no satisfactory solution has been reached within 30 days of the matter being referred to the EPA Committee, the ESA Parties

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			<p>may adopt the appropriate measures to remedy the circumstances.</p>
<p>16. Free Circulation of goods</p>	<p>ESA has no provision on free circulation of goods. This is the best option.</p>	<p>In other EPA texts,</p> <ul style="list-style-type: none"> • Customs duties shall be levied only once for goods originating in the EC Party or in the SADC EPA States in the territory of the other party (SADC Art. 27). • Many countries are not yet in customs unions, or the EPA configuration is different from those countries they are planning to be in a customs union with. <p>The implication is that the EU product will circulate more freely than the regional product - giving EU an unfair advantage and negatively affecting regional trade.</p>	<ul style="list-style-type: none"> • Remove free circulation of goods provision
<p>17. Food security clause</p>	<p>Some texts have a food security clause - Central Africa, Cote d'Ivoire, Ghana, and CARIFORUM. The texts are similar.</p> <p>Others do not have such a clause - SADC and EAC.</p> <p>The food security clause notes that</p>	<p>The current language of the security clause is insufficient to safeguard domestic food production</p> <p>The clause has a neo-liberal approach to food security (i.e. countries import to meet food security needs. The EU might</p>	<ul style="list-style-type: none"> • Instead of a Food Security Clause, replace it with the Agricultural Safeguard contained in the EU-South Africa Trade Development Cooperation Agreement (TDCA) - see Annex II. This would be a much more effective food security clause. • In addition, remove the Standstill

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	<p>where the EPA 'leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security, and where this situation gives rise or is likely to give rise to major difficulties', an EPA party can 'take appropriate measures' in accordance with the EPA's bilateral safeguard and procedures.</p>	<p>argue that improved access to food can be achieved by lowering tariffs).</p> <p>The real problem in African countries is that import surges have been displacing local production and rural jobs, leading to food insecurity. The food insecurity situations are not so much due to lack of availability of the product on the domestic market, but lack of unemployed and /or poor people's access to the food (e.g. those farmers which have been displaced by imports).</p> <p>The presence of this clause is therefore misleading - since it appears to address food security problems but in effect does not do so in an appropriate manner.</p> <p>Furthermore, the clause simply gives 'additional' invocation grounds for the use of the bilateral safeguard. It therefore runs into the same problems as noted above under bilateral safeguards.</p>	<p>Clause, which only allows the lowering of tariffs over the implementation period. The standstill clause is likely to increase the frequency of agricultural import surges.</p> <ul style="list-style-type: none"> • Change the interpretation of 'substantially all trade' so that this is effectively asymmetrical, necessitating liberalization only when development benchmarks have been achieved. <p>These suggestions will be much more effective than the current 'food security' clause.</p>
18. Infant industry	•They are all subsumed under the	Apart from the fact that the infant	• There should be a stand alone

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protection	<p>bilateral safeguard provision.</p> <ul style="list-style-type: none"> • The Clause only extends for 10, 12 or 15 years from the time of implementation of the EPA. <p>Both SADC and ESA renegotiated a stand-alone infant industry clause in the sense that it does not expire. The new texts they obtained also cover protection for the establishment of an infant industry, not just an existing infant industry as in the current text. However, these changes have not yet been incorporated into their signed EPA texts.</p>	<p>industry clauses in the current texts expire, the remedies and procedures are similar to the bilateral safeguard – hence running into the same problems mentioned under the bilateral safeguards section. E.g. need for ‘thorough examination...’ by EPA Committee.</p> <p>In SADC’s renegotiated text (not yet incorporated), the remedy has actually become worse than the existing language – from being able to apply the remedy up to the WTO bound rate, they can only do so up to the MFN rate. They also can no longer apply tariff quotas.</p>	<p>infant industry clause which does not expire after <i>x</i> number of years.</p> <ul style="list-style-type: none"> • Countries should be free to introduce infant industry protection without having to go through burdensome procedures. • The protection provided should be adequate and effective in supporting infant industries, and the level of which should be decided by the African/ Pacific EPA party. Even the bound WTO rate may not be sufficient. (e.g. Norway has had a history of tariff peaks for key tariff lines – up to 550%. All other developed countries also have industrialized using tariff peaks).
19. Subsidies (agriculture and non-agriculture subsidies provided to domestic producers)		<p>The EPAs have a clause allowing for payment of subsidies exclusively to national producers i.e. domestic subsidies for goods (agriculture and non-agriculture) can be provided without limits (e.g. SADC text Article 36.4). The problem is that whilst the EU has the resources to provide these supports such as domestic</p>	<ul style="list-style-type: none"> • As a Special and Differential Treatment, the EU should be prohibited from providing subsidies to products that are exported to the African /Pacific markets as this could be equivalent to dumping (sale of the product in another market below the cost of production).

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		<p>supports in agriculture, most African /Pacific countries do not.</p> <p>Even though both sides are supposed to liberalise in the EPA, through EU subsidies to its domestic producers, the playing field is tilted against developing country EPA Parties. This has resulted in EU food exports into Africa (dairy, poultry, cereals etc) for example, which have displaced African farmers.</p> <p>Domestic supports are equivalent in effect to safeguard duties in terms of protecting the domestic market. The further advantage for the EU is that they are permanent (unlike safeguards).</p> <p>Domestic producers receiving subsidies can sell their products at a lower price, outcompeting foreign producers both in the domestic market and in the export market.</p>	<ul style="list-style-type: none"> • In addition, African /Pacific countries should be able to implement automatic countervailing duties (which kick in automatically the moment it is known the subsidies are provided by the EU) to protect their domestic producers from the subsidized imports. • All subsidies provided by the EU should be notified in a timely manner to the EPA Committee.
20. Agricultural Export Subsidies	CARIFORUM (art 28) and Cameroon EPA (art. 24) have a clause which addresses this issue. The principle	In principle, it is good that the EPA text contains such an article. However, in reality, the clause is	<ul style="list-style-type: none"> • All African EPAs should address the issue of agricultural subsidies including domestic supports (not

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	<p>(supposedly) is that EPA Parties may not introduce new export subsidies or increase any existing export subsidy.</p> <p>Best (though still weak language) is the Central African EPA signed by Cameroon. Where Cameroon has eliminated tariffs on agricultural tariff lines, the EC undertakes to dismantle all existing export subsidies. Both Parties shall hold consultations to establish the details of the dismantling process.</p> <p>EAC, SADC, and ESA EPAs do not have a clause on agricultural export subsidies.</p>	<p>extremely weak and not even useful if African /Pacific countries want to use this to discipline the EU's export subsidies.</p> <p>This is because the language (for both CARIFORUM and Cameroon) allows for existing subsidies to be increased if there is a variation in world prices of the agricultural products in question. This is exactly how export subsidies work. When world prices go down, export subsidies paid to exporters go up, to make the subsidy recipients competitive on the world market. The language therefore contains a glaring escape clause for Europe.</p>	<p>only export subsidies)</p> <ul style="list-style-type: none"> The EU's export subsidies should be completely eliminated, whether or not African countries liberalise those tariff lines. This was in fact a commitment the EU made at the WTO's 2005 Ministerial – that it would eliminate all its export subsidies (WTO Hong Kong Declaration, Para 6, 2005).
<p>21. Non-execution clause</p>	<p>All EPAs have similar language under an article titled 'Relationship with Cotonou Agreement '(CARIFORUM) or 'Relationship with other agreements' (other EPAs)</p> <p>The SADC text is a slight improvement compared to the other EPA texts for two reasons: (i) it does not explicitly refer to the specific articles in the Cotonou Agreement, but the Cotonou</p>	<p>The so-called 'non-execution clause' of the Cotonou Agreement may allow the EU to suspend its trade commitments under the Cotonou Agreement when an individual ACP State fails to respect human rights, democratic principles and the rule of law as according to Cotonou.</p> <p>The relevant Cotonou articles include:</p>	<ul style="list-style-type: none"> To avoid any doubt, ACP regions should include an exception clause in the final provisions of the EPAs which states that Articles 11, 96 and 97 should not apply to the EPAs.

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	<p>Agreement as a whole and (ii) does not link rights and obligations resulting from the Cotonou Agreement to trade or trade-related measures: 'Nothing in this Agreement shall be construed so as to prevent the adoption by the EC Party or an SADC EPA State of appropriate measures pursuant to the Cotonou Agreement' (art. 103.2 SADC)</p>	<ul style="list-style-type: none"> • Article 11 (Peace-building policies, conflict prevention and resolution) • Article 96 (Essential elements: consultation procedure and appropriate measures as regards human rights, democratic principles and the rule of law) and • Article 97 (Consultation procedure and appropriate measures as regards corruption). <p>In the past, the EU has used these Cotonou Agreement articles to suspend development aid to Zimbabwe in 2001 and Fiji in 2007 over governance issues.</p>	

Annex I - CARIFORUM EPA Review Clause

Joint Declaration on the signing of the Economic Partnership Agreement

We understand that, in the context of our continued monitoring of the Agreement within its institutions, as provided for under article 5 of the Agreement, a comprehensive review of the Agreement shall be undertaken not later than five (5) years after the date of signature and at subsequent five-yearly intervals, in order to determine the impact of the Agreement, including the costs and consequences of implementation and we undertake to amend its provisions and adjust their application as necessary. CARIFORUM EPA, page 1953 (last page)

Annex II - EU-South Africa's Trade Development Cooperation Agreement (TDCA) Agricultural safeguard

TDCA Agricultural safeguard (article 16)

Notwithstanding other provisions of this Agreement and in particular Article 24, if, given the particular sensitivity of the agricultural markets, imports of products originating in one Party cause or threaten to cause a serious disturbance to the markets in the other Party, the Cooperation Council shall immediately consider the matter to find an appropriate solution. Pending a decision by the Cooperation Council, and where exceptional circumstances require immediate action, the affected Party may take provisional measures necessary to limit or redress the disturbance. In taking such provisional measures, the affected Party shall take into account the interests of both Parties.

Annex IIIa - Swakopmund Texts As Published by the EU⁶

**GENERAL SECRETARIAT
OF THE COUNCIL**

**Brussels, 3 April 2009
Doc. n° 109/09 ACP**

DG E II - Development

PS/ng

**NOTE
for the Members of the ACP Working Party**

**Subject: SADC EPA
- SADC EPA texts for ACP Working Group**

Delegations will find attached the texts that were agreed with SADC in Swakopmund (9-12 March 2009), transmitted by the Commission.

⁶ This is an EU internal document that was published, capturing the texts that were agreed to in the Swakopmund (Namibia) meeting between the EU and the SADC EPA States.

Article 27 bis

Food security

1. The Parties acknowledge that the removal of barriers to trade between the Parties, as envisaged in this Agreement, may pose significant challenges to SADC EPA State producers in the agricultural and food sectors and agree to consult with each other on these issues.
 2. Where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products in order to ensure food security of a Party or SADC EPA State and where this situation gives rise or is likely to give rise to major difficulties for such a Party or SADC EPA State, that Party or SADC EPA State may adopt safeguard measures in accordance with Article 34, following the procedure set out in paragraphs 8(b) to (d), 9 and 10. The measure will be reviewed at least annually, and shall be removed as soon as the circumstances leading to its adoption cease to exist.
-

Art. 27.
Free circulation

1. Customs duties shall be levied only once for goods originating in the EC Party or in the SADC EPA States when imported into the territory of the EC party or the SADC EPA States as the case may be.
 2. By derogation from paragraph 1, any duty paid upon importation in a SADC EPA State which is also a SACU Member State shall be refunded fully when the goods are re-exported from the customs territory of that SADC EPA State of first importation to a SADC EPA State which is not also a SACU Member State. Such products shall then be subject to the duty in the country of consumption. Pending agreement by the parties on the procedures for this paragraph, the operation of this paragraph shall be in accordance with applicable customs legislation and procedures.
 3. The Parties agree to cooperate with a view to facilitating the circulation of goods and simplifying customs procedures, within SADC EPA States, in particular as foreseen in Article 10.
-

Article 35

Prohibition of quantitative restrictions

The Parties to this Agreement may apply quantitative restrictions provided such restrictions are applied in conformity with the WTO Agreement.

Declaration on Article 97

The Contracting Parties recognise that the SADC EPA States are not in a position to act collectively in all circumstances where this is required under this Agreement, and understand that the SADC EPA States will exercise their best endeavours where collective action is required under this Agreement. To this end, and during the period mentioned in the previous sentence, it is understood that in the event that the EC Party has recourse to dispute settlement under this Agreement it shall do so with respect to only those SADC EPA States which it considers have infringed the relevant obligations.

This situation shall be kept under consideration by the Joint Council and shall be reviewed no later than 2 years after the date of signature of this Agreement.

Stand-alone infant industry clause

- 1 Botswana, Lesotho, Namibia, Mozambique and Swaziland may temporarily suspend further reductions of the rate of customs duty or increase the rate of customs duty up to a level which does not exceed the applied MFN duty, 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 threaten the establishment of an infant industry cause or threaten to cause disturbances to an infant industry producing like or directly competitive products.
- 2 Measures adopted in accordance with the conditions of paragraph 1 by a SADC EPA State which is also a SACU Member State shall take the form of the levying of additional duties exclusively by the SADC EPA State invoking this provision.
- 3
 - (a) Where a SADC EPA State takes the view that the circumstances set out in paragraph 1 exist, it shall immediately refer the matter to the Trade and Development Committee for examination.
 - (b) The Trade and Development Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade and Development Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the Trade and Development Committee, the SADC EPA State concerned may adopt measures in accordance with this Article.
 - (c) Before taking any measure provided for in this Article the SADC EPA State concerned shall supply the Trade and Development Committee with all relevant information required for a thorough examination of the situation, with a view to seeking an acceptable solution.
 - (d) In the selection of measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement.
 - (e) Any measure taken pursuant to this Article shall be notified immediately to the Trade and Development Committee and shall be the subject of periodic consultations within that body.
 - (f) In critical circumstances where delay would cause damage which it would be difficult to repair, the SADC EPA State concerned may take measures provided for in paragraph 1 on a provisional basis without complying with the requirements of sub-paragraphs (a) to (e). Such action may be taken for a maximum period of 200 days. The duration of any such provisional measure shall be counted as part of the period referred to in paragraph 4. In taking such provisional measures, the interest of all parties involved shall be taken into account. The importing SADC EPA State concerned shall inform the EC Party, and it shall immediately refer the matter to the Trade and Development Committee for examination.

4. Such measures may be applied for a period of up to 8 years. Application of the measures may be further extended by decision of the Joint Council.
 5. Article 25 of the TDCA shall continue to apply to South Africa.
 6. SACU Member States shall have the right to have recourse to Article 26 of the SACU Agreement 2002.
-

Article 24

Export duties

1. No new customs duties or taxes imposed on, or in connection with the exportation of goods, shall be introduced, nor shall those already applied be increased, in the trade between the European Community and the SADC EPA countries from the date of entry into force of this Agreement.
2. In exceptional circumstances where the SADC EPA States can justify specific revenue needs, protection of infant industries, protection of the environment or where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products essential to ensure food security, these SADC EPA States may introduce, after consultation with the EC Party, temporary customs duties or taxes imposed on, or in connection with the exportation of goods, on a limited number of additional products.
3. In exceptional circumstances where the SADC EPA States can justify industrial development needs those SADC EPA States may introduce temporary customs duties or taxes imposed on, or in connection with the exportation of goods, on a limited number of additional products, by mutual agreement with the EC Party as expressed in a decision of the Joint Council.
4. The Parties shall ensure that any application of this provision does not result in an incompatibility of this Agreement with Article XXIV of GATT 1994.
5. Any customs duties or taxes imposed on, or in connection with the exportation of goods, applied pursuant to this Article shall be applied to goods exported to all destinations.
6. Paragraph 2 shall not be applicable to South Africa.
7. The Parties agree to review the provisions of this Article in the Joint Council no later than three years after the entry into force of this Agreement, taking fully into account their impact on development and diversification of the SADC EPA States' economies.

**Annex IIIb – What was Omitted in the EU-published Swakopmund Texts:
SADC’s Draft Options on ‘Definition of Parties’**

The document published by the EU reproduced in Annex IIa gives the impression that agreement on ‘Definition of the Parties’ was reached between the EU and SADC EPA negotiators. However, according to SADC negotiators, this is not the case. The following are the SADC EPA Draft Options which the SADC countries had brought to Swakopmund on this issue.

SADC EPA Draft Options:

Article 97 bis

1. The Contracting Parties recognise that the SADC EPA States cannot act collectively as a legally constituted regional entity in all circumstances under this Agreement.
2. Without prejudice to their Sovereign Right to act individually, and to engage in legally recognized regional integration processes, the SADC EPA States may where possible voluntarily and temporarily act jointly for the purpose of enabling implementation of the IEPA.

Or

- 1 The Contracting Parties understand that the SADC EPA States may on a voluntary and temporary basis act jointly for the purposes of enabling implementation of some of the provisions of this Agreement where possible.
2. To this end, it is understood that for purposes of Article 34 of this Agreement, Botswana, Lesotho, Namibia, South Africa and Swaziland will act jointly in terms of the SACU Agreement of 2002.
3. To this end, it is understood that in the event that the EC Party has a right to recourse under this Agreement, it shall do so with respect to only the SADC EPA State or States as the case may be and in the event that a SADC EPA State has a right to recourse under this Agreement it may do so individually or jointly with other SADC EPA States against the EC.
4. The Contracting Parties shall review the definitions as set out in Article 97 of this Agreement in the negotiations towards the full EPA.

Annex IV : Joint Conclusions from the EC-ESA EPA Senior Official Meeting

EC-ESA EPA Senior Official Meeting

28 August 2009
Mauritius

Joint Conclusions

1. Eastern and Southern Africa Group (ESA) and the European Community (EC) senior officials met in Mauritius on 28 August 2009 under the co-chairmanship of H.E Ambassadors S Gunessee on ESA side and P. Thompson, Director, DG Trade on EC side.
2. Discussions focused mainly on basket I issues in market access to facilitate locking-in issues where progress has been made. The following issues were discussed:
 - I. Standstill Clause – a text was agreed and is attached as annex.
 - II. Infant Industry clause – a text was agreed and is attached as annex.
 - III. Quantitative restrictions – a text was mostly agreed and is attached as annex. However, Parties agreed to continue discussions on the issue of environment. ESA insists that the provisions on general exceptions do not adequately provide for the environmental protection while EC considers that quantitative restrictions are not the appropriate tool to address environmental protection.
 - IV. Export Taxes: – a text was agreed and is attached as annex (tbc on both sides).
 - V. Modification of tariff commitments: – a text was agreed and is attached as annex (tbc on both sides).
3. The Parties discussed and agreed on a mechanism to lock-in the above agreed texts as attached in annex.
4. EC reiterated its position with regards to the inclusion of provisions on regional preferences. ESA took note and will come back after undertaking internal consultations.
5. On the way forward, Parties agreed to meet at technical level as soon as possible to keep the momentum with the objective of concluding the full EPA. Parties also agreed that the substance of the agreement should not be compromised by fixing unrealistic deadlines.

Mauritius, 28 August 2009

ARTICLE 14 (ESA iEPA)

Standstill

Subject to Article 12 and Article XXX*, the Parties agree not to increase their applied customs duties on products imported from the other Party. This provision shall not apply to products not subject to the liberalisation schedule.

* Article on modification of tariff commitments

Article xxx
Stand-alone infant industry clause

1. ESA States may temporarily suspend further reductions of the rate of customs duty or increase the rate of customs duty up to a level which does not exceed the applied MFN duty or introduce tariff quotas or a combination of these measures, 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 threaten the establishment of an infant industry cause or threaten to cause disturbances to an infant industry producing like or directly competitive products

2. (a) Where a ESA Signatory State takes the view that the circumstances set out in paragraph 1 exist, it shall immediately refer the matter to the EPA Committee for examination.

(b) The EPA Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the EPA Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days of the matter being referred to the EPA Committee, the ESA Signatory State concerned may adopt measures in accordance with this Article.

(c) Before taking any measure provided for in this Article the ESA Signatory State concerned shall supply the EPA Committee with all relevant information required for a thorough examination of the situation, with a view to seeking an acceptable solution.

(d) In the selection of measures pursuant to this Article, priority must be given to those which least disturb the operation of this Agreement.

(e) Any measure taken pursuant to this Article shall be notified immediately to the EPA Committee and shall be the subject of periodic consultations within that body.

(f) In critical circumstances where delay would cause damage which it would be difficult to repair, the ESA Signatory State concerned may take measures provided for in paragraph 1 on a provisional basis without complying with the requirements of sub-paragraphs (a) to (e). Such action may be taken for a maximum period of 200 days. The duration of any such provisional measure shall be counted as part of the period referred to in paragraph 3. In taking such provisional measures, the interest of all parties involved shall be taken into account. The importing ESA Signatory State concerned shall inform the EC Party, and it shall immediately refer the matter to the EPA Committee for examination.

3. Such measures may be applied for a period of up to 8 years. Application of the measures may be further extended by decision of the EPA Committee.

Draft

ARTICLE 17

Prohibition of quantitative restrictions

1 Except as otherwise specified in Annexes I and II of this Agreement, all prohibitions or restrictions in trade on the importation, exportation or sale for exports between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 7, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. .

2. The provisions of paragraph 1 of this Article shall not extend to the following:

(a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

Article xxx

Modification of tariff commitments

1, 'In the light of the special development needs of ESA States, the Parties may decide in the EPA Committee to modify the level of customs duties stipulated in Annex 2, which may be applied to a product originating in the EC Party upon its importation into a ESA State. The Parties may also decide to simultaneously adjust customs duty commitments stipulated in Annex 2 and relating to other products imported from the EC Party, as appropriate.

2, In the event of serious difficulties and in respect of imports of a given product originating from EC Party, the schedule of customs duty reductions and eliminations may be reviewed by the EPA Committee by mutual agreement with a view to possibly modifying the time schedule for reduction or elimination. If the EPA Committee has not taken a decision within thirty days of an application to review the timetable, the ESA States may suspend the timetable provisionally for a period that may not exceed one year.

3 The Parties shall ensure that any such modification does not result in an incompatibility of this Agreement with the requirements of Article XXIV of the GATT 1994.

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

EPA CONTENTIOUS ISSUES MATRIX:
KEY PROBLEMS AND RECOMMENDATIONS

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