

3. The EU and the Participating SADC EPA States agree to cooperate on strengthening the regulatory frameworks of the Participating SADC EPA States as well as to support the implementation of the commitments resulting from the negotiations in accordance with Article 13(5). The Parties recognise that in accordance with Article 13(8) trade capacity building can support the development of economic activities.

4. If a Party that is not party to an agreement on trade in services negotiated in accordance with paragraphs 1 and 2 wishes to join, it may negotiate the terms of its entry to that agreement.

5. If any agreement emanating from negotiations envisaged in paragraphs 1 and 4 were to result in outcomes that prove to be incompatible with the future development of a SADC regional services framework, the Parties shall negotiate to bring this Agreement in line with such regional framework while ensuring a balance of benefits.

Article 74

Trade and investment

1. The EU and the Participating SADC EPA States agree to cooperate on investment in accordance with Article 13(6) and may in future consider negotiating an agreement on investment in economic sectors other than services.

2. If a Party that is not party to an agreement on investment negotiated in accordance with paragraph 1 wishes to join, it may negotiate the terms of its entry to that agreement.

3. If any agreement emanating from negotiations envisaged in paragraphs 1 and 2 were to result in outcomes that prove to be incompatible with the future development of a SADC regional investment framework, the Parties shall jointly endeavour to bring this Agreement in line with such regional framework while ensuring a balance of benefits.

PART III

DISPUTE AVOIDANCE AND SETTLEMENT

CHAPTER I

Objective and scope

Article 75

Objective

1. The objective of Part III is to avoid or settle any dispute between the Parties concerning the interpretation and application of this Agreement with a view to arrive at, where possible, a mutually agreed solution.

2. For disputes that relate to the collective action of SACU, SACU will act as a collective for the purposes of this Part, and the EU shall act against SACU as such.

3. For disputes that relate to an individual action of a SADC EPA State, the SADC EPA State concerned shall act individually for the purposes of this Part, and the EU shall act only against the specific State that it considers has infringed a provision of this Agreement.

Article 76

Scope

1. Part III shall apply to any dispute concerning the interpretation and application of this Agreement, except as otherwise expressly provided.

2. Notwithstanding paragraph 1, the procedure set out in Article 98 of the Cotonou Agreement shall be applicable in the event of a dispute concerning the financing pertaining to development cooperation between the Parties.

CHAPTER II

Consultations and mediation

Article 77

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 76 by entering into consultations in good faith with the aim of reaching an amicable solution.
2. A Party shall seek consultations by means of a written request to the other Party, copied to the Trade and Development Committee, identifying the measure at issue and the provisions of this Agreement with which it considers the measure not to be in conformity.
3. Consultations shall be held within forty (40) days of the date of the receipt of the request. The consultations shall be deemed concluded within sixty (60) days of the date of the receipt of the request, unless both Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods, shall be held within fifteen (15) days of the date of the receipt of the request, and shall be deemed concluded within thirty (30) days of the date of the receipt of the request.
5. If consultations are not held within the timeframes laid down in paragraph 3 or 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 79.

Article 78

Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator. Unless the Parties agree otherwise, the terms of reference for the mediation shall be the matter referred to in the request for consultations.
2. Unless the Parties agree on a mediator within fifteen (15) days of the date of the agreement to request mediation, the Chairperson of the Trade and Development Committee, or his or her delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 94 and are not nationals of either Party. The selection shall be made within twenty-five (25) days of the date of the submission of agreement to request mediation and in the presence of a representative of each Party. The mediator will convene a meeting with the Parties no later than thirty (30) days after being selected. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting and notify an opinion no later than forty-five (45) days after having been selected.
3. The mediator's opinion may include a recommendation on how to resolve the dispute consistent with the provisions of this Agreement. The mediator's opinion is non-binding.
4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties or on his own initiative, given the particular difficulties experienced by the Party concerned or the complexities of the case.
5. The proceedings involving mediation, in particular all information disclosed and positions taken by the Parties during these proceedings, shall remain confidential.

CHAPTER III

Dispute settlement procedures*Article 79***Initiation of the arbitration procedure**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 77, or by recourse to mediation as provided for in Article 78, the complaining Party may request the establishment of an arbitration panel.
2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Trade and Development Committee. The complaining Party shall identify in its request the specific measures at issue, and it shall explain how such measures constitute a breach of the provisions of this Agreement.

*Article 80***Establishment of the arbitration panel**

1. An arbitration panel shall be composed of three (3) arbitrators.
2. Each Party shall appoint one arbitrator within ten (10) days of the date of the receipt of the request for the establishment of an arbitration panel. The two (2) arbitrators shall appoint a third arbitrator, who shall be the chairperson of the arbitration panel, within twenty (20) days of the receipt of the request for the establishment of a panel. The chairperson of the arbitration panel shall not be a national of the Parties nor permanently reside in the territory of the Parties.
3. If all three (3) arbitrators are not appointed within twenty (20) days, or if, within ten (10) days of the appointment of the third arbitrator, either Party submits a reasoned written objection to the appointed arbitrators to the Trade and Development Committee, either Party may request the Chairperson of the Trade and Development Committee, or her or his delegate, to select all three (3) members by lot from the list established under Article 94, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against, and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the procedure laid down in this paragraph.
4. The Chairperson of the Trade and Development Committee, or her or his delegate, shall select the arbitrators within five (5) days of receipt of the request made by either Party referred to in paragraph 3 and in the presence of a representative of each Party.
5. The date of establishment of the arbitration panel shall be the date on which the three (3) arbitrators are finally selected.

*Article 81***Interim panel report**

The arbitration panel shall notify to the Parties an interim report containing both the descriptive section and its findings and conclusions, as a general rule not later than one hundred and twenty (120) days from the date of establishment of the arbitration panel. In cases of urgency, the time limit shall be reduced to sixty (60) days. Any Party may submit written comments to the arbitration panel on precise aspects of its interim report within fifteen (15) days of the notification of the report.

*Article 82***Arbitral ruling**

1. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within one hundred and fifty (150) days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade and Development Committee in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than one hundred and eighty (180) days from the date of the establishment of the arbitration panel.
2. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall make every effort to notify its ruling within ninety (90) days from the date of its establishment. The arbitration panel may give a preliminary ruling within ten (10) days of its establishment on whether it deems the case to be urgent.
3. Either Party may request the arbitration panel to provide a recommendation as to how the Party complained against could bring itself into compliance.

*Article 83***Compliance with the arbitral ruling**

The Party complained against shall take any steps necessary to comply with the arbitral ruling and the Parties shall seek to agree on the period of time to comply with that ruling.

*Article 84***The reasonable period of time for compliance**

1. No later than thirty (30) days after the receipt of notification of the arbitral ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade and Development Committee of the reasonable period of time it will require to bring itself into compliance with the arbitral ruling.
2. Upon notification by the Party complained against, the Parties shall seek to agree on such a reasonable period of time. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitral ruling, the complaining Party shall, within thirty (30) days of the notification made under paragraph 1, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Party complained against and to the Trade and Development Committee. The arbitration panel shall notify its ruling to the Parties and to the Trade and Development Committee within thirty (30) days from the date of the receipt of the request.
3. The arbitration panel shall, in determining the length of the reasonable period of time, take into consideration the length of time that it will normally take the Party complained against to adopt comparable legislative or administrative measures to those identified by such Party as being necessary to ensure compliance. The arbitration panel shall also take into consideration capacity constraints and the different level of development which may affect the adoption of the necessary measures by the Party complained against.
4. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 80 shall apply. The time limit for notifying the ruling shall be forty-five (45) days from the date of the receipt of the request referred to in paragraph 2.
5. The reasonable period of time may be extended by agreement of the Parties.

*Article 85***Review of any measure taken to comply with the arbitral ruling**

1. The Party complained against shall notify the complaining Party and the Trade and Development Committee, before the end of the reasonable period of time, of any measure that it has taken to comply with the arbitral ruling.
2. In the event of a disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions of this Agreement. The arbitration panel shall notify its ruling within ninety (90) days of the date of the receipt of the request. In cases of urgency, including those involving perishable and seasonal goods, the arbitration panel shall notify its ruling within forty-five (45) days of the date of the receipt of the request.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures set out in Article 80 shall apply. The time limit for notifying the ruling shall be one hundred and five (105) days from the date of the receipt of the request referred to in paragraph 2.

*Article 86***Temporary remedies in case of non-compliance**

1. If the Party complained against fails to notify any measure taken to comply with the arbitral ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 85(1) is not compatible with the provisions of this Agreement, the Party complained against shall, if so requested by the complaining Party, present an offer for compensation. Such compensation may include or consist of financial compensation, although nothing in this Agreement shall oblige the Party complained against to offer such financial compensation.
2. If no agreement on compensation is reached within thirty (30) days of the end of the reasonable period of time or of the arbitral ruling under Article 85 that a measure taken to comply is not compatible with this Agreement, the complaining Party shall be entitled, upon notification to the Party complained against, to adopt appropriate measures.
3. In adopting such measures the complaining Party shall seek to select measures proportionate to the violation which least affect the attainment of the objectives of this Agreement and shall take into consideration their impact on the economy of the Party complained against and on the individual SADC EPA States.
4. If the EU fails to notify any measure taken to comply with the arbitral ruling by the expiry of the reasonable period of time at the latest, or if the arbitration panel rules that the measure notified under Article 85(1) is not compatible with that Party's obligations under this Agreement, and the complaining Party asserts that the adoption of appropriate measures would result in significant damage to its economy, the EU shall consider providing financial compensation.
5. The EU shall exercise due restraint in asking for compensation or adopting appropriate measures pursuant to paragraphs 1 or 2.
6. Compensation or appropriate measures shall be temporary and shall be applied only until any measure found to violate the provisions of this Agreement has been withdrawn or amended so as to bring it into conformity with those provisions or until the Parties have agreed to settle the dispute.
7. For the purposes of Articles 86 and 87, appropriate measures refer to measures similar to those available under Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement ('DSU').

*Article 87***Review of any measure taken to comply after the adoption of appropriate measures**

1. The Party complained against shall notify the complaining Party and the Trade and Development Committee of any measure it has taken to comply with the arbitral ruling and of its request to end the application of appropriate measures by the complaining Party.
2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions of this Agreement within thirty (30) days of the date of notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the Party complained against and to the Trade and Development Committee. The arbitral ruling shall be notified to the Parties and to the Trade and Development Committee within forty-five (45) days of the date of the receipt of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with the provisions of this Agreement, the arbitration panel shall determine whether the complaining Party may continue to apply appropriate measures. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions of this Agreement, the appropriate measures shall be terminated.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 80 shall apply. The period for notifying the ruling shall be sixty (60) days from the date of the receipt of the request referred to in paragraph 2.

*CHAPTER IV***Common provisions***Article 88***Mutually agreed solution**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the Trade and Development Committee and the arbitration panel, if any, of such a solution. Upon adoption of the mutually agreed solution, the dispute settlement procedure shall be terminated.

*Article 89***Rules of Procedure and Code of Conduct**

1. The Parties shall agree on Rules of Procedure and a Code of Conduct within twelve (12) months of the entry into force of this Agreement which shall be adopted by the Joint Council.
2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties. The arbitration panel shall meet in closed session when the submissions or arguments of a Party contain confidential information.

*Article 90***Information and technical advice**

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration proceeding. The arbitration panel shall also have the right to seek the opinion of relevant experts as it deems appropriate. Interested entities are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with the Rules of Procedure. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments.

*Article 91***Languages of the submissions**

1. The written and oral submissions of the Parties shall be made in any official language of the Parties.
2. The Parties shall endeavour to agree on a common working language for any specific proceedings under this Part. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions and interpretation at the hearings into the language chosen by the Party complained against, unless such language is an official language of that Party. The EU shall, when seeking to agree on a common working language, take into account the potential impact of such costs on the SADC EPA States.

*Article 92***Rules of interpretation**

The arbitration panel shall interpret the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.

*Article 93***Arbitral rulings**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.
2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the reasoning behind any findings and conclusions that it makes. The Trade and Development Committee shall make the arbitral ruling publicly available unless it decides not to do so.

*Article 94***List of arbitrators**

1. The Trade and Development Committee shall, no later than three (3) months after the entry into force of this Agreement, establish a list of twenty-one (21) individuals who are willing and able to serve as arbitrators. Each of the Parties shall select eight (8) individuals to serve as arbitrators. The Parties shall also agree on five (5) individuals who are not nationals of either Party and who shall act as chairperson of the arbitration panel. The Trade and Development Committee will ensure that the list is always maintained in accordance with this Article.
2. Arbitrators shall have specialised knowledge on matters covered by this Agreement or experience in law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the governments of any of the Parties, and shall comply with the Code of Conduct annexed to the Rules of Procedures.
3. The Trade and Development Committee may establish an additional list of fifteen (15) individuals having a sectoral expertise in specific matters covered by this Agreement. When recourse is made to the selection procedure of Article 80, the Chairperson of the Trade and Development Committee may use such a sectoral list upon agreement of both Parties.

*Article 95***Relation with WTO obligations**

1. Arbitration bodies set up under this Agreement shall not arbitrate disputes on a Party's rights and obligations under the WTO Agreement.
2. Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding under this Agreement or under the WTO Agreement, it may not initiate a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For the purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the DSU.
3. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO.

*Article 96***Time limits**

1. Any time limits referred to in this Part, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer.
2. Any time limits referred to in this Part may be extended by mutual agreement of the Parties.

PART IV

GENERAL EXCEPTIONS*Article 97***General exception clause**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importation or exportation of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of the GATT, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;