

*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;

- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the GATT Contracting Parties and not disapproved by them or which is itself so submitted and not so disapproved ⁽¹⁾;
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; or
- (j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that the Parties and the SADC EPA States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 98

Security exceptions

1. Nothing in this Agreement shall be construed to:
 - (a) require either Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
 - (b) prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable materials or the materials from which they are derived; or
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) prevent either Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Trade and Development Committee shall be informed of measures taken under paragraph 1(b) and (c) and of their termination.

Article 99

Taxation

1. Nothing in this Agreement, or in any arrangement adopted under this Agreement, shall be construed to prevent either Party from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.
2. Nothing in this Agreement, or in any arrangement adopted under this Agreement, shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

⁽¹⁾ The exception provided for in this sub-paragraph extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution 30 (IV) of 28 March 1947.

3. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

PART V

INSTITUTIONAL PROVISIONS

Article 100

The Joint Council

A Joint SADC EPA States — EU Council ('Joint Council') is hereby established, which shall oversee and administer the implementation of this Agreement.

Article 101

Composition and functions

1. The Joint Council shall be composed, on the one hand, of the relevant members of the Council of the EU and relevant members of the European Commission or their representatives, and, on the other hand, of the relevant Ministers of the SADC EPA States or their representatives. The first meeting of the Joint Council shall be co-chaired by the Parties.

2. In relation to matters where SACU acts collectively for purposes of this Agreement, SACU shall act collectively in such matters under this provision and the EU shall treat SACU as such. In relation to matters where Member States of SACU act individually in such matters under this provision, the specific SACU Member State shall act in that capacity and the EU shall treat that Member State as such.

3. Without prejudice to the functions of the Council of Ministers as defined in Article 15 of the Cotonou Agreement, the functions of the Joint Council shall be to:

- (a) be responsible for the operation and implementation of this Agreement and monitor the fulfilment of its objectives;
- (b) examine any major issues arising under this Agreement that are of common interest and affect trade between the Parties;
- (c) examine proposals and recommendations from the Parties for the review of this Agreement;
- (d) make appropriate recommendations;
- (e) monitor the development of economic and trade relations between the Parties;
- (f) monitor and assess the impact of the cooperation provisions of this Agreement on sustainable development;
- (g) monitor and review progress on all matters covered by this Agreement;
- (h) establish its own rules of procedure;
- (i) establish the rules of procedures of the Trade and Development Committee;
- (j) monitor the work of the Trade and Development Committee; and
- (k) perform any other duties under this Agreement.

4. The Joint Council may provide periodic reports on the operation of this Agreement to the Council of Ministers established in accordance with Article 15 of the Cotonou Agreement.