

*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.