# SAFEGUARD MEASURES IN THE SADC-EU ECONOMIC PARTNERSHIP AGREEMENT

*A safeguard is an emergency measure introduced by a government to restrict imports of a product temporarily.*

The Economic Partnership Agreement (EPA) between the European Union (EU) and the Southern African Development Community (SADC) EPA Group came into effect in October 2016. This group comprises the Southern African Customs Union countries – South Africa, Botswana, Lesotho, Namibia and Swaziland – and Mozambique. The agreement governs trade between the EU and the SADC EPA Group of countries.

The EPA is designed to give asymmetrical preferential market access to the parties, with the EU opening its market to a greater extent than the SADC EPA countries. The agreement provides space for SADC EPA countries to protect sensitive products from full liberalisation. It also incorporates safeguards to mitigate against the rapid growth of imports.

At the multilateral level, World Trade Organization (WTO) members have long benefited from instruments that aim to protect producers – such as the WTO Agreement on Safeguards. These cannot target the imports of a particular country and have been seldom applied.

Regional and bilateral agreements, however, may include their own special and differential safeguards, tailored to the needs of the parties. The safeguards included in the EPA can be invoked in a wider range of conditions than provided under WTO rules.

# IMPORTANCE OF SAFEGUARDS

Safeguard measures are one of the most frequently used trade remedies under many trade agreements. A safeguard is a kind of insurance against adverse economic shocks.

One of the main arguments for applying safeguards is to protect sensitive domestic industries. When a surge in imports threatens to harm the domestic industry, they act as a safety valve from such a shock. This protection by default can also be used to protect infant industries.

Access to safeguards can reassure industries about the policy space available for governments to respond when unforeseen economic developments arise, such as a surge or decline in market prices and a surge in imports. Applying a safeguard can temporarily alleviate some of the effects of such changes and give industries time to adjust.

In the context of trade negotiations, safeguards can encourage greater tariff concessions in more sensitive sectors. The premise is that the inclusion of such a clause creates an escape window if the application of reduced tariffs has significant negative effects on domestic producers.

*World Trade Organization rules provide for the use of safeguards under Article XIX of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Safeguards. These multilateral rules detail that a safeguard measure is temporary and should not be in place for more than four years, although this can be extended up to eight years. Any extension is subject to a determination by national authorities that the measure is needed and that there is evidence the industry is adjusting.*

*Measures imposed for more than a year must be progressively liberalised. Importantly, after a safeguard has been in place for three years, affected exporting partners can retaliate against the safeguard by withdrawing substantially equivalent tariff concessions. Thus, the country imposing a safeguard has an incentive to abide by the time limits.*

# TYPES OF SAFEGUARDS IN THE EPA

The SADC-EU EPA is comparatively generous, given the large number of safeguards. The reason for this is that the agreement is meant to help SADC EPA countries cement economic growth. It is not meant to displace domestic industries through cheaper imports from the EU. The safeguards cater for various scenarios under which domestic industry can experience injury.

| SAFEGUARD MEASURES IN THE SADC-EU EPA | | | | | |
|---|---|---|---|---|---|
| | Bilateral safeguard | Agricultural safeguard | Food security safeguard | BLNS safeguard | Infant industry |
| **Beneficiary** | All parties | Southern African Customs Union (SACU) | SADC EPA countries | Botswana, Lesotho, Namibia, Swaziland (BLNS) | Botswana, Lesotho, Mozambique, Namibia, Swaziland (BLMNS) |
| **Coverage** | All products | Twenty-three agricultural tariff lines | All products | Sixty tariff lines | Infant industry produce |
| **Measure** | • Suspension of further reduction of the duty; or<br>• Increase in duty up to Most Favoured Nation (MFN) rate; or<br>• Introduction of tariff quotas | A duty which shall not exceed 25% of the current WTO bound tariff or 25 percentage points, whichever is higher. Such duty shall not exceed the MFN rate | Not specified | Increase in duty up to the MFN rate or a zero duty Tariff Rate Quota (TRQ), with duty outside the quota not exceeding the MFN rate | Suspend further reductions of the duty or increase in duty up to the MFN rate |
| **Duration of the measure** | For the EU, two years with possible extension of two years. For SADC EPA countries, four years, with possible extension of four years | For the remainder of the calendar year or five months, whichever is the longer | As soon as the circumstances leading to its adoption cease to exist | Four years, with possible extension of four years | Eight years |
| **Duration of the provision** | Indefinite | Twelve years from entry into force | Indefinite | Twelve years from entry into force | As long as injury is a result of a reduction of the duties |

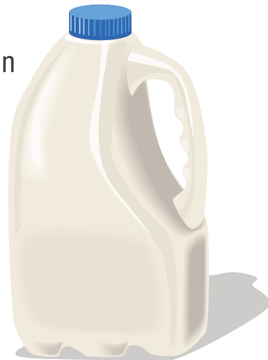
Source: Gijs Berends, based on What does the EU-SADC EPA really say? paper

## Multilateral Safeguards (Article 33)

The SADC EPA includes a provision on multilateral safeguards for when the parties apply a safeguard in accordance with the WTO rules (and not the EPA). If the EU applies a safeguard under WTO rules, the EPA provides an exception for SADC EPA countries. These countries will be exempted from the safeguard and will effectively be able to still export the relevant products to the EU market. This provision is in line with the overall development objectives of the EPA and is in place for five years from the date of entry into force of the agreement.

## General Bilateral Safeguards (Article 34)

The bilateral safeguard measures set out under Article 34 of the EPA can be triggered when imports increase in such quantities and under such conditions as to cause or threaten to cause:



- Serious injury to the domestic industry producing like or directly competitive products.
- Disturbances in a sector of the economy producing like or directly competitive products, particularly when these cause social problems, or difficulties that could bring about a serious deterioration in the economic situation of the importing party or SACU.
- Disturbances in the markets of like or directly competitive agricultural products.

This safeguard will apply indefinitely under the agreement on all products subject to liberalisation. It can take the form of a suspension of further tariff reductions; an increase in the customs duty (up to the level of MFN applied rate); or a tariff quota. The safeguard should be temporary and only applied for two years by the EU or four years by SADC EPA countries. It might be possible to extend the application if the conditions giving rise to the measure in the first place still exist.

The SADC EPA includes a consultation process before a safeguard can be imposed. The Trade and Development Committee, which oversees the implementation of the agreement, must be given information about the situation and the opportunity to find a mutually agreeable solution to the problem. This process must be concluded within 30 days, given that the need for safeguard protection is often urgent.

## Agricultural Safeguards (Article 35)

The agricultural safeguard is different from the other safeguards. Its trigger mechanism is not based on a demonstration (backed up by the necessary documentation) of injury to a domestic industry, but is rather based on volume of imports. This safeguard measure applies to an increase in imports from the EU into SACU of specific agricultural products. These are listed in Annex IV of the agreement and include worked cereals and meat preparations.

SACU is entitled to apply an import duty when the imports exceed an agreed quantity. The increased import duty is applicable for up to five months (or the remainder of the calendar year, whichever is longer). The increased duty rate shall not exceed 25 percent of the current WTO bound tariff or 25 percentage points, whichever is higher; and it cannot be higher than the MFN rate.

This is effectively an automatic safeguard on an agreed list of products. In addition to the safeguard, and to support local agricultural production, the EU has also agreed not to subsidise any of its agricultural exports

## Food Security Safeguards (Article 36)

This safeguard is triggered when it is essential to prevent or provide relief for "critical general or local shortages of foodstuffs or other products to ensure food security of a SADC EPA State". The safeguard is also triggered when this gives rise, or is likely to give rise, to major difficulties for such a SADC EPA country. That SADC EPA country may adopt safeguard measures in accordance with the procedures that apply to bilateral safeguards. The measure will be reviewed at least annually and removed as soon as the circumstances leading to its adoption cease to exist.

# ACCESS TO SAFEGUARD MEASURES IN SOUTH AFRICA


In South Africa, the International Trade Administration Commission (ITAC) has jurisdiction on the implementation of safeguard measures under the relevant regulations.

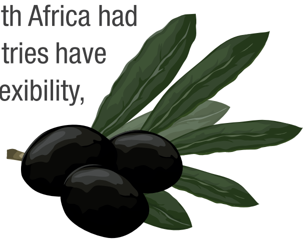
If a firm or an industry want to request a safeguard, they must apply to ITAC. ITAC will then investigate the product to determine if it is necessary to apply protection through a safeguard measure.

Following its investigation and stakeholder engagement (if necessary), ITAC will make a recommendation to the Minister of Trade and Industry.

# SPECIAL SAFEGUARDS NOT FOR SOUTH AFRICA

## BLNS Transitional Safeguards (Article 37)

The specific BLNS safeguard stems from the unease between the functioning of SACU and the TDCA. During the negotiations for the SADC EPA, the BLNS countries agreed to align themselves with the degree of liberalisation that South Africa had already granted to the EU under the Trade Development and Cooperation Agreement (TDCA). The BLNS countries have agreed to do so even though they were never party to the negotiations for this TDCA. In return for their flexibility, they have asked for an additional safeguard mechanism for those products that were considered particularly sensitive. This explains why this safeguard only applies to the BLNS countries, and only to a selected group of 60 products for 12 years from the entry into force of the agreement.



This safeguard applies when one of the products listed in Annex V of the agreement and originating in the EU is being imported into a BLNS country in such increased quantities that it causes, or threatens to cause, serious injury in any BLNS country. These safeguard measures take the form of a duty on the product.

## Infant Industry Protection Safeguards for BLMNS (Article 38)

The idea behind infant industry protection is that new industries particularly are vulnerable to competition and that they need protection until they can attain the economies of scale necessary to compete.

This safeguard is only applicable to Botswana, Lesotho, Mozambique, Namibia and Swaziland. These countries may temporarily suspend further reductions of tariffs or increase the rate of customs duty up to a level which does not exceed the applied MFN duty. This can be applied when imports from the EU threaten the establishment of an infant industry, or cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. This safeguard measure takes the form of additional duties.

# FIND OUT MORE

### Full text of agreement

http://www.thedti.gov.za/trade_investment/trade.jsp

### European Help Desk

The EU is the world's largest single market and the Export Helpdesk
is your online portal to access it.
http://exporthelp.europa.eu

# CONTACT US

The SADC-EU EPA Outreach initiative supports the implementation of the agreement in South Africa by providing information on its potential benefits. It comprises the Delegation of the European Union to South Africa, the Department of Trade and Industry, the Department of Agriculture, Forestry and Fisheries, and the South African Revenue Service. It is funded by the EU.

https://sadc-epa-outreach.com

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