

A clause that is present in all the Economic Partnership Agreement (EPAs) concluded by the EU is the one on the measures of trade defence. Such Agreements offer each Party the possibility to activate antidumping and countervailing duties, as well as safeguard measures, to protect their local industries against unfair practices. Safeguard measures, in particular, can consist of temporary quantitative import restrictions (trade quotas) or of duty increases and are actionable in cases where a surge in imports of the counterpart's products provokes a perturbation of local markets. These measures, although actionable only in exceptional circumstances, offer therefore protection to each EPA party from cases where imports from their counterpart grow too quickly in their respective markets, posing a threat for their domestic productions.

In the EPA that the EU concluded [with the Southern Africa Development Community](#) (SADC), to date the only full and comprehensive regional EPA concluded by the EU in Africa (as it covers not only trade in goods, but also in services and many other policy areas), bilateral safeguard measures are regulated by art. 34, which establishes that these measures can be activated both by a country individually and by the Southern Africa Customs Union (SACU) - as SADC, not being a customs union, has not safeguard measures that can be used by its members for trade defence purposes.

Like in all its trade agreements, the EU's EPA with SADC includes a dispute settlement mechanism so that the EU and its counterparts can resolve disputes through consultations. Consultations give the parties an opportunity to discuss the matter and to find a satisfactory solution without proceeding further with litigation. In case parties fail to find a solution, an arbitration procedure is foreseen (art. 79) that can be activated. All the disputes arisen under bilateral trade agreements concluded by the EU are accessible on a [webpage](#) developed by the Directorate-General for Trade (DG-Trade) of the EU Commission.

In December 2016, SACU imposed a provisional bilateral safeguard measure on imports of frozen bone-in chicken cuts from the EU in the form of increased import duties, arguing a threat posed to the local industry production by the abnormal increase of such imports in the region. The temporary safeguard measure was converted in September 2018 in a definitive bilateral safeguard measure. On 14 June 2019, the EU launched dispute settlement proceedings with SACU under the Dispute Settlement and Avoidance Part (Part III) of the EU-SADC EPA, arguing that the safeguard measure taken by SACU did not comply with the requirements under the EU-SADC EPA. This is the first time the EU triggered a bilateral dispute settlement mechanism under one of its EPAs, challenging the legal basis and compliance of the measure with the EU-SADC EPA.

After a failed attempt to resolve the dispute amicably held on 13 September 2019 in Gaborone, Botswana, on 21 April 2020, the EU [requested](#) the establishment of an arbitration panel with SACU, whose nomination however has been delayed due to several causes, including a disagreement on the chairmanship of the panel and the outbreak of the Covid pandemics. Because of this delay, the arbitration Panel was formally established only on 29

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November 2021, followed by the adoption of the

[rules](#)

for the arbitration procedure with the timeline for adoption of the final ruling (the first written submission of the EU to the arbitration panel is available

[here](#)

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The final ruling, issued on 3 August 2022, has not yet been published, but according to a [press release](#)

issued by SACU, it seems that this is more favorable to such organisation, even if the EU has a [different opinion](#)

. Whoever is right in this interpretation of this ruling, this arbitral decision sets a precedent for the imposition of similar safeguards in the SADC region and under the other EPAs including similar measures at bilateral level in defence of domestic industries. This because, as indicated above, this is the first case of dispute on a bilateral safeguard measure adopted within the EU EPAs. Follow-up on the publication of the text of the ruling will be therefore opportune.