

Health-related standards in Economic Partnership Agreements in East and Southern Africa

The Economic Partnership Agreements (EPA) is a trade agreement between the European Union (EU) and the Africa, Caribbean and Pacific (ACP) countries signed under different regional groupings. It aims to promote trade and investment between the EU and ESA countries by reducing tariffs and other trade barriers. In 2012 and 2016, some East and Southern African (ESA) countries signed the interim ESA-EU and SADC-EU EPA respectively after negotiations that started in 2002. Kenya, Tanzania and Uganda (initially part of the ESA-EPA region are now negotiating under the East African Community (EAC). The SADC EPA has a revision clause that requires the parties to review the entire agreement no later than five years after its entry into force. This brief seeks to contribute and strengthen the sustainable development chapter of the agreement and proposes inclusion of standards that promote health in the ESA region.



Introduction

The Economic Partnership Agreements (EPAs) between the European Union and Africa, Caribbean and Pacific states are trade agreements signed by the different regions to promote trade and investment by reducing tariffs and other trade barriers. It is premised on the World Trade Organisation (WTO)'s architecture. For the ESA region, 5 countries are implementing the interim [ESA-EU EPA](#); and 6 the [SADC-EU EPA](#). In this brief the term 'ESA' refers to all countries in the ESA region that are implementing the EPA, viz: ESA-EPA states-Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe and SADC EPA States-Botswana, Lesotho, Eswatini, Mozambique, Namibia and South Africa. Whilst the two agreements have common features in their scope, issues covered and liberalisation framework, some provisions differ. For example the SADC-EU EPA includes a chapter on sustainable development. This chapter requires all parties to uphold social and environmental matters, providing a framework for environmental or labour issues and a comprehensive list of areas for cooperation between the partners to foster sustainable development. The agreement does not cover labour standards or social protection measures, but includes

provisions promoting human rights and democratic principles. The interim ESA-EU EPA does not have such a chapter on sustainable development. EPAs do not explicitly require State parties to guarantee the right to health in the different clauses and thus include health related standards in the agreement.

The SADC EPA's revision clause requires the parties to review the entire agreement no later than five years after entry into force. This provides an opportunity to revisit the agreement's provisions and assess its impact on SADC countries and the EU. At the same time, the deficits in the agreement on health-related standards could be addressed in this review process.

This brief prepared from review on online documents and legal databases for the 17 ESA countries provides information to support inclusion of health-related standards in the EPAs, viz:

- Environmental standards, relating to water, sanitation, clean energy, green spaces, recycling and pollutants and specific standards relating to extractive activities.
- Food standards as covered in country and international standards.





- c. Social, labour and governance standards in the International Convention on Economic and Human Rights, the UN Guiding Principles on Business and Human Rights, ILO Conventions and public health duties to prevent harm to health, including in relation to advertising, information, labelling gender equality, occupational health and decent work.
 - d. Fiscal duties, including to ensure fair standards on taxes
 - e. Local content and investment: to ensure local benefit and employment, procurement, and training, health and related infrastructure, and access to health technologies and medicines.
- Of the 17 ESA countries (Angola, Botswana, DRC, Eswatini, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Tanzania, Uganda, Zambia and Zimbabwe), those covered by specific EPAs are shown in *Table 1*:

Table 1: EPA agreements and the ESA countries covered

EPA Region	Countries that initialed interim EPAs (Dec 2007)	Countries that did not Initial interim EPAs	Countries that signed Interim EPAs (June 2009)	Countries that initialed interim EPAs but did not sign the EPAs	Current status 2024 (countries implementing the agreement)
ESA	Comoros Madagascar Mauritius Seychelles Zambia Zimbabwe	Djibouti Eritrea Ethiopia Malawi Sudan	Madagascar Mauritius Seychelles Zimbabwe	Comoros Zambia	Comoros Madagascar Mauritius Seychelles Zimbabwe
EAC	Burundi Kenya Rwanda Tanzania Uganda				Kenya Rwanda
SADC	Botswana Eswatini Lesotho Mozambique Namibia	Angola South Africa	Botswana Eswatini Lesotho Mozambique	Namibia	Botswana Eswatini, Lesotho Mozambique Namibia South Africa

Source: Author's compilation

Deficits in EPA protection of health standards

When negotiations to establish an EPA between the EU and ACP countries started in 2002, they were supposed to progress in phases. The first agreed phase that has not been concluded to date is to put in place institutional mechanisms to progressively implement the EPAs. The deficits shown in *Table 2* point to inadequate institutions to implementation a free trade area.

Those envisaged in 2002 included [joint institutions, consultative mechanisms, and dispute settlement mechanisms](#), established at regional and national levels to oversee the implementation of the EPA and to involve all stakeholders in the implementation of the EPA.



Table 2: Key issues and deficits in health protection in the EPAs

Area covered	Specific issues in the EPAs	Deficits in health protection
An agreement oriented towards sustainable development?		
Establishes a Free Trade Area (FTA) on goods (Asymmetric trade opening)	The EU guarantees ESA countries 100% free access to its market without the market openness from ESA states, who can keep tariffs on products sensitive to international competition. ESA-EPA countries do remove duties on up to 98% of imports from the EU.	Whilst the EPA has sanitary and phytosanitary provisions and allows for sensitive products that might include health products, no clause requires weaker parties to have institutional mechanisms to facilitate other measures, such as strong regulatory, standards, competition laws and policy institutions.
Customs duty	The EPA agreement prohibits the introduction of new customs duties on goods imported by parties to the agreement. It prohibits new duties to those applied between the parties after the agreement comes into force.	Whilst it can increase the availability of health products by reducing their cost, removing customs duties can lead to low-quality or counterfeit health products coming into the market, with risks to public health especially in the absence of strong regulation and under-mining local industries that produce quality health products at higher price. Lack of competition laws and policies increases ESA vulnerability in implementing their EPAs.
Prohibits export duties or taxes	The agreement prohibits new customs duties or taxes on or in connection with export of goods and an increase in duties for those already applied between the parties, after the agreement comes into force.	This facilitates raw material export and limits value addition, local manufacturing, and acquisition of technology for beneficiation. It favours the stronger party (the EU). Lagging health product manufacture in ESA countries makes them dependent on EU products.
More favourable treatment (MFN) resulting from the FTA	Any more favourable treatment applicable as a result of either part collectively or individually entering into a free trade agreement with third parties shall extend to the other party.	This reduces policy space for ESA countries to pursue alternative routes for diversification and development, such as within south-south cooperation, with established pharmaceutical companies in Brazil, India and China.
Safeguards on imports	The EPA contains bilateral and multilateral “safeguards” that ESA EPA countries can activate if increased import of goods from EU threatens to disrupt domestic production. If the EU applies a safeguard under WTO rules, it offers EPA partners a renewable 5-year exemption from its application.	The safeguards can only be applied under certain conditions and with limitations, which require strong institutions to monitor trade and apply the safeguards in ESA, not present in many ESA countries. The various sectors affecting health, eg: agriculture impact on nutrition are affected by deficits in institutional mechanisms for invoking safeguards.
Possibility of flexible sourcing	The rules of origin determine which products benefit from trade preferences. In the ESA EPA they have been formulated to make it much easier for ESA countries to benefit from reduced EU customs duty rates.	It is not clear if health products can benefit from the trade preferences.
An agreement supporting economic diversification in ESA EPA states?		
ESA EPA chapter (iv) on economic development and cooperation.	The agreements include duties to meet ESA development needs to promote their growth, production and supply capacity, foster structural change, economic competitiveness, value addition and regional integration.	There are no provisions targeting the essential sectors such as health and other social services. In addition, there is no binding language as this chapter is limited to “cooperation” on the issues identified



Area covered	Specific issues in the EPAs	Deficits in health protection
Access to intermediate goods	The EPA reduces the import duties on many of the intermediate goods like fertilizers, chemicals and machinery. In theory this paves the way for ESA EPA countries' industries to diversify and add more value to their products.	This has not yet yielded results due to other barriers, including intellectual property barriers. The EU introduced unilateral measures eg the Carbon Border Adjustment protecting EU producers, and discriminating against ESA producers seen as carbon intensive
Protection of industry	The EPA contains clauses that let ESA EPA partners protect their infant industries, applicable under certain conditions.	However, as noted above, there should be strong institutions to ensure this is done. There is no provision that allows for these institutions to be in place first
Rules of Origin and Cumulation	Origin is the citizenship of a product. A product exported to the EU has a zero or reduced duty based on its origin. Discounted tariffs and flexible rules of origin benefitting agri-food, fishery and industrial companies are possible for countries in an EPA with the EU.	Whilst cumulation of origin (allowing discounted tariffs across countries in a region) is possible under certain conditions, rules of origin are complex and difficult to apply in a region with multiple and cross cutting blocks that individual countries belong to.
An agreement promoting sustainable development?		
Adherence to principles	The ESA EPA agreement is based on the principles of respect for human rights, rule of law, and democracy.	These principles help to hold companies and member states accountable. However, there is no explicit recognition of the right to health being made an integral part of the agreement
Conditionality of trade benefits	Under the Cotonou Agreement, "appropriate measures" can be taken if a Party fails to fulfil its obligations in respect of fundamental principles (democracy, human rights), including suspension of trade benefits, even if this would be an action of last resort.	This conditionality should also be made explicit that if an EPA implementing provisions of the EPA violates the Right to health principle, this should constitute reasonable grounds for suspension of benefits. In their current form, the EPAs do not recognize such and therefore this is a major deficit
Reconfirmation of Cotonou Agreement clauses	EPAs are based on the Cotonou Agreement of 2000, which has provisions on human rights, sustainable development, and dialogue including parliaments and civil society. The EPA offers some of the highest levels of protection of human rights and sustainable development in EU agreements.	Sustainable development should also include binding clauses for technology transfer particularly in critical sectors like health to ensure timely and affordable provision of health products and services including medicines, vaccines, diagnostics, among others. The regional EPAs in place do not, however, indicate these provisions.

It is not clear which products have been excluded from liberalisation under the SADC EPA. The agreement allows for asymmetric provisions such as special safeguards and measures for agriculture, food security, and infant industry protection. Under the interim ESA-EPA, the following products have, been excluded from liberalisation:

- **Madagascar:** meat, milk and cheese, fisheries, vegetables, cereals, oils and fats, edible preparations, sugar, cocoa, beverages, tobacco, chemicals, plastic and paper articles, textiles, metal articles, furniture;
- **Mauritius:** live animals and meat, edible products of animal origin, fats, edible preparations and beverages, chemicals, plastics, rubber, leather and fur skins, iron and steel and consumer electronic goods;
- **Seychelles:** meat, fisheries, beverages, tobacco, leather articles, glass and ceramics products and vehicles;
- **Zimbabwe:** animal origin products, cereals, beverages, paper, plastics, rubber, textiles, clothing, footwear, glass, ceramics, consumer electronics and vehicles (Interim ESA EU EPA, 2012)



Towards health-oriented EPAs in the ESA region

The EPAs cover a range of activities - including agriculture, fisheries, and manufacturing- and include provisions for the protection of intellectual property rights, the promotion of sustainable development, and the establishment of a dispute settlement mechanism. This section addressed the environmental standards, food standards, social, labour and governance standards, fiscal duties, local content and investment requirements that may impact on health.

3.1. Environmental Standards

The EU-SADC EPA chapter on sustainable development noted earlier includes provisions on environmental protection, climate change, and biodiversity conservation, together with provisions on environmental impact assessments and public participation in environmental decision-making processes. However, the language is not binding as in other articles on reduction and elimination of custom duties and is limited to “ensuring cooperation”. The interim ESA EPA does not contain a chapter on sustainable development or environmental standards, although this is currently being negotiated. Given this, environmental standards need to be included in the EPAs using binding language, particularly covering major determinants of health that contribute to sustainable development, viz standards covering:

- Air quality for pollutants (eg: nitrogen dioxide, sulphur dioxide) and particulates.
- Water quality, including for pollutants such as lead, cadmium, and mercury.
- Waste management, including recycling, landfill diversion and waste reduction targets.
- Climate change: including on greenhouse gas emissions, and renewable energy.

The EPAs should provide for protection of workers health and safety, particularly in the extractive industries that produce for domestic or export markets. To complement the rules of origin and cumulation provisions, the EPA should integrate:

- Promotion, protection of and training in health and safety for workers and contractors
- Prevention and reporting of accidents and injury;
- Provision of periodic medical examinations.
- Legal objects to give effect to international standards for occupational health and safety.
- Duties to make available to workers representatives, competent authorities, workers’ and employers’ organisations information on national and international safety and health policies and standards relevant to their operations, and the hazards and protective measures.
- Powers of state inspectors, including to suspend activity in the event of serious risk to life and health of workers and the population.
- Provision for workers compensation for work-related injury or disease, and a presumption that an occupational disease was due to employment unless proved otherwise.
- Provision for workers to rescind an employment contract that exposes them to serious and unforeseen health and safety risks. (Loewenson *et al.*, 2016)

3.2. Food Standards

Whilst the EPA provides for flexible rules of origin, in addition to special safeguards and measures for agriculture, food products, and infant industries as well as sanitary and phytosanitary measures, it should also identify food standards to be included, including to:

- a. “Prevent, reduce risk, protect against, control and provide a public health response to domestic and international risks to health in the production, processing, transport, distribution, marketing and advertising of food, through to consumption and storage”.
- b. Establish capacities, authorities and processes for risk assessment, analysis, management and communication to control of health-related risks throughout the food chain.
- c. Regulate, test, inspect, certify and set approval procedures; packaging and labelling requirements, prevention of



- fraud and deception; avoidance of food adulteration in ways that are commensurate with public health risks, based on evidence and transparent decision making and information; avoiding unnecessary interference with food trade.
- d. “Enable interaction across stakeholders, including in providing for consumer protection and information; producer and retailer responsibilities for food safety and risk communication and disclosure; and state duties and co-ordination across sectors to monitor, audit and enforce standards and communicate food safety information and measures to the public”.
 - e. Establish emergency procedures and a rapid alert system for dealing with food emergencies.
 - f. Set the responsible authority, powers, capacities and resources nationally and as required for harmonised regional and international standards and capacities and resources for research and scientific co-operation. (Kasapila 2023: 23-25)

3.3. Social, labour and governance standards

Labour standards in the EPA can contribute to the achievement of the SDGs by promoting decent work and economic growth (SDG 8), sustainable economic development (SDG 17) and reducing inequalities (SDG 10). The agreement should ensure that workers are treated fairly and that their rights are protected as

a contribution to .sustainable economic development, investment and trade. Decent work is defined by the International Labour Organization (ILO) as “productive work for women and men in conditions of freedom, equity, security and human dignity” (ILO, 1999). It includes secure employment, safe working conditions, and social protection for workers and their families.

Upholding labour standards can lead to increased productivity, better working conditions, and higher wages, reducing [poverty and inequality](#), modern day slavery and precarious work. Various international conventions set commitments to respect fundamental labour rights, such as freedom of association, collective bargaining, and the elimination of forced labour and child labour, as well as for [conflict resolution](#) systems, funds, and parallel labour cooperation/consultation. According to a report by the European Trade Union Institute ([etui](#)), labour provisions in free trade agreements should also provide for rapid sanctions, particularly commercial embargoes to ensure their effectiveness.

The ILO has developed a number of conventions that set out basic principles and rights at work. These cover a wide range of areas including freedom of association and protection of the right to organise, the right to collective bargaining, elimination of forced labour, minimum age for admission to employment, equal remuneration, occupational health and safety, shown in *Table 3* below with the issues covered that should be included in the EPA.

Table 3: Conventions affecting the EPAs

Instrument	Overview
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	This Convention obliges Member States to protect freedom of association and the right to organise and for workers to join organisations of their choice. All SADC EPA States (both ESA-5 and SADC 6) are signatories to the Convention. All the EU 27 EPA States are also signatories to the convention
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	The Convention guarantees workers protection against acts of anti-union discrimination in their employment. All the SADC EPA States (both ESA-5 and SADC 6) and all the EU 27 EPA States are also signatories to the Convention.
Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)	The Convention obliges members to discourage the use of forced or compulsory labour except to provide national service, in emergencies like wars and as part of normal civic obligations. All SADC EPA States and EU 27 EPA states are signatories to the Convention. The newer 2014 protocol has, however, only been ratified by 6 EPA States from the ESA/SADC region.



Abolition of Forced Labour Convention, 1957 (No. 105)	The Convention obliges members to suppress and not to make use of any form of forced or compulsory labour for purposes of economic development, among others. All the SADC EPA States (both ESA-5 and SADC 6) and EU 27 EPA states are signatories to the Convention.
Minimum Age Convention, 1973 (No. 138)	Members are required to abolish child labour and to raise the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. All SADC EPA States (both ESA-5 and SADC 6) and EU 27 EPA states are signatories to the Convention.
Worst Forms of Child Labour Convention, 1999 (No. 182)	Worst forms of child labour include slavery, the sale and trafficking of children, debt bondage and serfdom, forced recruitment of children in armed conflict; prostitution, pornography; and drug trafficking. All SADC EPA States (both ESA-5 and SADC 6) and EU 27 EPA states are signatories to the Convention.
Equal Remuneration Convention, 1951 (No. 100)	States to ensure the application to all workers of equal remuneration for men and women workers for work of equal value. All SADC EPA States (both ESA-5 and SADC 6) and EU 27 EPA states are signatories to the Convention.
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	States are required to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination. All SADC EPA States (both ESA-5 and SADC 6) and EU 27 EPA states are signatories to the Convention.
Occupational Safety and Health Convention, 1981 (No. 155)	Members are obliged to establish a coherent national policy on occupational health and safety the working environment to prevent accidents and injury to health. 4 SADC EPA and 1 ESA EPA States (Botswana, Namibia, Eswatini, Mozambique and Comoros) have not yet ratified the Convention
Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	Members are required to promote continuous improvement of occupational health and safety to prevent occupational injuries, diseases and deaths. 8 ESA/SADC EPA States (Comoros, Seychelles, Zimbabwe; Botswana, Eswatini, Namibia, Mozambique, South Africa) have not yet ratified the Convention.

ILO resolution R204 (Transition from the Informal to the Formal Economy Recommendation, 2015) guides member states to facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights, and ensuring opportunities for income security, livelihoods and entrepreneurship. It covers the creation and sustainability of enterprises and decent jobs in the formal economy and prevents the informalization of formal economy jobs.

As further pertinent international standards relevant for the EPAs, **the Universal Declaration of Human Rights (UDHR)** sets out fundamental human rights to be universally protected, including the right to work, the right to just and favourable conditions of work, and the right to form and join trade unions.

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** is a multilateral treaty that recognizes the right to work, the right to just and favourable conditions of work, and the right to form and join trade unions. The [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) recognizes the rights of migrant workers and their families, including the right to work under just and favourable conditions, the right to form and join trade unions, and the right to social security. Its provisions should be integrated in the EPAs given that labour mobility is a key issue in the region.

The **2011 UN Guiding Principles on business and Human rights** include States' obligations to respect, protect and fulfil human rights and fundamental freedoms; the role of business enterprises



as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; the need for rights and obligations to be matched with appropriate and effective remedies when breached, and the principles clarified the State duty to protect against business-related human rights abuse and the responsibility of companies to respect human rights. At continental level, the **African Charter on Human and Peoples' Rights** is a regional human rights instrument that recognizes the right to work, the right to just and favourable conditions of work, and the right to form and join trade unions. At minimum the EPAs should include the duty to comply with the standards in these instruments and make specific reference to them.

3.4. Fiscal duties, including to ensure fair standards on taxes

The SADC EPA contains provisions only for cooperation in some areas related to fiscal activities without further elaboration. Article 19 (Cooperation on tax governance) states that *"The Parties recognise the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities."* It does not include binding language to ensure the promotion and protection of social services like health. The EPAs should thus include:

- a. Requirement for state parties to expand the tax base through expansion of wealth and other progressive taxes as substantial sources of revenue, and by increasing transparency in and blocking illicit outflows, such as through beneficial ownership transparency registries
- b. A commitment to reduce tax incentives and exemptions for corporates, that reduce the capacities of ESA country to mobilise tax revenue (Loewenson and Mukumba, 2022)

There are also fiscal and tax measures that discourage harmful products and incentivise health promoting technologies, and the EPAs should include reference to these. For example sugar-sweetened beverages (SSBs) as a rapidly expanding form of ultra-processed foods are associated with the rise in non-communicable diseases in the region. Applying an excise tax based on sugar

content/volume across all categories of SSBs can encourage consumers to switch to healthier untaxed alternatives and industry to reformulate beverages with lower sugar content (Kadungure and Loewenson, 2023). Similar tax measures may be applied on cigarettes and other harmful products. The EPAs should include provision for support of such fiscal measures where countries seek to apply them in the interests of public health so that they are not challenged as barriers to trade.

3.5. Local content and investment requirements

As was noted in *Table 2*, there are a number of social determinants that can impact positively or negatively on health that are linked to the production of goods and services promoted under EPAs. Liberalised trade can lead to widening availability of products that are harmful to health, including tobacco, ultra-processed foods, alcohol, SSBs and genetically modified foods, with impact on increased non-communicable diseases. Liberalised trade also places significant demands on port health and public health and health service capacities (Machemedze 2023).

Explicit provisions in EPAs thus need to address these issues, viz:

- a. Direct fiscal support from the stronger state party in areas where they have a unfair advantage in line with bilateral and multilateral safeguard mechanisms
- b. Obligations for transfer of technology to produce essential medicines and vaccines to address priority public health problems.
- c. Development support for ESA countries' local pharmaceutical and other sectors for the production and procurement of medicines and other essential health technologies.
- d. Allowing measures such as raising import taxes on imported pharmaceutical products and essential health technologies that can be manufactured locally.
- e. Requirement for ESA countries to provide state incentives to companies that utilise local resources for local medicines production (Machemedze et al., 2022).



Actions to implement the proposed standards

There is thus need for advocacy and engagement with negotiators for the inclusion into the revised EPAs clauses and measures that address the environmental, food, social, labour and governance standards, fiscal duties, and local content and investment requirements noted in Section 3. Actions are also needed to strengthen their recognition and implementation:

As enforcement mechanisms, the SADC EPA contains a chapter that establishes a Trade and Sustainable Development Committee to oversee the implementation of the agreement's provisions on sustainable development. This should include representatives of the following stakeholders to ensure its oversight role, viz State Parties (governments); Workers (at regional level); Employers (at regional level); Civil society organisations (at regional level) and Parliaments (at regional level). In addition, the ESA-EU interim EPA also establishes an EPA Committee, which, according to the agreement "shall be composed of representatives of the Parties. Each Party determines the organisation of its representation." This gives flexibility to each Party to include stakeholders that are critical in the implementation of the agreement.

In order to effectively implement the EPA agreement including enforcement of standards raised in this brief, capacity building programmes should be introduced and supported jointly by the ESA Member States as well as through the EU European Development Fund. The actions may include but are not limited to:

- **Technical assistance to joint committees:** for monitoring implementation and enforcement of the agreement and the provisions therein and including supporting early warning mechanisms and structures;
 - **Financial support:** for the development of laws and policies in areas identified in this brief where these are not in existence and where amendments are required;
- **Training/ awareness raising programmes:** for government officials and other stakeholders on the promotion of health related standards as raised in this brief (environmental, food, the core labour standards etc)
 - **Funding Support under the EPAs:** for key stakeholders including trade unions and civil society organisations to implement their core mandate including undertaking health and labour assessments particularly in industries that are central to the EPAs;

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