

Towards a Comprehensive EPA?

Investment Chapter

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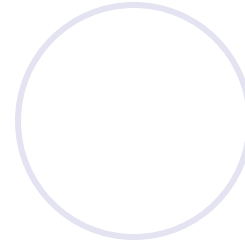
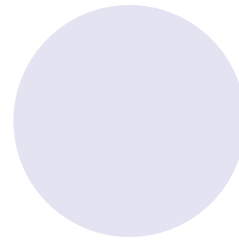
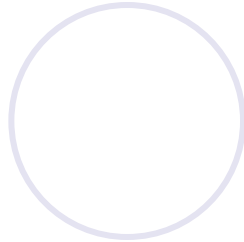
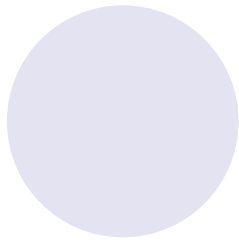
- **Background on Investment Regulation**
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- **SADC IEPA on Investment**
- **SADC Finance and Investment Protocol**
- **Progress towards full EPA**
- **Way forward?**

BACKGROUND ON INVESTMENT REGULATION

- No Multilateral Investment Regulation
- Singapore Issues?
- BIT's
 - **Definitions of investment and investor**
 - **Most Favoured Nation (MFN) and National treatment for investors**
 - **Fair and equitable treatment**
 - **Compensation for expropriation**
 - **Performance requirements**
 - **Investment-specific dispute settlement mechanisms**

INVESTMENT IN CARIFORUM EPA

- Limited to direct foreign investment through establishment of “commercial presence”
- Covers Services sectors plus agriculture, hunting, forestry, fishing, mining, manufacturing, production etc of gas, electricity, steam and hot water
- Market access & National Treatment commitments
 - Treatment no less favourable than specific commitments in Annex IV
 - Where Annex IV commitments, treatment no less favourable than given to own like commercial presence & investors
- Liberalisation through limitations on regulations of commercial presence
- Excluding sensitive sectors
- Reservations on market access & NT for possible future regulation in sub-sectors (policy space) (Annex IV)



- **MFN: EU investors (commercial presence) entitled to:**
 - ***treatment no less favourable than the most favourable [Signatory CARIFORUM states] may accord to like commercial presences and investors of any major trading economy with whom they conclude an economic integration agreement after the signature of this Agreement.***
 - “industrialised country / >1% share of world merchandise exports”
 - **Excluding CARICOM treatment**
 - **More Favourable Treatment in Future FTA’s by CARIFORUM: consultations with EU on awarding of MFT treatment**

- **CARIFORUM investors entitled to treatment no less favourable than that afforded by EU to *any third country investors.***

INVESTMENT IN CARIFORUM EPA

- **Also included:**

- Domestic regulations required to ensure maintenance of labour & environmental standards, prohibition on bribery & corruption

- **Not included:**

- Investment protection (expropriation)
 - Except free movement of capital
- Fair and equitable treatment
- Investment specific dispute settlement provisions

Lessons for Southern African countries

- Positive list approach to commitments
- Extensive exclusions & reservations on market access NT
- Flexibility in MFN provisions
- Additional issues (investor protection, dispute settlement) should EC mandate allows
- BIT's? Potential overlap of MFN commitments & dispute settlement jurisdiction



SADC IEPA

- Art 67:
 - Parties agree to negotiate an *Investment Chapter*, taking into account the relevant provisions of the SADC Protocol on Finance and Investment (FIP) no later than 31 December 2008; and
 - The EC Party agrees to provide adequate technical assistance to facilitate negotiations and implementation of the Investment chapter.
- Art 69: State to State dispute settlement, no specific reference to investment

SADC Finance and Investment Protocol

- Relevant provisions?
- Objective: *This Protocol seeks to foster harmonisation of the financial and investment policies of the State Parties in order to make them consistent with objectives of SADC*
- *To be achieved through facilitation of regional integration, co-operation and co-ordination within finance and investment sectors*
- *State Parties shall co-ordinate their investment regimes and cooperate to create a favourable investment climate within the Region as set out in Annex 1.*



FIP: ANNEX I

- **INCLUDES:**

- Investor / investment definitions
- Investment promotion & investment climate
- Local entrepreneurs
- Investment protection: expropriation
- Policy space for national development objectives & right to regulate in public interest
- Free movement of capital
- Environmental protection
- Preferential treatment for LDCs (non-reciprocity)
- Role of IPAs
- Investor / State dispute settlement



FIP: ANNEX I

- **NOT INCLUDED:**

- **Pre-establishment provisions, NT and MFN.**
- **Limitations to Mode 3 Services, commercial presence.**
- **Provisions to schedule commitments in industrial and manufacturing sectors, agriculture or services.**

Progress on Investment negotiations within SADC EPA

- Only BLS & Mozambique negotiating
- Namibia, Angola and SA observing
- SA unwilling to negotiate on services and investment because
 - Not WTO compatible
 - No regional standards and capacity (common policies)
 - Policy space concerns

SADC EPA NEGOTIATIONS

- **DRAFT INVESTMENT CHAPTER (NOV 2008):**
 - **Based on FIP Annex I**
 - **Seeks to cooperate with EC to improve investment climate, regulatory frameworks, attract investment, enhance investment protection**
 - **Promotion & Facilitation of Investment**
 - **Environmental measures**
 - **Local & Regional entrepreneurs**
 - **Public /private partnerships**
 - **Preferential treatment for LDC's**
 - **IPAs**

SADC Draft Investment Chapter

- **Includes investment protection against expropriation (not in FIP Annex I)**
- **Detailed provisions on cooperation in investment, capacity building, etc**
- **Does not include NT & MFN or commitment schedules for market access or liberalisation**
- **Rejected by EC?**



Way forward?

- Interpretation of Art 67 SADC IEPA & FIP?
- Lack of regional frameworks / common policies as envisaged by FIP (common ground)
- Lack of capacity / financial resources
- Needs:
 - Technical & financial assistance, impact assessment on investment liberalisation, investment policies
- Can SADC countries negotiate & implement investment provisions?