



NAMIBIA : SADC EPA Legal Aspects

FES/ATF – 10th Public Dialogue on Trade: Will Europe be closing its doors to Namibia beef?

Windhoek, 14.02.2007

Basic Issues



- ▶ Secure Namibian MA interests
- ▶ How?
- ▶ Scrutinize applicable legal provisions...
- ▶ To determine extent of rights....
- ▶ In order to develop legal arguments....
- ▶ For what purpose?
- ▶ But there is a framework
 - ▶ Cotonou Agreement
 - ▶ EPA Negotiations
 - ▶ WTO Compatibility
- ▶ Explore further

Relevant Cotonou Provisions : Arts 34 and 35



1. **Econ. and Trade Cooperation** (Arts. 34-35)
2. Basic principles
 - ▶ Integration into global econ. What does it mean?
 - ▶ See art. 34(2)
 - ▶ But –"in full conformity with WTO"
3. Why this emphasis on WTO conformity?
4. What does it mean?
5. Remember *Bananas* and *Turkey Textiles*
6. Subsequent notification of EPAs.
7. Regional Integration (Art. 35)
8. Special and Differential Treatment



Relevant Cotonou provisions (Arts. 36- 38)



1. **New Trading Arrangements**
2. Foundation of EPA negotiations
3. WTO Waiver runs out
4. New arrangements must be WTO compatible
5. Negotiations to be completed by end of 2007
6. Review in 2006
7. Other choices for ACP countries not ready for EPA
8. What rights for Namibia?
 - ▶ Art. 37(7)
 - ▶ What does this mean?
 - ▶ Bargaining chips in negotiations
9. Formal dispute? (Art.98)

Nature of Waivers



1. Exception to MFN (Non discrim.)
2. They are justiciable - Previous case law
3. Interpret them strictly
4. Extension?
5. Voting requirements in Ministerial Conference
6. Who brings the request?
7. Time pressure after 1 Jan 2008
 1. Depends on coverage of EPA
 2. Waiver only covers goods
 3. Transitional arrangement with deadlines
 4. But then strategize accordingly

Implications re WTO Compatibility



1. Art. XXIV GATT
2. An FTA
3. Is an exception to MFN
4. Must notify – together with EC
5. Subst. All trade
6. Reciprocity
7. Flexibility
8. How to negotiate and notify?
9. Record of Namibia

The SADC EPA



1. Configuration
2. Strategic Framework Proposal of March 2006
3. Still awaiting EC response
4. TDCA
5. SACU
6. Art. 31 SACU
7. How to integrate EPA negts. and TDCA review
8. Lateral negotiations
9. Namibia's sensitive products
10. TDCA is binding – EPA still a long way to go
11. Can both run along same time line?

Way Forward



1. There are rights
2. How to use them?
3. Part of focused negt. strategy
4. “Legitimate expectations”
5. Political sympathy
6. Plan for staged negts
7. Plan for 1 Jan 2008 – early notification
8. Plan for transitional proposal
9. Do it jointly
10. ACP structures and partners to buy in
11. Process intra SADC EPA
12. Structures intra SADC EPA
13. Capacity intra SADC EPA



