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# Can EPAs strengthen regional integration in southern Africa: A qualitative analysis

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## Abbreviations

ACP	African Caribbean and Pacific
AU	African Union
AUC	Africa Union Commission
BLNS	Botswana, Lesotho, Namibia and Swaziland
CET	Common External Tariff
COMESA	Common Market for East and Southern Africa
CPA	Cotonou Partnership Agreement
CU	Customs Union
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
EEC	European Economic Commission
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
GSP	generalised system of preferences
IEPA	Interim Economic Partnership Agreement
LDC	least developed country
MAT	Mozambique, Angola and Tanzania
MTN	multilateral trade negotiations
MTS	multilateral trading system
NGI	new generation issues
NGO	non-governmental organisation
PTA	preferential trade agreement
REC	regional economic community
RTA	Regional Trade Agreement
ROO	rules of origin
SA	South Africa
SACU	Southern African Customs Union
SADC	Southern African Development Community
TDCA	Trade Development and Cooperation Agreement
TRALAC	Trade Law Centre of Southern Africa
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
WTO	World Trade Organisation

## Abstract

Economic Partnership Agreements (EPAs) are currently being negotiated by the European Commission (EC), envisaging the creation of free trade areas (FTAs) between the European Union (EU) and various African, Caribbean and Pacific (ACP) groupings.

This study is a qualitative examination of whether or not EPAs in the southern African region will promote regional integration amongst southern African countries. The paper argues that EPAs stand to hinder rather than promote regional integration. The reason is that they fail to adhere to certain provisions and/or obligations of the World Trade Organisation (WTO) and the Cotonou Partnership Agreement (CPA) – provisions which are consistent with the analytical framework of conditions favouring the type of international trade that enhances welfare gains amongst southern African states.

## Chapter One: Analytical framework and theoretical background

### Introduction

Economic Partnership Agreements (EPAs) are intended to change the trade relationship between the EU and ACP states into a WTO-compatible trade relationship<sup>1</sup>. The mandate for EPA negotiations derives from the Cotonou Partnership Agreement (CPA) between the EU and the ACP. Whilst WTO-compliance is the primary legal objective of EPAs and their negotiation, the CPA demands other equally important legal obligations.

Of interest to this study are Articles 35.2 and 37.2 of the CPA which specify the legal obligation to not only be cognizant of the regional integration initiatives in southern Africa, but also to foster, deepen and strengthen regional integration. These articles read:

- a) *“Economic and trade cooperation shall build on regional integration initiatives of ACP States, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy.”*<sup>2</sup>
- b) *Negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP.”*<sup>3</sup>

Using the analytical framework described in this chapter, this study provides a qualitative assessment of current EPA negotiations in southern Africa, and whether their results uphold or indeed undermine this legal obligation.

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1 See Chapter 2

2 Article 35.2 of the Cotonou Agreement

3 Article 37.2 of the Cotonou Agreement

## Theoretical background

The theory underpinning regional integration revolves around the work of Jacob Viner. Viner (1950) argued that regional integration does not always result in gains in economic efficiency. He was of the opinion that regional integration, and in particular trade creation effects, can potentially have trade diversion effects on participating economies or even on third party economies outside of any agreements.

'Trade creation' is the term used when trade liberalisation initiatives create trade that would not otherwise have existed. Such initiatives result in a particular country being supplied with goods and/or services by the most efficient producer of the product. Trade creation often results in improved economic welfare<sup>4</sup>. In contrast, 'trade diversion' refers to discriminatory trade liberalisation which diverts trade away from a more efficient supplier outside of the regional trade agreement (RTA), in favour of a less efficient supplier within the RTA. Trade diversion may, at times, be sufficiently strong so as to outweigh trade creating effects and so reduce a country's national welfare; conversely in certain circumstances national welfare may improve despite trade diversion.

Are regional integration agreements to be regarded as a step toward global free trade? Jacob Viner (1950) attempted to answer this question, although his results were inconclusive. This is largely because the relative importance of trade creation versus trade diversion is an empirical matter depending on conditions of supply and demand, and on the size of factors such as the initial level of tariffs. As a rule, the outcome will depend on the extent that the RTA results in trade creation and/or trade diversion<sup>5</sup>.

Other researchers, such as Kemp (1964), Vanek (1965), Ohyama (1972), and Kemp and Wan (1976), built on the work of Viner. A major difference in their work was their view that:

*"It is always possible for a regional integration agreement, formed among an arbitrary group of countries, to structure itself in such a way as to make the member countries better off without making any of the non-member countries worse off."*

More recently, Krugman (1991) coined the term 'economic geography' which attempts to explain the determinants of regional concentration of economic activity. On the assumption that increasing returns to scale are desired, Krugman hypothesizes that the eventual determinants of the location of economic activity will be economies of scale and trade cost considerations. Economies of scale can be enhanced in regional blocks by concentrating production activity in one location rather than each activity in a separate country.

Robinson (1996) rightly notes that an important determinant of the success of any RTA is that the distribution of gains and/or losses should be carefully evaluated. The next step is that carefully thought-out compensation mechanisms should be established. An important requirement for success, is that RTA members must be ready to surrender a degree of

4 However this depends on how well distributional issues are managed. At least in the short term, freer trade will have 'losers' (normally the competing importers) as well as 'winners' (normally exporters) and the latter may not always compensate the former.

5 For in-depth explanations of the 'trade creation' and 'trade diversion' effects of regional economic integration, see Viner, 1950: *"The Customs Union Issues."* New York: *Carnegie Endowment for International Peace.*

national sovereignty to a supranational organisation. Such an approach recognises that any regional integration process will always result in winners and losers.

Reflecting the gradual nature of moving towards regional integration, the orthodox regional integration model has six stages. Figure 1.0 illustrates these stages and their main characteristics. The starting point is a Preferential Trade Agreement (PTA) in which member states apply lower tariffs to imports produced by other members as opposed to imports from non-member states, whilst maintaining the prerogative to individually determine tariffs on imports from non-member states.

**Figure 1: Characteristics of the six stages of regional integration**

Integration arrangement	Free trade among members	Common commercial policy	Free factor mobility	Common monetary and fiscal policies	Central government
Preferential trade area	No	No	No	No	No
Free trade area	Yes	No	No	No	No
Customs union	Yes	Yes	No	No	No
Common market	Yes	Yes	Yes	No	No
Economic union	Yes	Yes	Yes	Yes	No
Political union	Yes	Yes	Yes	Yes	Yes

Source: Author's compilation

## Regional Integration and the multi-lateral trading system (MTS)

This section provides a brief overview of the multi-lateral trading system (MTS) providing, in a nutshell, a background to important RTA concepts underpinning the MTS through its custodian, the World Trade Organisation (WTO). This is important since all countries referred to in this paper are WTO members.

The WTO derives its relevance from the need to ensure, among other things, that regional integration results in welfare gains among the participating members, whilst at the same time protecting third party non-participating states. In this regard, it has at its core the principles of '*non-discrimination*' and '*single-undertaking*' by members. The '*single-undertaking*' philosophy obliges all WTO members, upon ascension, to *all* WTO rules and regulations. The following sub-sections discuss the '*non-discrimination*' and '*most favoured nation*' principles.

### The non-discrimination principle

The General Agreement on Tariffs and Trade (GATT) (1947 and 1994<sup>6</sup>) and the WTO have as their main objective the progressive breakdown of barriers to trade. The '*non-discrimination*' principle<sup>7</sup> is a key philosophy which is based on Article I of the GATT – the '*most favoured*

<sup>6</sup> Reference to the GATT, unless otherwise stated, shall imply the GATT (1994).

<sup>7</sup> The WTO identifies four other principles on its website, which due to the focus of this paper, are slightly different. These are: (1) freer trade, (2) predictability, (3) promoting fair competition, and (4) encouraging development and economic reform.

nation' (MFN) rule. The MFN rule obliges member states to extend to all other member states "all benefits accorded to like products of one member state"<sup>8</sup>.

### The importance of the MFN principle

The relevance of the MFN principle can be traced back to the work of Viner *et al.* on the costs and benefits of trade liberalisation, referred to in preceding sections. By requiring the extension of similar trade benefits to all WTO member states, the MFN principle is an attempt to limit the trade diversion effects of regional integration. An important outcome of the MFN principle is that it circumvents cumbersome, complicated, costly and bureaucratic administrative rules and procedures, such as rules of origin procedures, requisite of discriminatory trade liberalisation.

In promoting the MFN principle, the WTO hopes to achieve barrier-free trade across the world, by "providing a structured and functionally effective way to harness the value of open trade"<sup>9</sup>. The reasoning is that trade liberalisation is welfare enhancing and contributes significantly to the development of nations. Without trade liberalisation, tariffs and non-tariff barriers to trade distort the efficient allocation of resources, which is illustrated by the static effects of RTAs. Salvatore (2005) uses an example of two non-existent economies (A and B) and shoes as a good being traded. Figures 1.1 to 1.3 provide a graphical illustration of these dynamics.

Figure 1.1: Tariff incidence without free trade

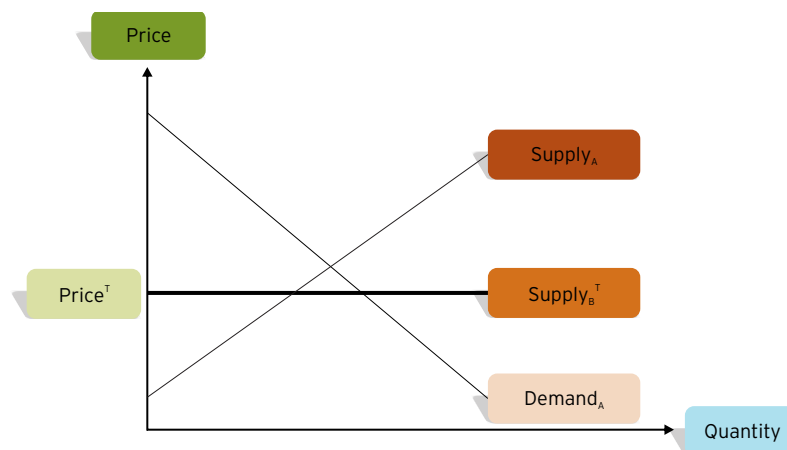


Figure 1.1 illustrates the incidence of tariff: A imports shoes from B, since B's supply curve (bold horizontal line) is below the equilibrium price for shoes bought within A (depicted by the point where A and B's supply curves meet). But A charges a tariff on the imports,

8 It is important to point out although it is not the focus of this paper, Article I defines only half of the non-discrimination principle. Article III of the GATT (National Treatment) is the other half that completes the non-discrimination philosophy in the GATT/WTO. It deals with imports from other WTO member states and obliges member states to extend to foreign goods the same treatment that they accord to domestic like products "in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use" (Article III of the WTO General Agreement on Tariffs and Trade (GATT), 1947). Available from [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) (06/03/2008).

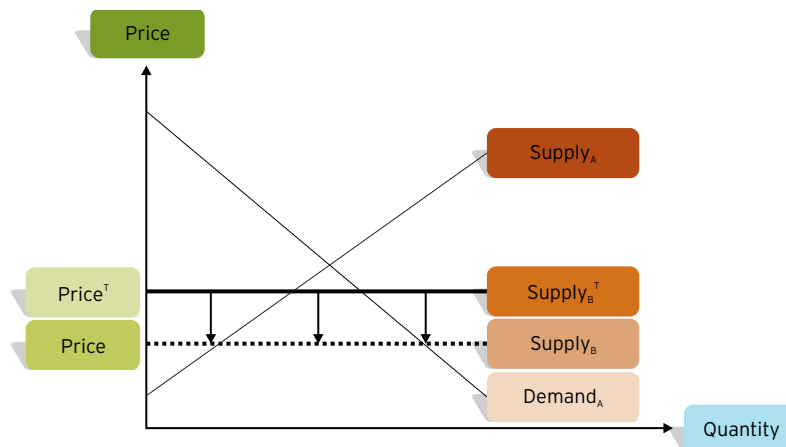
9 Sutherland et al., 2006, p. 15.



so B's supply curve is represented with a superscript T for tariff. This also means that price is noted with a superscript T for tariff.

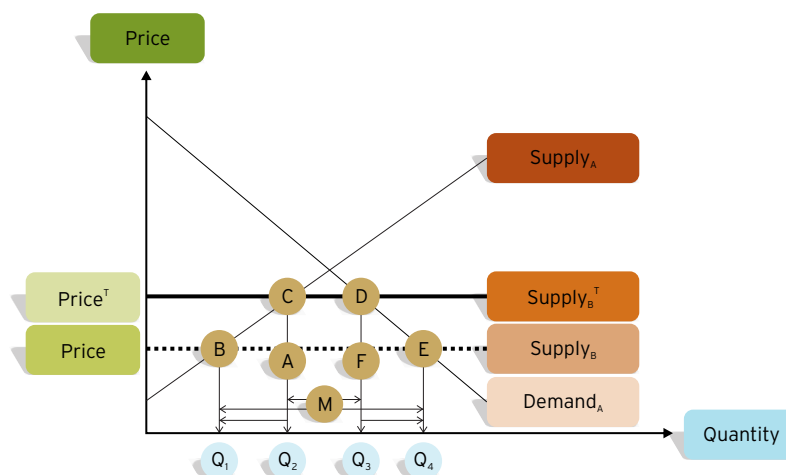
Figure 1.2 illustrates a situation in which the tariff is lowered:

**Figure 1.2: Reduction in tariff**



The reduction of the tariff leads to B's supply curve shifting downwards. This benefits consumers as they have to pay less for shoes ( $Price < Price^T$ ). At the same time it also harms producers who now earn less on their shoe sales. The overall effect is shown in Figure 1.3:

**Figure 1.3: Static effects of tariff reduction (in RTAs)**



From the reduction in tariff due to an RTA, the following static effects can be noted:

- The gap between B's supply curves ( $Price^T$  and  $Price$ ), denotes the size of the tariff. Imports subject to tariff were initially equal to M (denoted by thin arrows either side

of M). This is because A's supply curve intercepted B's supply *with* tariff at point C, while A's demand curve intercepted B's supply *with* tariff at point D. The difference between C and D hence denotes quantum imports.

- The removal of the tariff leads to B's "*without* tariff" supply curve intercepting A's supply curve at point b, and A's demand curve at point E, thus increasing imports from  $Q_4Q_3$  to  $Q_1Q_2$ . The reason for this is that the reduction of the tariff leads to a reduction in the price paid for shoes; this in turn increases the demand for shoes, leading to higher import quantities.
- $abC$  represents a deadweight efficiency loss. This is because with the tariff, there is a requirement for an increase (relative to the non-tariff situation) in local (A's) production of shoes, equal to  $Q_1Q_4$ , resulting from the fact that the tariff increases prices and means that imports fall by a certain level. This fallen level is made up for by an increase in local production. This is an efficiency loss because whereas shoes can be imported from B, higher prices mean that local resources must be used to produce more shoes instead.
- Triangle DEF represents a deadweight consumption loss. Again, B's "*with* tariff" supply curve intercepts A's demand curve at a lower level than the intercept between B's "*without* tariff" supply curve and A's demand curve. The intercept at point D is at a lower level than point E because the tariff increases prices, so consumers purchase fewer shoes.
- Tariff reduction hence eliminates the deadweight loss triangles  $abC$  and DEF by pushing B's supply curve down. This also expands exports and reduces the price paid for shoes by consumers, thus increasing their welfare.

Based on this reasoning, the WTO promotes barrier-free trade, because trade barriers distort the efficient allocation of resources. The MFN principle attempts to make inherent the above description of the benefits of tariff reduction, not just in terms of two countries involving one product, but applying to many countries involving many products; hence the term *Multi-Lateral* Trading System, to encompass all member countries.

## Exceptions to the MFN

As with most rules, the MFN principle does have exceptions. The GATT provides two qualified exceptions to the MFN rule:

1. *The differential and more favourable treatment reciprocity and fuller participation of developing countries decision of 28 November 1979 (commonly referred to as the Enabling Clause)*: This clause offers a legal alternative to MFN treatment. It allows for developed countries to discriminate in favour of less developed countries and also provides the legal framework for less developed countries to enter into free trade agreements under less stringent conditions than their developed counterparts.

Two main principles form the foundation of this article and the clause. First, the clause refers strictly to a relationship in which developed countries offer favourable treatment to less developed countries. Second, it calls for non-discrimination of less developed countries by developed countries, i.e. treatment granted to any single less developed country should then be extended to all less developed countries.

2. *Article XXIV of GATT (formation of PTAs)*: This article lays down the modalities under which a limited number (or group) of WTO members can come together and agree to liberalise trade amongst themselves in a discriminatory manner. Under this article, member states can enter into PTAs as long as the following three conditions are met:
- a. Trade barriers after integration do not rise on average;
  - b. All tariffs and other regulations of trade are removed on substantially all inter-regional exchanges of goods within a reasonable length of time; and
  - c. The arrangement is notified to the WTO.

The first condition ensures that loyalty to the overarching aim of trade liberalisation is not lost, whilst the second is aimed at obliging RTA participants to pursue ambitious programmes of breaking down trade barriers. The third condition is as ceremonial, as it is procedural – it is intended to allow the WTO to test whether such PTAs conform to Article XXIV.

## The WTO and RTAs

As mentioned earlier, Article XXIV of the GATT is the foundation of WTO legislation on RTAs. The article can be seen as an attempt to translate into law the economic theory behind trade liberalisation and regional integration. It is important to highlight the fact that the article has not been without controversy, and its obligations are part of ongoing WTO negotiations under the Doha Round.

## Analytical framework

Figure 1.4 illustrates the analytical framework for this study and shows the two levels of analysis (separated by the broken bold line). The upper level is the legal and theoretical framework which informs the lower level – the procedural analysis level. The upper level outlines the theoretical and legal context underpinning the analysis.

Within the top level there are three sections. The first section refers to the economic theory which, as alluded to earlier, forms the basis of the next section - the MTS and its rules and regulations on RTAs. In this section the instrument of analysis is the GATT Article XXIV. An important principle behind the article is the requirement that RTAs should not lead to a rise in barriers to trade amongst participating members or for third party non-participating members. Adherence to this principle is analysed further, since an overarching objective of EPAs is WTO-compliance.

Whilst the MTS level is important since all the countries studied are WTO members, the legal framework governing EU-ACP trade is also important. This forms the third section of the theoretical and legal analysis. The CPA governing EU-ACP trade and from which EPA negotiations derive their mandate, is hence the instrument of analysis. In this regard, the analysis in this section focuses on the adherence to the legal obligations defined by Articles 35.2 and 37.5 of the CPA.

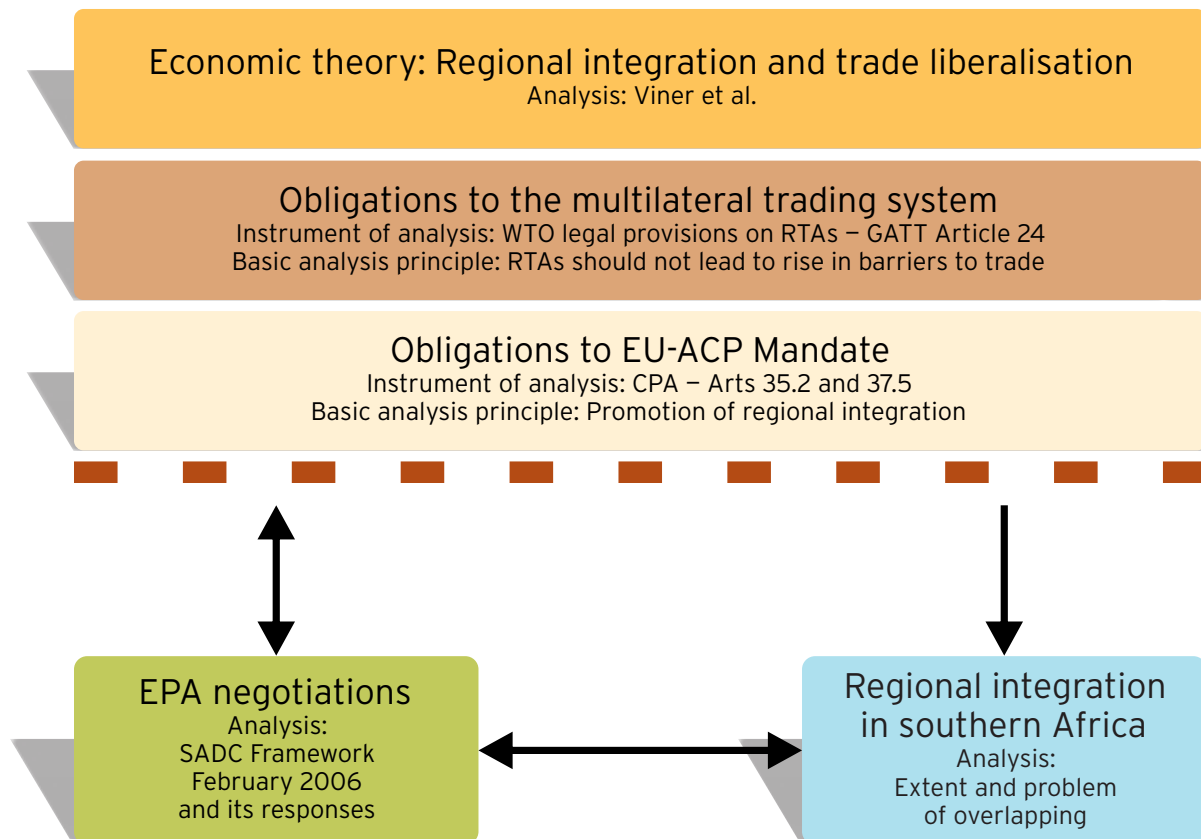
This study does not note any legal or procedural ambiguities between the obligations to the MTS and those to the EU-ACP mandate. Furthermore, the author of this study is of the opinion that the MTS is based on a sound theoretical foundation.

The lower level (procedural analysis) represents the main area of analysis of this study. Whilst the upper level provides the legal and theoretical context, the lower level is the analysis of the actual procedures involved, which investigated the extent to which the legal obligations in the upper level are adhered to.

In analysing the procedural level it must be remembered that southern African states are involved in two processes simultaneously:

- a. the conclusion of a FTA with the EU,
- b. the conclusion of a harmonised regional integration agenda – this means that integration and harmonisation within the region have not yet been achieved.

**Figure 1.4: Analytical framework**



Chapter two in this report investigates the trade relationship between the EU and southern Africa in order to establish the basis for EPAs. Chapter three focuses on regional integration in southern Africa. Here, the main focus is on the problem of overlapping membership of different regional economic communities (RECs) and how this affects regional integration in southern Africa.

Chapters four and five then analyse current EPA negotiations in the region and their effect on regional integration. It is this analysis that links the theoretical and legal level with the procedural level, by exploring whether EPAs have the ability to promote regional integration.

The foundational documents analysed include the *SADC Framework* proposal on EPA negotiations submitted to the EC in February 2006, the EC's official response to this of February 2007, and the EC's unofficial response of December 2006. These instruments form the basis for the primary analysis of EPA negotiations<sup>10</sup>.

Chapter six provides the conclusion of the study and summarises the current situation.

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<sup>10</sup> These instruments are explained in detail in Chapter four.

## Chapter Two: Trade relations between the EU and southern Africa

From 1975 to 1999, economic and trade relations between the EU and her former ACP colonies<sup>11</sup> have been governed by a series of framework agreements known as the Lomé Conventions, and by the Cotonou Agreement since 2000 (See Figure 2.1 below).

**Figure 2.1: Conventions between the EEC/EU and the ACP**

Year	Treaty, declaration or decision	Comment
1975	Lomé I	Included the STABEX system, a facility for stabilising agricultural export earnings.
1979	Lomé II	Included the SYSMIN facility to assist ACP countries to preserve mining production capacity and protect them against any fall in global mineral prices.
1984	Lomé III	Shift of emphasis to food security.
1990	Lomé IV	Emphasis on mitigating SAPs.
2000	Cotonou	Shift of emphasis to 'nationally owned' development.
2001	Everything but Arms (EBA)	Zero tariff access granted to all imports from LDCs, except arms.
2002	EU-South Africa Trade, Development and Cooperation Agreement	An FTA between the EU and South Africa
2002	3 <sup>rd</sup> Generalised System of Preferences Regulation	Implemented the scheme until 2005. A new scheme covering 2006–2015 is now being implemented.

Source: Author compilation

The four Lomé conventions were characterised by the EU granting aid and unilateral trade preferences to ACP states. The incompatibility of these preferences with WTO rules resulted in the new Cotonou Agreement<sup>12</sup>.

Figure 2.1 above shows that besides the Lomé Conventions, there are four main frameworks that can be applied to EU trade relations with southern African states:

<sup>11</sup> This includes all SADC and SACU states.

<sup>12</sup> WTO rules governing the provision of unilateral trade preferences are contained in the enabling clause concluded during the Tokyo Round. They permit only the differentiation of unilateral trade preferences based on a country's level of development. Hence in granting trade preferences to developing ACP states, the EU also has to extend this preference to all developing WTO member states in order to comply with the clause.

1. *The Cotonou Partnership Agreement*: This agreement is the principal framework governing trade and economic relations. Signed on 23 July 2000, the agreement's main objective is "reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy<sup>13</sup>".

Maintaining loyalty to the spirit of the Lomé Conventions, the CPA granted its signatories extensive unilateral trade preferences until 31 December 2007. Needless to say, this required a WTO waiver. Hence, until the end of 2007, southern African states who are signatories to the CPA<sup>14</sup> enjoyed non-reciprocal, duty and quota-free access to the EU, with some qualifications<sup>15</sup>.

The CPA covers the period 2000 to 2020. Under article 95 of the Agreement, it is to be adapted every five years, with the exception of the economic and trade provisions which have a special review procedure. The review process which started in 2004 and was concluded in early 2005 did not result in any substantial trade-related revisions.

2. *The Everything but Arms (EBA) Initiative*: the EBA is a special non-reciprocal trade framework providing duty and quota-free access to the EU market for all products from LDCs except arms and ammunition. This access was, however, also qualified, since bananas, rice, sugar, and products containing them faced duties and/or quotas until 2009.

Unlike the Cotonou Agreement, the EBA initiative is fully WTO-compliant as the preferences, in line with the *Enabling Clause*, are extended to all LDC states that are WTO members. Consequently, eight LDC states within the SADC and SACU region are eligible to benefit from the EBA initiative. These are Angola, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mozambique, Tanzania and Zambia.

3. *The generalised system of preferences (GSPs)*: The GSPs arose from a recommendation, in 1968, by the United Nations Conference on Trade and Development (UNCTAD) that industrialised countries grant trade preferences to all developing countries. The EU first implemented a GSP scheme in 1971. According to the EU external trade website: "The EU's GSP grants products imported from GSP beneficiary countries either duty-free access or a tariff reduction, depending on which of the GSP arrangements a country enjoys"<sup>16</sup>. There are five GSPs available under the EU GSPs, of which the EBA initiative is one.

All southern African countries have access to the general GSP; however since the framework entails much lesser preferences than the CPA or the EBA initiative, it is hardly ever used.

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13 Cotonou Agreement, Article I, para 2.

14 That includes all southern African states except South Africa.

15 These relate to (a) exceptions arising from the application of the EU Common Agricultural Policy, (b) the application by the EU of strict rules of origin, (c) the safeguard clause at the EU's disposal, and (d) the application by the EU of stringent sanitary and phyto-sanitary standards.

16 [http://ec.europa.eu/trade/issues/global/gsp/index\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/index_en.htm). Accessed 5 June 2008.

4. *The South Africa-EU Trade Development and Cooperation Agreement*: The TDCA is a free trade agreement between the EU and South Africa. Because the EU treats South Africa as being at a different development level than other ACP states, South Africa was not given access to the CPA. Instead, a reciprocal WTO-compliant agreement was negotiated and concluded.

Although essentially an agreement between the EU and South Africa, the TDCA has significant implications for the other SACU member states. Since South Africa is in a customs union, the BLNS states are and have been *de facto* tied to the tariff reduction obligations entered into by South Africa in the TDCA. This has resulted in great resentment of the TDCA by the BLNS states, as they were not party to its negotiations and so the agreement does not build in their sensitivities.

### Economic Partnership Agreements (EPAs)

Economic Partnership Agreements (EPAs) are free trade agreements negotiated between the EC (on behalf of EU member states) and 75 ACP member states that make up former colonies of the EU member states. EPAs are largely principled on the notion of reciprocity, thereby reversing decades of unilateral trade preferences from the EU to ACP states.

The reversal of this longstanding relationship was necessitated primarily by the fact that its non-reciprocal nature was not compliant with the WTO rules governing the provision of such preferences as contained in the *Enabling Clause*. Consequently, and to avert continued challenges by other WTO member states, a WTO-compliant framework had to be agreed upon.

At the launch of the EPA negotiations in 2002, ACP states were divided into six regional groups, each of which negotiated a separate EPA agreement with the EU<sup>17</sup>. Negotiations were to be completed by 31 December 2007 and EPAs were hence expected to be operational from 1 January 2008. However, by the end of 2007, the EU and the ACP, with the exception of the Caribbean region, had inevitably failed to conclude any fully regional and comprehensive trade agreements as originally foreseen by the CPA.

The South Centre (2008) notes that “a large number of technical and political divergences stood in the way of that objective”<sup>18</sup>. The record shows that as at 1 January 2008:

- only the Caribbean managed to conclude a comprehensive EPA agreement;
- 20 other ACP countries initialled an agreement of partial scope, requiring continued negotiations with the EC to reach full agreement by the end of 2008 or mid-2009;
- the remaining 40 ACP countries which were engaged in the EPA negotiations preferred, albeit arguably at a risk, not to initial interim texts. Most of these are LDCs, eligible

17 These groups were: west Africa, east and southern Africa, SADC (also referred to at times as ‘SADC minus’), central Africa, the Caribbean and the Pacific.

18 South Centre. 2008. EPA Negotiations: State of Play and Strategic Considerations for the Way Forward. Analytical Note SC/AN/TDP/EPA/13, [www.southcentre.org/publications/AnalyticalNotes/Other/2008Feb\\_State\\_of\\_Play\\_and\\_Way\\_Forward.pdf](http://www.southcentre.org/publications/AnalyticalNotes/Other/2008Feb_State_of_Play_and_Way_Forward.pdf). Accessed 25 May 2008.



for EBA preferences, whilst some are non-LDCs who are now trading with the EU under the other available GSP regimes; or as in the case of South Africa, already have a WTO-compliant free trade agreement with the EU.

## EPAs: Some background

The expiry of the last Lomé convention (Lomé IV) signalled the imperative to negotiate and conclude a WTO-compliant framework to govern trade relations between the EU and ACP states. The CPA heralded this move. Although the Agreement itself identifies five focus areas, three main pillars of cooperation can be identified as the bedrock of the CPA, namely: (1) political, (2) development, and (3) economic and trade cooperation. It is under the economic and trade cooperation that the EU and ACP states agreed to conclude EPAs.

Articles 34 to 38 of the Cotonou Agreement are the relevant texts as regards EPAs. Articles 36 to 38 provide a number of principles against which outcomes of the negotiations are to be evaluated. These principles include:

- WTO compatibility of the final agreements;
- Gradual introduction of the arrangements;
- Maintenance of non-reciprocity during the transition to the new arrangements;
- Use of the preparatory period to build capacity in both the private and public sectors "...where appropriate with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion"<sup>19</sup>;
- Maintenance of the CPA *acquis*; and
- Sensitivity to the differing development levels and socio-economic impact of trade measures on ACP countries and their capacity to adapt and adjust their economies to the liberalisation process.

The benefits, especially for ACP countries, of being part of a larger, integrated and rules-based economic area with predictable, stable and transparent policies has been a major selling point of the EPAs. These benefits generally relate to the orthodox dynamic gains of moving from restricted to free trade, and include economies of scale, specialisation, increased competitiveness, attraction of foreign investment, and increased intra-regional trade flows.

It is crucial to point out in this regard that these purported gains have not been accepted without critical analysis. In fact, a considerable number of analysts and international NGOs have disputed such claims. Although the reasoning behind such disputes is beyond the scope of this study, some relevant aspects are discussed in the following sections.

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<sup>19</sup> Article 37.3 of the Cotonou Agreement.

Whilst the centrality and candour of the need to reformulate the EU-ACP trade relationship in a WTO-compliant manner can hardly be contested, Goodison and Stoneman (2005, p. 20) contend that the EC has not been entirely forthcoming in terms of their motivation to conclude EPAs. Citing a 1995 paper by the EC, those authors suggest that the EU is motivated rather by the hunger to bolster its presence in the faster growing economies of the world and by:

*strategic considerations regarding the need to reinforce our presence in particular markets and to attenuate the potential threat of others establishing privileged relations with countries which are economically important to the EU...*<sup>20</sup>

As regards the benefits to the EU of an FTA with South Africa, Goodison and Stoneman (2005, p. 20) cite the same paper as contending that:

*"The further opening up of the South African market...will create competitive advantages for EU exporters compared to exporters from the USA, Japan and other suppliers of South Africa. The price the EU would have to pay for such an improved position in terms of loss of customs revenues is relatively low..."*<sup>21</sup>

The same authors note that once the framework for achieving this purpose had been mapped out, the rhetoric and justifications for EU FTAs mutated and EU offensive interests were no longer mentioned in EPA discussions. This situation arguably helps to explain the insistence by the EU on the 'beyond WTO-compliance' nature of the current EPA negotiations, reflected partly by their insistence on the inclusion of new generational issues in negotiations.

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20 Free-Trade Areas: An Appraisal, Commission of the European Communities, Communication from the Commissioner, SEC(95) 322 final, p. 6, quoted in Goodison and Stoneman, 2005, p. 20.

21 Goodison and Stoneman, 2005, p. 20.

## Chapter Three: Regional integration in southern Africa

### Background

The regional integration process in southern Africa has largely and for historical reasons been based on political philosophy and imperative. Three distinct, post-Berlin 1884 conference<sup>22</sup> periods of regional integration can be identified in southern Africa (See Figure 3.1 below).

1. *The colonial era*: This is the longest period, running from 1884 to arguably at least 1980. It was characterised by regional integration initiatives aimed primarily to protect the interests of the minority settlers in the various countries. Whilst marketed by the colonial settlers as building partnerships between the minority settlers and the majority natives (amongst other objectives), these initiatives gained notoriety for their largely racist nature. This aspect helps explain why some of them never survived the post-colonial era.

Some of the regional integration initiatives attempted during this time met with success, whilst others collapsed. For example, an attempt was made to create a federation consisting of present day Zimbabwe, Zambia and Malawi. The *Federation of Rhodesia and Nyasaland* as it was known, lasted only a decade. An attempt was also made to amalgamate present day Zimbabwe with South Africa, but this did not progress far. Probably the most successful regional integration initiative of this era was the formation of the Southern African Customs Union (SACU) in 1910.

2. *The post-Lagos plan era*: This era was precipitated by the establishment of the Organisation of African Unity (OAU) in 1963. The OAU was a compromise between three distinct blocs that had emerged in Africa in the early sixties with the intention of unifying the continent, namely: the Casablanca group<sup>23</sup>, the Brazzaville group (composed mainly of francophone African states)<sup>24</sup>, and the Monrovia group<sup>25</sup>. The OAU had as its objective the collective fight against colonialism by African governments with the aim of establishing a 'United States of Africa'. In line with this objective, the Lagos Plan of Action was an OAU sponsored plan that attempted to map a development path for Africa to achieve self-sufficiency.

This period ran from 1980 to 1991 and within the southern African sub-region, was characterised by 'closed regionalism', in part illustrated by an attempt by the independent states of the region to reduce economic dependence on apartheid South Africa and to build self-sufficiency. This period saw the formation of the Southern African

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22 The Berlin conference of 1884-85 was convened at the residence of Chancellor Otto von Bismarck. It was attended by the foreign ministers of 14 European nations. The conference established the 'ground rules' for partitioning Africa that saw the continent divided into European colonies based largely on geographic lines of longitude and latitude.

23 Established in 1961 and led by the then president of Ghana, the late Kwame Nkrumah it consisted of Ghana, Mali, Guinea, the United Arab Republic and Algeria. This group emphasised the imperative for Africa to unite immediately.

24 Established by the Brazzaville Charter of 1960 and made up of Central African Republic, Cameroon, Ivory Coast, Peoples' Republic of Congo, Dahomey, Mauritania, Gabon, Upper Volta, Senegal, Niger, Chad, and Madagascar. This group was gradualist in its approach to integration.

25 Established in 1961 and consisting of Nigeria, Sierra Leone, Liberia, Togo, Ivory Coast, Cameroon, Senegal, Dahomey, Malagasy, Chad, Upper Volta, Niger, Peoples' Republic of Congo, Gabon, Central African Republic, Ethiopia, Somalia and Tunisia. This group was also gradualist in approach.

Development Coordination Conference (SADCC) and the Preferential Trading Area (PTA), the precursor organisations of the Southern African Development Community (SADC) and COMESA respectively

3. *The post-Abuja, Multilateral Trading System (MTS) Era*: This era, described by Kennes (1999) as the “second wave of African regional integration”<sup>26</sup>, was largely precipitated by the Abuja Treaty of 3 June 1991. The Treaty proposed the establishment of an African Economic Community and was adopted by the majority of OAU member states. This era runs from 1992 to the present day and is characterised by ‘open regionalism’ illustrated by the transformation of regional integration initiatives in line with the MTS. Accordingly, this era has seen the transformation of SADCC and PTA into SADC and COMESA respectively; and the transformation of SACU into a democratic rules based union.

**Figure 3.1: Important regional treaties, declarations and decisions**

	Year	Treaty, declaration or decision	Comment
Colonial era	July 1910	The SACU Agreement establishing the Southern African Customs Union (SACU)	
	December 1969	Amendment of the 1910 SACU Agreement	
	December 1974	Signing of the Rand Monetary Area (RMA) Agreement	Established a currency union between South Africa, Botswana, Lesotho and Swaziland (Namibia as a colony of South Africa was automatically included)
Post-Abuja MTS era	December 1981	Creation of the Preferential Trade Area (PTA)	
	July 1981	Creation of the Southern African Development Coordination Conference (SADCC)	
	April 1986	The Common Monetary Area (CMA)	Review of the Rand Monetary Area Agreement
Post-Lagos plan of action era	August 1992	Windhoek Declaration and Treaty establishing the Southern Africa Development Community (SADC)	Transformed SADCC into SADC
	December 1994	The COMESA Treaty establishing the Common Market for East and Southern Africa (COMESA)	COMESA replaced PTA
	August 2001	Amendment of the SADC Treaty	Established and clarified SADC institutions
	October 2002	2002 SACU Agreement	Replaced the 1969 Agreement with a modern, democratic, rules based and WTO-compliant agreement

26 See Kennes W. African Regional Economic Integration and the European Union. In Bach C. (Ed). Regionalisation, Integration and Disintegration in Africa. Oxford: James Curry Ltd (1999), p. 27.

## Regional economic communities in southern Africa

Three major RECs co-exist in southern Africa amidst an interesting and complex web of programme duplication and similarities in objectives. These are:

1. the Southern African Development Community (SADC),
2. the Common Market of Eastern and Southern Africa (COMESA), and
3. the Southern African Customs Union (SACU).

The similarity in the regional integration objectives of these RECs is illustrated in the Figure below.

**Figure 3.2: The regional integration timetable in southern Africa**

	Free trade area	Customs union	Common market	Economic union
SADC	2008	2010	2015	2016
SACU	1910	1910	Exists partially	Not elaborated upon
COMESA	2001	2001	Not elaborated upon	Not elaborated upon

Source: Adapted from Gibb (2006)

Despite their similarities, the three RECs have, as alluded to earlier, undergone some important strategic transformation post-1991 that has seen them becoming more aligned with the MTS. In accordance with multilateral obligations, all three RECs have been notified to the WTO (See Figure 3.3). Two of these, SADC and SACU have been notified under article XXIV of the GATT, whilst COMESA has been notified under the more flexible *Enabling Clause*. SACU is the only customs union, whilst the others are either FTAs or PTAs.

**Figure 3.3: Southern African RTAs notified to the WTO**

Agreement	Date of entry into force	Date notified by parties	Related provisions	Type of agreement	Document series
SACU	15 July 2004	25 June 2007	GATT Art. XXIV	CU	WT/REG231
SADC	1 September 2000	2 August 2004	GATT Art. XXIV	FTA	WT/REG176
EC-South Africa	1 January 2000	2 Nov 2000	GATT Art. XXIV	FTA	WT/REG113
COMESA	8 December 1994	4 May 1995	Enabling Clause	FTA	WT/COMTD/N/3

Although three RECs exist in the region, this study discusses only SADC and SACU. COMESA is not examined because its membership goes beyond the region of interest of the study – the southern African region. Accordingly, the following sections briefly describe SADC and SACU.

## The Southern Africa Development Community (SADC)

The SADCC<sup>27</sup>, the precursor to the current organisation, was established in 1980 by the *Lusaka Declaration: Southern Africa: Towards Economic Liberation*. Lwanda (2007b) contends that SADC was not foreseen by its founders primarily as a trade institution. The major objective of the post-Lagos Plan of Action era, as alluded to earlier, was to reduce the region’s economic dependence on and vulnerability to apartheid South Africa. In accordance with this aim, SADCC was, at its formation, essentially a political response and ‘defensive mechanism’<sup>28</sup> by the Frontline States<sup>29</sup> (FLS),.

SADC today comprises 14 member states<sup>30</sup>, eight of which are LDCs. In addition to being members of SADC, all but one of these countries are members of at least one other regional organisation. Only Mozambique is a member of SADC alone (See Figure 3.4).

**Figure 3.4: Membership of other regional organisations of SADC member states**

SADC member state	COMESA	IOC <sup>1</sup>	EAC <sup>2</sup>	SACU	ECCAS <sup>3</sup>
Angola	●				●
Botswana				●	
Democratic Republic of the Congo	●				
Lesotho				●	
Madagascar	●	●			
Malawi	●				
Mauritius	●	●			
Mozambique					
Namibia				●	
South Africa				●	
Swaziland	●			●	
Tanzania			●		
Zambia	●				
Zimbabwe	●				

SADC, unlike SACU, has a remarkably broad agenda covering more than just trade. Its areas of cooperation are spelt out in its various protocols and other instruments. The 1996 Trade Protocol is essentially the primary regional integration driving tool.

27 Members in 1980 were Angola, Mozambique, Malawi, Lesotho, Swaziland, Zambia, Zimbabwe, Tanzania and Botswana.

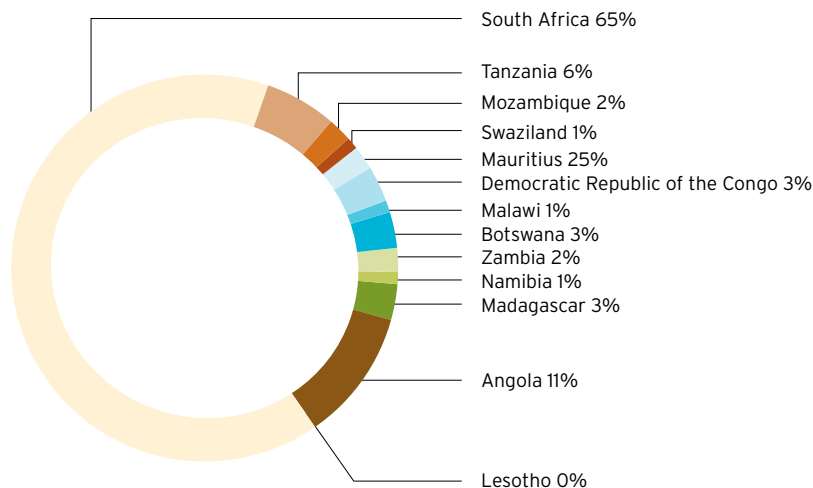
28 Baregu, M, 1993. *From confrontation to cooperation? Revisioning Southern Africa*, SAPEM, 6 (7), April, p. 33.

29 The Frontline States comprised countries in close proximity to the then apartheid South Africa, namely Angola, Botswana, Mozambique, Tanzania, Zambia and Zimbabwe.

30 Angola, Botswana, the Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

SADC, like SACU is characterised by the economic hegemony of South Africa. South Africa contributes 65% of the region’s GDP whilst the second and third largest economies (Angola and Tanzania) contribute 11% and 6% respectively (See Figure 3.5 below).

**Figure 3.5: 2006 SADC GDP PPP (millions of constant 2005 international US\$)**



In terms of trade and regional integration, SADC is still confronted by a number of challenges including lacklustre political commitment, stringent rules of origin (ROOs) and a lack of diversity in trading products. SADC member states are battling to conclude a harmonised regional integration agenda which means that integration and harmonisation within the region has not yet been achieved. As seen in Figure 3.2 above, a SADC FTA was to be functional by the end of 2008 with a Customs Union (CU) by 2010. That target too has not been met.

Figure 3.6 and 3.7 illustrate, in part, some of the challenges faced by SADC. The Figures show that seven SADC states have an applied simple average rate in the range of 3.5% to 8%<sup>33</sup>, whilst six have applied simple MFN rates of between 12% and 13.9%. This implies that it is not easy to achieve convergence in the applied MFN tariff rates of the region, a requisite for regional integration.

In terms of trade with the EU, Figure 3.6 shows that all eight LDCs have duty free access on over 90.2% of tariff lines on their exports to the EU, largely due to the EBA initiative. Additionally, all the other member states have considerable duty free access on a high percentage of tariff lines. All-in-all, of the 13 SADC states for whom data is available, only three – South Africa, Botswana and Swaziland – have less than 90.2% access to duty free tariff lines on exports to the EU. Regardless of these differences, very little diversity in trade is exhibited in the region’s exports to the EU.

31 World Bank. World Development Indicators database. Accessed through the Global Development Network website ([www.gdnet.org](http://www.gdnet.org)), <http://wdi.gdnet.ws:9999/ext/DDPQQ/member.do?method=getMembers&userid=1&queryId=6>, Accessed 16 June 2008.

32 Data for Zimbabwe was unavailable.

33 It must be noted that this Figure is due mainly to the five SACU states that have a uniform simple average MFN applied rate.

Figure 3.6: Some features of SADC trade with the EU<sup>34</sup>

Country	Diversification	Duty free	Export market	Applied MFN rate
	95% of HS-6 trade (no. of subheadings)	Tariff line (%)	Importance ranking	Simple average (%)
Angola	2	96.6	3	7.2
Botswana	1	83.4	1	8.0
Democratic Republic of the Congo	14	95.9	1	12.0
Lesotho	18	90.2	3	7.9
Madagascar	116	95.2	1	13.3
Malawi	8	98.1	1	13.5
Mauritius	90	94.7	1	3.5
Mozambique	5	95.2	1	12.1
Namibia	26	93.1	1	8.0
South Africa	68	67.8	1	8.0
Swaziland	27	40.2	2	8.0
Tanzania	51	97.5	1	12.7
Zambia	21	97.4	4	13.9
Zimbabwe	–	–	–	–

Note: Bold and italics = SACU states

Figure 3.7: SADC MFN rates

Tariff range	Frequency
0	–
0–3.5%	1
3.6–9%	6
9.1–12%	1
12–15%	5
More than 15%	–

### The Southern African Customs Union (SACU)<sup>35</sup>

SACU, founded in 1910, is the oldest customs union in the world and the only functional customs union in Africa. Its members are South Africa, Botswana, Lesotho, Namibia and Swaziland. All members of SACU are also members of SADC. Additionally Swaziland is also a member of COMESA. All SACU members, with the exception of Botswana, are also members of the Common Monetary Area (CMA) otherwise referred to as the 'Rand Zone'.

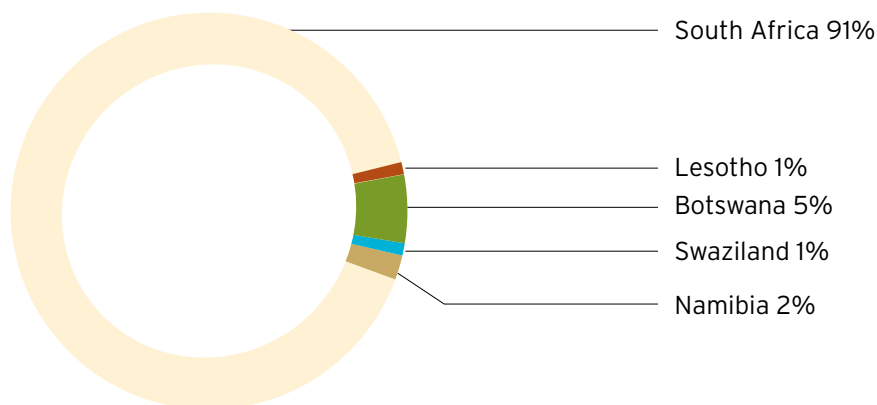
34 WTO Trade Statistics Database, <http://stat.wto.org/Home/WSDDBHome.aspx?Language=E>. Accessed 14 June 2008.

35 Further official information on SACU can be obtained from [www.sacu.int](http://www.sacu.int).

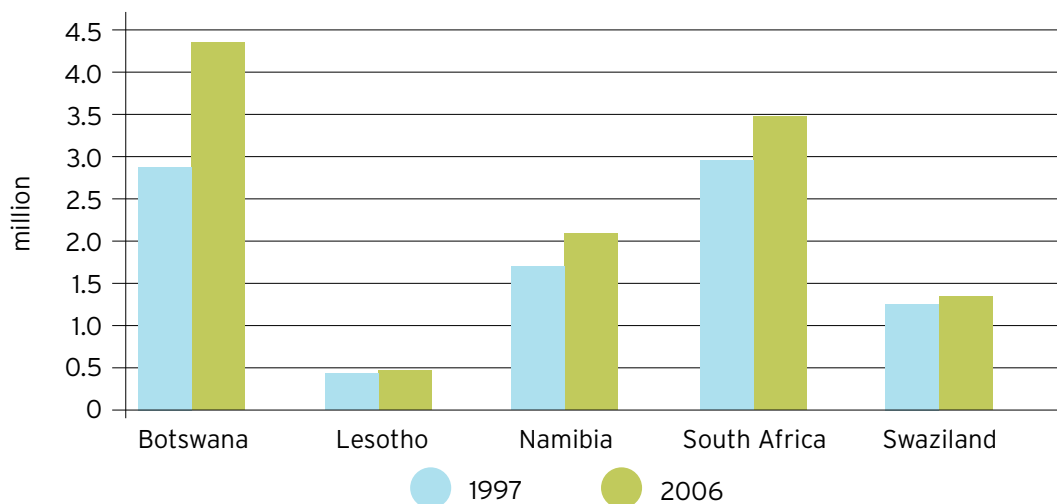


Of the five SACU economies, only Lesotho is an LDC whilst the others are non-LDC. Additionally, SACU is characterised by the economic dominance of South Africa which accounts for approximately 91% of SACU’s GDP, with Botswana the second biggest economy accounting for only about 5%. When measured in terms of per capita GDP however, South Africa is second to Botswana which has experienced relatively higher growth rates over the last decade (See Figure 3.8 and 3.9).

**Figure 3.8: 2006 SACU GDP PPP (millions of constant 2005 international US\$)<sup>36</sup>**



**Figure 3.9: 2006 SACU per capita GDP (millions of constant 2000 international US\$)<sup>37</sup>**



According to the WTO, the applied simple average MFN rate in the SACU region is 8% (see Figure 3.6), which is comparatively higher than the applied rates of the region’s

<sup>36</sup> World Bank. World Development Indicators database. Accessed through the Global Development Network website ([www.gdnet.org](http://www.gdnet.org)), <http://wdi.gdnet.ws:9999/ext/DDPQQ/member.do?method=getMembers&userid=1&queryId=6>. Accessed 16 June 2008.

<sup>37</sup> World Bank, World Development Indicators database (*ibid.*)

more developed trading partners<sup>38</sup>. When compared to other developing trading partners, the applied SACU MFN simple average is relatively lower than those of Brazil, China, India and Russia which have simple applied MFN rates of 12.3%, 9.9%, 19.2% and 11.4% respectively. This relatively low rate hence illustrates the bloc's deep commitment to the MTS.

Data from the WTO website reveals that, despite considerable access to duty-free tariff lines (ranging from 40.2% for Swaziland to 93.1% for Namibia), SACU exports to the EU exhibit little diversity<sup>39</sup>. South Africa's trade with the EU is unsurprisingly the most diverse in the region, with 68 HS-6 subheadings with trade flows. This restraint is particularly observable when contrasted against EU trade with the economies of Brazil, Russia, India, China and Egypt which register 560; 132; 1269; 1521 and 281 HS-6 subheadings with trade flows.

Since its founding, the SACU Agreement was replaced in 1969 and then by the current agreement in 2002. The 2002 SACU Agreement transformed SACU into a democratic, rules based institution. It envisions, amongst other things, the establishment of an organisation with common policies and common institutions. Besides already having submitted to two Trade Policy Reviews with the last one in 2003, the extent of loyalty to the MTS of the new agreement can be noted by, amongst other things:

- the establishment of a tribunal to settle disputes related to the implementation and interpretation of the agreement;
- the provision of the adoption, by all member states, of common policies in a number of areas (Part 8 of the agreement);
- the establishment of a common negotiating mechanism and policy mandates for future negotiations between SACU and third parties.

### **The current state of regional integration in southern Africa: The problem of overlapping membership of regional organisations**

The southern African regional integration process is characterised by multiple and overlapping membership of RECs. Overlapping membership to regional organisations raises a number of technical and procedural complications by creating institutional and trade regulatory overlap. Procedurally, multiple membership of RECs strains the already limited financial and institutional capacity and resources of member states. This is because administrative costs of maintaining such arrangements rise since trade policy operates within multiple trade regimes with different tariffs, rules of origin etc. Arguably the financial and institutional resources deployed by states that are members of different RECs that ultimately have the same eventual end goal, could be channelled more rationally.

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<sup>38</sup> For example, the EU and Japan, with rates of 5.4% and 5.6% respectively.

<sup>39</sup> This statement is based on measures in terms of the number of HS-6 digit subheadings with trade flows after the exclusion of 5% of the smallest bilateral tariff line trade flows.

Technically, whilst membership of multiple RECs presents no major problems in the first two stages of regional integration (PTA and FTA), confusion and conflict increase as integration deepens in the RECs. Box 3.1 illustrates some of these complications by using an example of two SADC member states. In any case, a country cannot be a member of more than one customs union (CU) unless the CUs are similar. This is because an important feature of CUs is that they have a common external tariff (CET) and hence a common trade policy.

Additionally, the MTS is not sympathetic to multiple REC membership once any of the RECs has evolved beyond FTA status. For example, when COMESA becomes a CU, COMESA states also party to the SADC FTA would be in violation of WTO regulations on RTAs if they were to maintain trade preferences in favour of non-COMESA SADC states.

### **Extent of the problem of overlapping REC membership in southern Africa\***

Gibb (2006) uses three case studies to illustrate the current unworkable regional integration situation in southern Africa and eastern Africa due to overlapping membership of RECs. Two of these examples are adapted below:

Zambia is a member of SADC and COMESA. Under the SADC Protocol on Trade it is obliged to remove tariff barriers to South Africa, a fellow SADC member, by 2012. Similarly, as a result of its COMESA membership, it is obliged to be part of the COMESA CET in 2008. However, the COMESA CET excludes and hence discriminates against South Africa which is not a member of COMESA. Hence, Zambia has agreed to simultaneously promote free trade with South Africa and to maintain tariff barriers against it.

Swaziland, being a member of SADC and the only SACU member also a member of COMESA, has agreed to simultaneously implement three FTAs and three customs unions. It has hence agreed via the SACU CET to maintain tariff barriers against non-SADC COMESA states despite being a member of COMESA itself, while simultaneously agreeing to erect a COMESA CET against other SACU states. At present the country relies on COMESA derogations, allowing it to access the COMESA FTA, while simultaneously applying the SACU tariff regime against COMESA imports.

\* Adapted from Gibb (2006). Rationalization or Redundancy? Making Eastern & Southern Africa's Regional Trade Units Relevant. Brenthurst Discussion Paper 3/2006.

It is important to point out that the problem of multiple REC membership within the regional and continental integration agenda is not unique to the southern African region. In a statement opening the African Union private sector forum in Banjul Gambia in June 2006, the African Union Commissioner for Economic Affairs, Dr Maxwell Mkwezalamba remarked:

*“Indeed the RECs are recognised as the building blocks of the African Economic Community in the Abuja Treaty establishing the African Economic Community. However, more could have been achieved in this process had there not been any problems associated with the overlapping and multiple memberships to regional economic communities (RECs) of member states...”<sup>40</sup>*

The United Nations Economic Commission for Africa (UNECA) supports this concern about overlapping memberships. Explaining the problems that can result, the UNECA (2002) in its ‘Assessing Regional Integration in Africa’ publication noted that:

*“The many regional economic communities with overlapping memberships are perceived as wasting effort and resources. Having multiple groups adds to the work of harmonisation and coordination and complicates the eventual fusion of regional economic communities into the African Union. This has prompted calls to rationalise integration.”<sup>41</sup>*

Accordingly, during the first conference for African ministers in charge of integration that took place in Ouagadougou, Burkina Faso in March 2006, a resolution on the rationalisation and harmonisation of RECs noted

*“with concern the constraints posed by a proliferation of RECs and the challenges these constraints pose to taking the process of continental integration forward towards the African Economic Community.”<sup>42</sup>*

This conference was closely followed by the Decision on the Moratorium on the Recognition of RECs in July 2006, which effectively suspended the recognition, by the AUC, of new RECs. The moratorium does not apply to the seven RECs identified in 1997, nor the east Africa community, being the eighth.

This decision puts into context the disruptive nature of overlapping REC membership in southern Africa and Africa as a whole, which partly explains the infancy of regional integration in southern Africa. Of relevance to this study is the fact that regional integration in southern Africa remains problematic and underdeveloped.

Notwithstanding this problematic situation, the region is simultaneously involved in EPA negotiations with the EC. The effect of this is two-fold:

1. the region has engaged the EU without a harmonised regional position on which to build and negotiate concessions with the EC, and
2. the region has further strained its already limited resources by engaging in these parallel initiatives.

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40 Africa Union statement by H.E. Dr Maxwell M Mkwazalamba, Commissioner for Economic Affairs, Africa Union, on the occasion of the opening of the African Union Private Sector Forum, 22 June 2006, Banjul, Gambia.

41 United Nations Economic Commission for Africa (2004) op cit.

42 AU Resolution on rationalisation and harmonisation of regional economic communities.

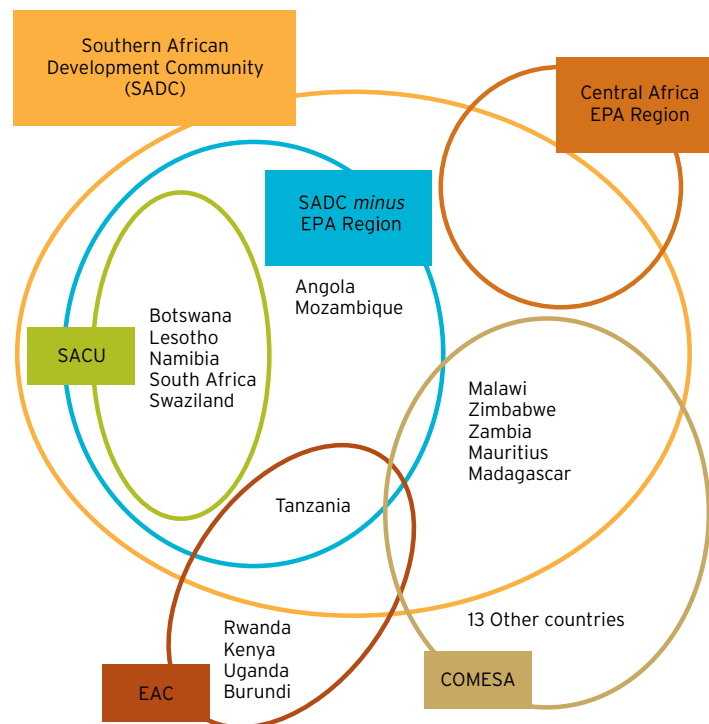
## Chapter Four: EPA negotiations in the SADC region

The immediate effect of EPA negotiations on the southern African region was to split SADC member states amongst four EPA negotiating configurations, namely: the central African group; the east and southern African group; the SADC-EPA<sup>43</sup>; and the east African group (See Figures 4.1 and 4.2).

Originally of the 14 SADC member states, seven (Botswana, Lesotho, Namibia, Swaziland, Mozambique, Angola and Tanzania) opted to negotiate under the SADC-EPA configuration, the Democratic Republic of Congo joined the Central Africa grouping, five (Madagascar, Malawi, Mauritius, Zambia and Zimbabwe) joined the ESA grouping while South Africa was initially merely an observer in the SADC-EPA grouping. As the negotiations progressed, Tanzania later joined the EAC. Initially South Africa only had ‘observer’ status since it already has a WTO-compliant FTA with the EU. However South Africa joined the SADC-EPA configuration in February 2006.

The SADC-EPA configuration hence currently consists of South Africa, the BLNS states, Angola and Mozambique. Of these seven states, three (Angola, Lesotho and Mozambique) are LDCs whilst the remaining four are not. Additionally, South Africa and Angola make up the major economies of this configuration.

Figure 4.1: EPA configurations in southern Africa



43 Variably referred to as SADC-minus

**Figure 4.2: Membership of other RECs of SADC member states (with EPAs)**

SADC member state	COMESA	IOC	EAC[2]	SACU	EPA configurations		
					SADC	ESA	Central Africa
Angola	●				●		
Botswana				●	●		●
Democratic Republic of the Congo	●					●	
Lesotho				●	●		
Madagascar	●	●				●	
Malawi	●					●	
Mauritius	●	●				●	
Mozambique					●		
Namibia				●	●		
South Africa				●	●		
Swaziland	●			●	●		
Tanzania			●			●	
Zambia	●					●	
Zimbabwe	●					●	

The SADC-EPA negotiations were launched in July 2004 in Windhoek, Namibia. A negotiations structure, at both national and regional level, was accordingly formulated by the configuration member states. Botswana, through its Ministry of Trade and Industry, was designated coordinator of the overall process of negotiations. Each SADC-EPA member state was assigned a negotiation issue or issues to coordinate.

### Progress and state of play

This section discusses the progress and state of the SADC-EPA negotiations, with special interest in how they relate to regional integration. Due to its special focus, this section does not claim to be exhaustive, since several other issues not directly related to regional integration, at least in the opinion of the author of this study, are not analysed.

Grappling with the complications and challenges of overlapping membership in regional integration arrangements has not been easy for the SADC group and this dilemma dominated the first part of the negotiation period. In fact, towards the end of 2005, SADC suspended EPA negotiations “in order to deal more concretely with key regional integration challenges and the inter-linkages created by different trade regimes between the southern Africa region and the EU such as the EU-SA TDCA and the situation of the

BLNS in SACU and the EPA.”<sup>44</sup> The result was the adoption of a SADC framework proposal which was presented to the EC by the SADC-EPA group on 7 March 2006.

This proposal has come to be known as the ‘Framework Proposal for the EPA Negotiations between SADC and the EU’. The importance of this framework lies in its attempt to support a regional integration agenda in southern Africa. For this particular purpose, it called for the inclusion of South Africa as a full participant in the SADC-EPA configuration and alignment of the TDCA with the EPA process.

In addition to these calls, the framework contains four major suggestions:

1. In line with the call to align the TDCA with the EPA process, it was suggested that the TDCA be used as a benchmark for negotiations, particularly since four of the remaining six SADC-EPA configuration members – the BLNS states – are *de facto* participants of the TDCA. A qualification to this, however, was that the sensitivities of the BLNS states be addressed.

The need to address the sensitivities of the BLNS states must be seen against the context within which the TDCA was negotiated between South Africa and the EU. South Africa unilaterally locked-in the BLNS states, without consultation, to obligations some of which were costly to the BLNS states. For example, the SACU CET meant that the SACU fiscal revenue pool shrunk due to the TDCA. Goodison and Stoneman (2005, p. 23) quote studies estimating that the TDCA shrunk the fiscal revenue pools of the BLNS states by the following amounts:

- Botswana – 53%
- Lesotho – 12.9%
- Namibia – 8.6%
- Swaziland – 13.9%

Furthermore, the TDCA has resulted in the reduction of trade protection of the BLNS states without factoring in their defensive interests.

2. Second, it was submitted that the EBA qualifying SADC-EPA LDC states should continue enjoying their non-reciprocal, duty-free EBA status. Essentially this entailed binding the EBA benefits of LDCs into the EPAs.
3. The third submission was that all SADC-EPA states, including South Africa, be granted duty free market access to the EU. More than likely, realising the potentially divisive nature of this suggestion, the South African Department of Trade and Industry was quick to point out that “South Africa conceded that this should not be achieved at the expense of any other SADC-EPA member, and recognising the EU’s sensitivities in agriculture, this could be obtained over a transitional period.”<sup>45</sup>

44 SADC Secretariat. 2007. Review of the SADC-EC Negotiations for an Economic Partnership Agreement. Unpublished. p. 6.

45 The South African Department of Trade and Industry. 2008. SADC-EPA Group – EC Negotiations: Assessing the Emerging Outcome. Press release of 30 January 2008, Pretoria, South Africa. [www.thedti.gov.za/parliamentary/EPAoutcomes.pdf](http://www.thedti.gov.za/parliamentary/EPAoutcomes.pdf). Accessed 6 June 2008.

4. The last suggestion, which has proved to be a major sticking point, was in regard to 'new generation' trade issues<sup>46</sup>. These, it was suggested, "should be subject to non-binding cooperative arrangements to allow time for building policy, human and institutional capacity at national level. The development of national positions should then be followed by processes for regional convergence to build regional markets and common regional policies<sup>47</sup>". More significantly, new generation trade issues are not necessary in order to make the agreement WTO-compliant. The argument hence is that these issues, some of which are already under negotiation in the WTO, can be negotiated later without the time pressure accompanying current negotiations. This would facilitate the conclusion of more mutually acceptable negotiations on these issues.

Once submitted to the EC, a long period of non-response followed, prompting the SADC secretariat to observe at one point that the silence gave the "impression that these developments in the SADC-EPA almost require a *de facto* re-launching of the negotiating process."<sup>48</sup> When the response came exactly a year later in March 2007, Xavier Carin, South Africa's chief trade negotiator, summarised the response as consisting of the EU welcoming South Africa's inclusion in the SADC-EPA configuration whilst challenging everything else<sup>49</sup>. In summary, in its official response the EC generally adopted a dim view of and refused the suggestions.

On 1 January 2008, five of the seven SADC-EPA configuration countries (Botswana, Lesotho, Mozambique, Namibia and Swaziland) initialled an interim EPA, although Namibia did so with reservations. South Africa, which already has a free trade agreement with the EU and is hence under no obligation to conclude an agreement, did not initial, whilst Angola (an LDC) simply registered its intent to participate in the future. Needless to say, as an LDC, it still has EBA access to the EU market.

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46 These include services, investment, procurement, intellectual property, competition, labour, and the environment.

47 The South African Department of Trade and Industry. 2008. SADC-EPA Group – EC Negotiations: Assessing the Emerging Outcome, press release of 30 January 2008, Pretoria, South Africa. [www.thedti.gov.za/parliamentary/EPAoutcomes.pdf](http://www.thedti.gov.za/parliamentary/EPAoutcomes.pdf). Accessed 06 June 2008.

48 SADC Secretariat. 2007. Op. cit. p.3.

49 Xavier Carin, Workshop on EPAs organised at the Institute for Global Dialogue, Midrand South Africa, July 2007.



## Chapter Five: EPAs and regional integration in southern Africa

This chapter measures the effects of the EPA negotiations against the analytical framework illustrated in chapter one.

As noted earlier, the immediate effect of EPA negotiations on the SADC region was to split the SADC member states into four EPA negotiating configurations. Needless to say this splintering of the bloc came with costs, not least of which are the adjustment costs associated with realigning the resultant blocs. The realignment of the blocs themselves is a process that requires time in order to build internal coherence and strong, well-coordinated institutions. More importantly, EPAs have led to an increase in regional groupings which has further complicated the rationalisation of regional integration.

Arguably, the behaviour and response of the EC to the SADC Framework proposal betray the Commission's disregard for the legal obligation of EPAs to strengthen and support regional integration, as shown by an analysis of the Commission's earlier unofficial response.

The Trade Law Centre of Southern Africa (TRALAC) provides an interesting account of the period between the submission by the SADC-EPA group and the official response from the EC. According to the TRALAC, an unofficial response, in which six points were cited, was received on 1 December 2006, almost nine months after submission of the proposal. Five of these points are particularly relevant due to their implications for the regional integration process in southern Africa:

1. The EC made clear its doubts that the negotiations would be completed on time, largely due to configuration issues and the involvement of South Africa.
2. The EC accepted the proposal to include South Africa in the configuration and implied that SACU would be the axis driving regional integration in the south. Reference was made to an *"institutionally coherent and economically integrated core group, which could be gradually expanded to integrate more countries in the region"*.
3. The inclusion of South Africa was, however, qualified by a differentiation between the market access conditions of South Africa and BLNS states. The EC was prepared to maintain a separate trade regime for South Africa, while trying to preserve the coherence of the configuration. This would be done through a *"rigorous system of control for rules of origin and the establishment of an autonomous safeguard mechanism which will automatically apply in case of a trade surge linked to circumvention"*.
4. The TDCA was considered to be a useful starting point for negotiations relating to imports from the EU. Any increase in tariffs to accommodate BLNS sensitivities would be opposed by the EC since these adjustments would also apply to South Africa.
5. Non-reciprocal and contractual EBA treatment for MAT countries would be unacceptable as it would not be compatible with WTO rules. The EC expected MAT countries to *"revise*

*their position” but also subtly reminded them that “changing EPA configurations could be done without leaving SADC membership”<sup>50</sup>.*

Each of these responses has implications for regional integration, which are highlighted and discussed below:

1. Firstly, already doubting the probability of meeting the deadline, and having made this clear, the EC’s sincerity is questionable in insisting on the immediate inclusion of legally binding obligations on new generational trade issues (NGIs). As already noted, there exists no imperative to conclude new generational trade issues in EPAs, as this is not a requirement for WTO compliance. Additionally, some of these issues are currently being negotiated at the WTO.

Given that most developing WTO member states have resisted negotiations on new generation trade issues, it could be argued that the EC is using EPAs to ‘sneak’ NGIs into the multilateral trading system. Given that ACP states make up over half the WTO members, the conclusion of NGI negotiations with them would effectively mark the inclusion of the Singapore issues in the multilateral trading system.

2. The proposition that the inclusion of South Africa in the negotiations implies that SACU is now the ‘axis driving regional integration’ is arguably not only misplaced, but also a betrayal on the part of the EC to appreciate the SADC-EPA negotiation structure, as well as the EPA negotiation mandate of the CPA articles (35.2 and 37.5). This additionally suggests a sense of insincerity towards the southern African regional integration agenda. SACU does not have the requisite mandate from the other SADC-EPA member states to assume such a role, and no such implication is made in the SADC-EPA framework submission to the commission.
3. The differentiation of obligations and benefits, regarding both goods and services, for different SADC-EPA member states imposes three complications on SADC’s regional integration agenda:
  - a. Whilst the situation is technically possible in SADC’s current FTA, serious complexities confront the situation should SADC move on to a customs union;
  - b. Differential obligations to the EU in terms of new generational trade issues hamper the possibility of SADC agreeing on a common position on the issues; and
  - c. Importantly, in order to effectively implement the differential obligations to the EC and stem the problem of transshipment and/or trade deflection, countries will have to set up rigorous, time-consuming customs procedures and costly ROO checks. This essentially implies a rise in trade barriers.

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50 TRALAC. SADC EPA Update. [http://epa.tralac.org/pdf/20061222\\_SADC\\_EPAUPDATE.pdf](http://epa.tralac.org/pdf/20061222_SADC_EPAUPDATE.pdf). Accessed 06 June 2008, p.4.

4. The refusal to incorporate BLNS sensitivities in the TDCA presents major regional integration challenges for SACU. For example, whereas the BLNS EPA schedules are based on the HS2007, the TDCA schedules are based on the earlier HS 1996. Secondly, whereas the TDCA is based on a 'negative list', EPAs are based on a 'positive list'. The difference between the two is that whilst any product not specifically listed in the schedules is liberalised under a 'negative listing' protocol, a 'positive listing' states what is to happen to each and every item, and any item not listed is considered to maintain an 'as is' status. An implication of this, as in the example above, is that effective implementation of these two statuses will entail the building up trade barriers and restrictions in the region, hence again debilitating regional integration.
5. Lastly, the subtle suggestion that MAT countries can change configurations without necessarily leaving SADC membership is akin to meddling with the southern African regional integration process specifically with the intention of undermining coherence, which is a violation of the CPA articles 37.5 and 35.2.

Using the five points discussed above and the study's analytical framework, Figures 5.1 summarises the study's findings. As stated in chapter one, the analysis of the procedural level is used to interrogate adherence to the theoretical and legal framework, namely adherence to WTO Article XXIV, as well as CPA Articles 37.5 and 35.2.

Figure 5.1 evaluates each of the five points from the EC unofficial response with its relevant level of analysis based on the implications of the response. At the MTS level, adherence to the principle that RTAs should not lead to a rise in trade barriers is analysed. As illustrated in the first chapter under the '*Importance of the MFN*' subheading, trade barriers lead to efficiency losses which can have negative welfare effects. Any rise in trade barriers is more likely to increase the potential of trade diversion and negative welfare effects. Hence the commitment to a progressive breakdown of trade barriers is enshrined in the MTS.

At the CPA level, adherence to the two principles of consideration of existing regional integration processes, and the promotion of regional integration, is assessed.

**Figure 5.1: Measure of EPAs effects on regional integration**

Analysis level	Principle	Relevant points in EC unofficial response	Pass/fail
MTS	RTA should not lead to a rise in trade barriers	1, 3 and 5	Fail
CPA	1. Consideration of existing regional integration initiatives 2. Promotion of regional integration	2 and 5	Fail

Starting with the MTS level: the study notes that points 3 and 5 of the EC response inadvertently imply a rise in non-tariff trade barriers in the form of complicated rules of origin etc. By breeding and promoting a rise in trade barriers, EPAs essentially fail to

adhere to their MTS obligations. The implication of this is that EPAs are devoid of the economic theory on which the MTS is based. Additionally, the spirit behind the 'beyond WTO' nature of the EPAs exhibited by the EC's insistence on the inclusion of NGIs in the negotiations is questionable, given the limited negotiation time and the fact that completion of NGIs is not a prerequisite for WTO-compliance.

At the CPA level, as explained above in points 2 and 5, the EC response brings into question its commitment to the CPA mandate. Additionally, by leading to a proliferation of regional groupings, EPAs have exacerbated the problem of multiple regional organisation membership and its negative effects.

Ultimately this analysis has shown that EPAs, by failing to adhere to the MTS regulations on regional integration and the CPA mandate on EPA negotiations and regional integration, will not promote regional integration. On the contrary, by raising non-tariff trade barriers, EPAs will hinder regional integration.

## Chapter Six: Conclusion

EPAs have a legal obligation not only to take into consideration current regional integration initiatives in southern Africa, but more importantly, to reinforce and strengthen regional integration in ACP states. Due to the complexities presented by multiple and overlapping memberships in various RECs, there exists, not only in the southern African region but the entire ACP region, an imperative to rationalise REC membership, thus essentially streamlining the regional integration process. The potential of EPAs in this regard, almost go without saying, since countries can only be members of one EPA configuration.

EPAs hence have the potential to streamline the regional integration process in southern Africa. Additionally, they have the potential to 'lock' SADC-EPA member states into regional integration processes and policy reforms. The South Centre suggests that "the presence of the EU within each EPA grouping will enhance the credibility of integration initiatives, and that the incentives of financial aid and technical assistance will encourage political support for regional integration<sup>51</sup>".

However, a bounty of pessimism exists in terms of the EPA's ability to foster regional integration, not only in southern Africa but indeed continentally. The Africa Union Commission is of the opinion that "unless the timeframes of the EPAs are streamlined with the RECs integration roadmaps, EPAs could well undermine the RECs, since the EU is an important and influential partner in the areas of trade, development and finance, and peace and security."<sup>52</sup> This pessimism with regard to EPAs is shared by the SADC trade adviser Paul Kalenga (2008) who wonders whether "a SADC-EC EPA (can) assist the integration process in the region, and if so, how?"<sup>53</sup> Whilst the feasibility of the EU adopting the integration roadmaps of the various RECs on the continent is arguable, the point stands that regional integration is threatened by EPAs.

What remains now is for both parties to map out a mutually acceptable way forward that will see the strengthening and fostering of regional integration in southern Africa taking centre stage as an objective. Undoubtedly, and although negotiating with a stronger partner, this imperative lies primarily on the shoulders of the SADC-EPA states. Should such a way forward prove elusive, not only will the current gains of regional integration in southern Africa be lost, but a reality exists that the 'partnership' in the EPAs between the EU and the southern African region will most likely be akin to the partnership between a rider and their horse.

51 South Centre Analytic Note SC/AN/TDP/EPA/4, point 36. [http://www.southcentre.org/publications/AnalyticalNotes/Other/2007Mar\\_EPA\\_Fact\\_Sheet\\_No4.pdf](http://www.southcentre.org/publications/AnalyticalNotes/Other/2007Mar_EPA_Fact_Sheet_No4.pdf). Accessed 17 April 2008.

52 Africa Union Commission (ibid.).

53 Kalenga, quoted in Bertelsmann-Scott, T. 2008. Challenges of the SADC EPA Negotiations: A Conference Report. [www.ecdpm.org/trade/sadconference](http://www.ecdpm.org/trade/sadconference), Accessed 10 March 2008.

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