

**The TDCA:  
Impacts, Lessons and  
Perspectives for  
EU–South and  
Southern African Relations**

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## Executive Summary

On 11 October 1999, South Africa and the EU signed the Trade, Development, and Co-operation Agreement (TDCA) after four years of difficult negotiations. Although the agreement was only ratified in May 2004, some aspects of the TDCA were provisionally implemented with immediate effect. Over the last five years the agreement has become the corner stone of EU-SA relations.

Whilst South Africa is grappling with issues of implementation and how to optimally make use of the provisions of the TDCA, its neighbours in Southern Africa have initiated negotiations with the EU with the aim to establish Economic Partnership Agreements (EPAs). The EPAs are set to become regional free trade areas with a strong development component. However, the negotiations seem to be embroiled in controversy for a number of reasons:

- Many fear that free trade agreements between the EU and developing and least developed countries will have a severe negative effect on the weaker parties;
- Although the EU would like to establish regional free trade agreements in Southern Africa, regional organisations are weak and overlap in both membership and goals. This posed - and to a certain extent still poses — a huge problem for Southern Africa in deciding which countries will negotiate the EPAs as units. The biggest problem is caused by the overlap between SADC (Southern African Development Community) and COMESA (Common Market for Eastern and Southern Africa) membership. Currently most countries that are members of both have decided to negotiate within the COMESA fold. COMESA (minus Egypt) has established the ESA (Eastern and Southern Africa) trade negotiating unit. The remaining SADC states, now called the SADC-minus

group — include the BLNS, Tanzania, Angola and Mozambique.

- There are concerns that Southern African states lack the capacity to take on negotiations of such magnitude.

### **The EU–SA TDCA: A model for Southern African EPAs?**

Many have speculated that the experience of negotiating the TDCA could hold lessons for Southern Africa in their ongoing EPA talks with the EU. The SA-EU negotiations were the first international trade negotiations that the new South African government was involved in. For many Sub-Saharan countries the EPA talks will be the biggest and most important talks that they will have participated in.

South Africa's TDCA experience could be instructive to the Southern African Customs Union (SACU), SADC and COMESA. The concluded SA-EU agreement provides a good base from which to construct EPA mandates. One could use the TDCA as a benchmark and assume that the ACP EPAs will at the very least not be greater in coverage. The European Commission is, however, wary of using the TDCA as a model for the EPAs and is not encouraging Southern African states to approach them in this way. There are obvious differences between the TDCA and potential EPAs, like the fact that Services and the Singapore issues were not included in the TDCA but are set to become part of the EPAs. Also, the EPAs should be negotiated within the context of the Cotonou Agreement of which South Africa only holds partial membership.

Even if the TDCA is not used as a model, South African negotiators learnt many useful lessons from their engagement with the EU — on the process of negotiating with the EU, rather than on content. The most important lesson learnt was

to be more proactive and not to narrowly focus on the EU's mandate. South Africa's partners would do well to tap into this experience and use it to their own advantage.

In terms of the development component of the TDCA, the agreement could provide real pointers for the EPAs on how to include a development component in a trade agreement. The South African approach, of actively managing donor relations and integrating external funding into cabinet-approved development plans is noteworthy in this regard. In addition, the SA–EU Science and Technology Agreement shows that taking the initiative will be key to the ACP securing additional benefits from an EPA, without having to demand additional funds under the EDF. However, there are also some significant differences between EU development co-operation in South Africa and elsewhere on the continent. Whereas the EU wants to focus on promoting equitable and sustainable economic growth that will encourage employment creation in South Africa, traditionally its development assistance to other Southern African countries has focused on basic social services and social infrastructure. So again, the lessons learnt in South Africa might be useful in the general, but the ACP states need to understand them within the context of their own political and economic situation.

### **Specific lessons learnt**

Some of the lessons learnt by the South African negotiators include:

- The political context within which the negotiations are concluded matter — negotiators, therefore, should be well aware of internal dynamics in the EU

- There is no unified view within the EU amongst the member states — negotiators will do well to identify partner states that would prove useful to lobby
- Trade negotiations are driven by technocrats and not by a popular mandate — it is important to understand how to deal with technocrats in this regard
- Free trade alone is not enough to ensure attractiveness of any FTA, the EPA negotiators will have to focus strongly on issues of investment and development co-operation
- EPA negotiators have to take the initiative and turn the table in their favour, rather than simply following the negotiating formula designed by the EU
- A very deep and detailed understanding of each tariff line is key to a successful negotiation.

### **The TDCA Review:**

#### **A way in which to approach the EPAs?**

In the TDCA the parties agreed to review the agreement every five years. Although this provides an opportunity to renegotiate some issues, it would not seem as if either party is keen to seriously reopen talks on liberalisation. However, the thorny issue of the TDCA and SACU needs to be addressed with some urgency. Although Botswana, Lesotho, Namibia and Swaziland (BLNS) are officially not signatories to the TDCA, the agreement is *de facto* a SACU–EU agreement, due to the nature of the customs union. There still remains some confusion over the impact this might have on the Southern African EPAs.

It is expected that Rules of Origin will be included in the review of the TDCA. If these were to be renegotiated within the context of the Review, it would also make sense to try and

solve the position of the BLNS vis-à-vis the TDCA, which in turn could have a dramatic impact on the SADC EPA negotiations as it would leave only Angola, Tanzania and Mozambique to negotiate a SADC EPA with the EU. However, both the TDCA and SACU only cover trade in goods whilst the EPAs will include services too. Given this differential coverage it is questionable whether the TDCA Review could become a vehicle towards sorting out the BLNS EPA question.

### **Regional Spaghetti Bowl of overlapping memberships**

In Southern Africa there are a number of regional integration agreements and bilateral agreements unfolding within the context of the worldwide multilateral trading system. These include: SACU, SADC, COMESA, the East African Community (EAC), the Indian Ocean Commission (IOC) and the Economic Community of Central African States (ECCAS). While the existence of these groupings is not a problem, overlapping membership between the groupings has the potential to cause conflict and certainly imposes greater transaction costs on business and governments. As these regional groupings move closer to deeper trade and economic integration, co-ordination problems become more severe. Overlapping free trade areas are technically possible, but not overlapping customs unions.

The problem is not insurmountable but it will take political will at the highest level to sort out the current overlap and confusion. Some options have been put forward on how to rationalise the various regional organisations, ranging from distributing memberships equally amongst the various organisations to incorporating all Southern African states in one organisation as envisaged under the African Union treaty. A recent study by Christopher Stevens (Institute for Development Studies) and Matthew Stern (Go-Capital)

provides empirical detail on the potential for expanding SACU, concluding that its expansion seems more feasible than originally anticipated. Although expansion would be an incremental process, starting off with Mozambique, it could go as far as including all SADC countries. This would ensure that no rift occurs in Southern Africa, as might be the case if the current members of SACU have a separate agreement with the EU versus the rest of SADC, and it would avoid a corrosive undermining of the SADC trade protocol.

### **EPA negotiations**

Confusion remains regarding the EU's objectives and motivations for negotiating free trade agreements with the ACP and frustration abounds regarding the manner in which the negotiations are being approached from both an EU and ACP perspective.

There seemed to be a lingering unhappiness regarding the configuration of the negotiating units in Southern Africa. This issue clearly overlaps with the Spaghetti Bowl problem. It is, however, unclear whether or not the EPA talks are contributing to the confusion in the region or whether the negotiations provide an opportunity to rationalise the organisations. It is evident that the EPA process has focused attention on the problem and perhaps provides a catalyst for change. Although the conundrum posed by overlapping membership will need to be resolved at the highest political level, it will be wise to practically evaluate the implications of each and every agreement and protocol in the region, in order to make sense of what option would work the best for the region.

A clear area that needs clarification is the idea that the EPAs will be developmental in nature. However, the EU has made it



clear that no new funds will be channelled to the ACP. In fact, development assistance levels have been finalised within the EDF budget. The challenge will be to find ways in which to incorporate a development aspect into the agreements, without talking about additional resources. It is here that the SA–EU TDCA could point the way. Seeing as the TDCA was only ratified in May 2004, economic co-operation has not to date been given full attention by the two parties. (The trade aspect of the TDCA was provisionally implemented pending ratification.) However, if the Science and Technology Agreement is indicative, and similar innovative ideas emerge within this context, economic co-operation could have a real impact on South Africa’s economic development. The same principles could also be incorporated into the EPAs, or Southern African states could think of other ways in which co-operation could achieve development.

Although the EPA negotiations will probably focus on tariffs, these are of decreasing relevance in light of progressive multilateral liberalisation. So beyond tariffs what should be the basis of an EPA? It is clear that development aspects should include issues like SPS and rules of origin that favour development and integration in Southern Africa. But what else could be included in this? Both the TDCA Review and the EPA negotiations provide an opportunity for Southern African states to think outside the box and to come up with innovative ways in which Southern Africa’s under-development, poverty and global marginalisation can be addressed.

## Opportunities ahead

There are a few areas in which additional work is needed. These include:

- *The potential expansion of SACU*: Although the Stevens and Stern study provided some quantitative indications that SACU expansion could be beneficial to the region, this needs to be followed-up with qualitative assessments.
- *The TDCA Review*: Although both the EU and South Africa are committed to review the TDCA, it is still unclear as to what could be included and suggestions are still very welcome. This is an opportunity to influence the debate right at the source of decision-making.
- *Rules of Origin*: All Rules of Origin currently implemented in Southern Africa should be reviewed, harmonised, and liberalised.
- *The development component of the TDCA*: Seeing as the TDCA has only been fully operational since May 2004, there is still little understanding about the potential for a development component in a trade agreement. There are crucial lessons to be learnt here for the ACP in their EPA talks.

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# Chapter 1: Internal EU Dynamics

## The EU after enlargement<sup>1</sup>

The EU is a difficult organisation to understand and to engage with. Worse, it only seems to become more difficult over time. Therefore the challenge for Europe's trading partners is not just to understand the dynamics behind the integration process, but also to understand what those dynamics mean for relations between Europe and the outside world.

### *The challenges of enlargement*

The EU (EU) expanded to 25 members on 1 May 2004. In turn, this increase in membership brought with it a range of challenges. The EU is not only larger, it is more cumbersome, more diverse, and more expensive (see Table 1). How the EU adapts to these challenges will determine not just the internal dynamics of the 'union', but its external presence as well.

The difficulties adapting to a EU of 25 (or more) member states were recognised already at the start of the 1990s. Even before a major enlargement became a realistic prospect, and at a time when French President François Mitterrand was still suggesting that the unification of Europe would take 'decades and decades', analysts began to cluster the challenges of a wider union into three categories:

- decision-making,
- diversity, and
- redistribution.

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<sup>1</sup> This section was contributed by Erik Jones from the Johns Hopkins Bologna Centre.

The problem of *decision-making* is three fold. To begin with, and obviously, larger groups have more difficulty making decisions than smaller groups. Second, no matter what the number of countries involved, the institutions of the EU are unwieldy and decision-making authority is poorly distributed both across institutions and across member states. Third, the informal practice of decision-making in the EU is difficult to learn, it relies heavily on the ability of member states to engage in complicated exchanges both over time and across issues, and it functions only when member state representatives can achieve a degree of autonomy from their domestic constituencies. To summarise, a larger union would have more difficulty making decisions under the best of circumstances—both in terms of institutions and membership. However, the circumstances were likely to be anything but the best.

The problem of *diversity* differs depending upon the policy area. Diversity is least problematic in the realm of market competition or the common external commercial policy. The existing body of economic legislation known as the *acquis communautaire* sets the boundaries for acceptable diversity within which what is acceptable in any one country should be acceptable in all the rest. Hence to the extent to which the accession countries have adapted to the *acquis* they should not pose a problem. A similar point applies with reference to the common external commercial policy, where European Commission representatives have considerable autonomy from the demands of national politicians or special interests.

Diversity is more problematic with reference to welfare state institutions, wage bargaining practices, corporate governance, and tax regimes. Many of these structures are market distorting and yet are not subject to legislation within the *acquis communautaire*. Therefore, these structural issues will remain a problem no matter how well the accession countries may have

adapted to the body of EU law. Finally, diversity is most important in terms of matters relating to 'Justice and Home Affairs' and 'Common Foreign and Security Policy'. These policy areas remain largely outside the scope of the *acquis*, they rely on unanimous decision-making within the Council of Ministers, and they only progress on the basis of established areas of common concern.

The problem of *redistribution* is in many ways a feature of diversity as well. The accession countries are generally less wealthy, on a per capita basis, than the existing member states. Therefore, they are sure to attract financial resources directed to regional development that are triggered by relative per capita income. Many of the accession countries also include large agricultural sectors (see Table 2). By implication they will attract large support under the EU's common agricultural policy (CAP). Given that regional and agricultural transfers make up the bulk of the EU's budget, the effect of enlargement will be to trigger massive transfers from existing member states to the accession countries—transfers that would not only increase the burden on net-contributors to EU coffers, but that would decrease (or eliminate) the benefits paid out to net-recipients.

These challenges of enlargement have not changed since they were first recognised in the early 1990s. What has changed is the EU.

### *Responding to the challenge*

The EU member states have engaged in a prolonged struggle to reform their institutions, procedures, and finances in preparation for enlargement. At times, this struggle has coincided with other developments in European integration, such as the deepening of European policy competence in the

area of Justice and Home Affairs or with respect to unemployment. At other times, however, the struggle to adapt the EU to enlargement has come into conflict with other integration projects, such as the elaboration of a European Security and Defense Identity (ESDI) or a common European Security and Defense Policy (ESDP). Moreover, the pattern of adaptation has not been optimal when viewed in terms of the EU as a whole. Rather it has reflected the political possibilities of the member states, both existing and potential.

Adapting the institutions for *decision making* has proven to be extremely difficult. The European Council agreed treaty revisions at Amsterdam (June 1997), Nice (December 2000), and in the form of a draft constitutional treaty (July 2003). However, the Amsterdam revisions did not address fundamental questions of institutional design, the Nice revisions provided only stop-gap measures that some have argued are actually worse than the original institutions themselves, and negotiation of the draft constitutional treaty collapsed at the Brussels European Council summit (December 2003).

The failure of the Brussels summit was due in large part to a bitter conflict over relative voting weights between France and Germany on the one hand, Spain and Poland on the other hand. The fact of this conflict is unremarkable. That the weaker parties, Spain and Poland, could not be bought off is more important. Europe's constitutional negotiations were brought to a close after the change in the Spanish government and the resignation of the Polish Prime Minister. Under the new regime, voting in the Council of Ministers will follow a 'dual majority' formula that takes both population size and the number of member states into account. The point to note, however, is that this formula — while more efficient — will have little practical impact on decision-making. The reason is



that very few decisions actually come to a vote. Whatever the formal institutional requirements, the practice of the Council is to seek consensus on all issues. By implication, the constitutional negotiations were difficult, but the difficulty had less to do with the institutions per se than with the pattern of decision-making in the newly enlarged Europe. However, the intransigence of Polish opposition in December 2003 suggests that the accession countries may have some way to go before they learn the art of effective participation in European decision-making. Put another way, institutional reform, no matter how difficult, is only part of the solution to a problem that must still be addressed.

Adaptation to the challenge of *diversity* has been more successful, particularly in the realm of economic structural reform. (NB: This is not to say that the reforms themselves have been successful, only that the process is improved). In part this adaptation has derived from a deepening of European responsibility for employment and unemployment. The June 1997 Amsterdam treaty revisions introduced a title on employment into the Treaty Establishing the European Community (TEC). At the time, this amendment was viewed as a political concession to the incoming left-wing French cabinet of Lionel Jospin. However, it has since evolved into a complicated network of overlapping procedures for active labour market policies, market structural reforms, and macroeconomic dialog between government, labour, and industry. A general strategy for this network of reform procedures was agreed by the European Council at Lisbon (March 2000) and centres on an open method of co-ordination. Within the 'open method', member states tailor their reform strategies to their own requirements, both institutional and political. The EU as a whole plays a role in monitoring and encouragement.

The results of the Lisbon strategy are mixed. The original goal was to achieve the world's most competitive and dynamic knowledge-based economy within ten years. Within only four years, it was clear that the target would be missed. The March 2004 European Council summit, the heads of state and government began toning down the rhetoric about achieving the world's most competitive economy and called for a High Level Group to review what progress had been made. When the Group reported back in November, the Group's chairman, former Dutch prime minister, Wim Kok, delivered a harsh critique of the EU's failure to reform. More subtly, Kok also downgraded the goals behind the Lisbon strategy. Rather than emphasising the dynamics of the knowledge-based economy, he placed more attention on the need to promote the sustainability of the European social model. And rather than underscoring Europe's commitment to become the world's most competitive economy, he alluded to the objective of becoming one of the world's most competitive economies. In the ensuing news analysis and commentary, much of the popular confidence that the EU could cope with the diverse challenges of market-structural reform was lost.

Despite the bad press, however, the failure of the Lisbon strategy may be exaggerated. Of course it is true that the EU has not been able to achieve the world's most competitive economy. But EU member states have been to make progress in reform on a number of different fronts across the Union. In particular, the introduction of active labour market policies has changed the way many member states tackle the jobs crisis. Meanwhile, the broader application of shared-best-practice has provided an important source of policy innovation at the member level. The result has not been to encourage diversity in Europe. Rather it has been to take advantage of diverse European experience in managing the process of welfare state reform. In the final analysis, the Lisbon strategy is more

important for the procedures it introduces than for the results that it has achieved. Recognition of this fact is signally important given the increased diversity—both institutional and political—that will come into the Lisbon strategy as a result of accession.

Response to diversity has been less remarkable in the area of foreign and security policy, but is evident nevertheless. The controversy that surrounded the war in Iraq was certainly a setback. Over the long term, however, giving too much attention to the 'old Europe' — 'new Europe' dichotomy is likely to prove misleading. It is true that a number of EU member states disagreed with France and Germany in their opposition to US-led intervention. It is also true that a number of the accession countries sided with the pro-Atlantic faction. However, there is nothing remarkable in this. Euro-Atlantic controversy is as old as European integration. Moreover, Iraq-sized conflicts are relatively rare. Far more important is the fact that the EU was able to agree on so-called 'Berlin-plus' procedures for borrowing NATO assets. In doing so, the EU was able to assume responsibility for peacekeeping operations in former Yugoslavia. Critics of the ESDI and ESDP may point to the limited scale of these operations, but the point is that a European identity does exist, this identity is undiminished (and is indeed strengthened) by enlargement, and this identity can give way to effective common policy. Such policies remain limited by the requirement to achieve a common position before the fact. The point is simply that they can exist.

EU adaptation to the problem of *redistribution* falls somewhere between relative success and relative failure. The existing member states have proven consistently unwilling to accommodate the costs of enlargement, either before or after the fact. The European Commission's blueprint for enlargement, *Agenda 2000* (June 1997), and the European

Council's Berlin budgetary agreement (March 1999), both underscored that the accession countries would have to pay the major share of the costs of adapting to membership and that they should expect to receive only belated access to redistribution through EU coffers. However, NATO conflict in Kosovo gave new impetus to the enlargement process and forced a reconsideration of the financial implications. Before the conflict, the EU expected to take in only six new member states in the first wave of accession. Afterward, the accession process was amended to accommodate twelve countries plus, eventually, Turkey. Although only 10 of the 12 would be eligible to join on 1 May 2004, it was clear already in 2000 that the financial implications would have to be revisited—not once, but twice. The EU would have to amend the financial authority granted at Berlin, and it would have to plan its expenditures for the period 2007–2013.

### *Focus on finance*

Three aspects of the changed financial situation require consideration: the treatment of accession countries, the structure of transfers for agricultural support and regional development, and the overall provision of resources for the EU budget. Of the three, the treatment of accession countries is the most explicit. The European Council decided in Brussels (October 2002) that the new member states would immediately contribute as full members to EU coffers. Nevertheless, they would receive direct payments for agricultural support at only 25% of the EU level in 2004, rising by increments of 5% to 2007, and further increments of 10% until 2013.

The treatment of agriculture is somewhat more complicated. Immediately prior to the October 2002 Brussels summit, the French and the Germans agreed to finance the CAP at constant

absolute levels through 2013. This agreement was hotly disputed by both the British and the Dutch, who argued in favour of more comprehensive reform. Nevertheless, the Franco–German deal was ultimately accepted as the only basis for coming to an overall revision of the EU’s finances in preparation for enlargement. The deal was made more palatable insofar as the precise wording remained ambiguous and given that the EU would have to revise its common agricultural policy in light of the commitments it had made to multilateral negotiations within the Doha Round of the World Trade Organisation (WTO) talks. It soon became clear, however, that the French regard the commitment agricultural expenditure as a level and not a ceiling. Moreover, a second Franco–German deal in June 2003 mitigated the scope of CAP reform by giving countries the right to delay the ‘de-coupling’ of agricultural subsidies from production levels by maintaining price supports as opposed to switching over to grants in income. The delay is only for two years, from 2005–2007, and the effects are felt primarily in terms of output and not total expenditure under the CAP. Nevertheless, the concession signals the continuing salience of agriculture subsidies for the French (and therefore the likelihood that the French will continue to resist sweeping reform).

The debate now centres on the overall provision of EU resources. Soon after the European Council failed to reach an agreement on the constitutional treaty in Brussels (December 2003), the six most important net contributors to EU coffers — including Britain, France, and Germany, plus the Netherlands, Austria, and Sweden — wrote a letter to European Commission President, Romano Prodi, indicating their unwillingness to see EU resources go above 1% of gross national income (GNI). Prodi responded by asserting that ‘with only 1% of GNI it will simply not be possible to do what these Member States — and all others — expect from us.’ When the

Commission presented its financial prospective (10 February 2004), the total allocations averaged 1.14% of GNI during the 2007–2013 period, with a peak of 1.23% in 2008. Within those figures, the two largest outlays — for agriculture and for regional development — are held constant in absolute terms over the six-year period. Meanwhile, the much smaller allocations for internal security, foreign affairs, and administration, are allowed to grow along with the underlying growth in GNI. Prodi is right to suggest that much of this could not be accomplished without going above the 1% of GNI ceiling. The question remains, therefore, what part of the agenda will be left undone.

### *Solidarity and culture*

The economic dimension of redistribution is only part of the problem. The cultural dimension is perhaps even more important. During the long debate over enlargement of the EU to Central and Eastern Europe, many such cultural considerations failed to crystallise. The violent break-up of Yugoslavia made it difficult for Europeans to express controversial attitudes that could be interpreted as religious intolerance, pan-Slavic nationalism, or anti-Slavism. The complementary desires to reunify the continent and to avoid the horrors of ethnic conflict made it necessary for politicians to frame their arguments in starkly rational terms. Finally, although a large number of countries applied to join the EU, only Turkey lacked unimpeachable European credentials and close consideration of the Turkish case could be put off in any event.

Now that the big enlargement is completed, however, Europeans have been released from many such constraints. The Yugoslav example continues to resonate, and yet

Europeans are more focused on whether to bring the Western Balkans into the Union than on how to avoid repeating the Balkan tragedy. Meanwhile, a growing sense that the global war on terror reflects an underlying 'class of civilisations' has legitimated the expression of strongly held religious or cultural views: Catholics in France, Italy and Poland have begun agitating for a definitively Christian European identity; secular humanists in the Netherlands have charged Islam with being inherently intolerant. Finally, the Turkish question can no longer be put off. Although the December 2004 European Council agreed to begin negotiations for membership, it did so with only great reluctance and with repeated insistence that such negotiations could fail.

Even if money were not an issue, it is clear that the EU has reached the limits of cultural solidarity across the member states. The conflict over the appointment of Italian Commissioner, Rocco Buttiglione, illustrates the underlying tension well. When Dutch members of European parliament (MEPs) questioned Buttiglione about his views on homosexuality, marriage, and families, he replied with 'strongly held beliefs' that provoked outrage across much of Northern Europe. Ultimately Buttiglione's candidacy was withdrawn. However, his departure has done little to eliminate the underlying contrast in values — a contrast that is sure to re-emerge in reference to issues such as abortion (Ireland and Portugal) or the death penalty (Turkey). Moreover, it is clear that money is an issue. Membership applications from Ukraine, Moldova, and perhaps even some of the republics in the Caucasus have become real possibilities. Such countries are not only closer to the geographic fringes of Europe, they are also considerably poorer than existing member states.

### *The larger picture*

The EU still faces important adaptations to the challenges of enlargement — in terms of decision-making, diversity, and redistribution. Moreover, the range of issues to which the EU must respond has grown dramatically over time. Unemployment remains a problem to which we must add the threats of organised crime, international terrorism, weapons of mass destruction, environmental degradation, demographic change, and world development. Within this new environment, the key to European adaptation will lie in finding a consistent source of leadership with a coherent program of action. The hope among Euro-idealists is that the institutions of the EU can be refashioned in a manner that gives the Union much the same capacity for agency that we typically associate with a nation-state. A more pragmatic, and yet still optimistic view is that the larger member states will band together either as an informal *directoire* or as a more formal core Europe. The greatest likelihood is that Europe will move into a phase of muddling through that is marked by more controversy of redistribution than progress in terms of integration.

The idealistic view nevertheless deserves careful consideration. The constitutional treaty does have provisions that should strengthen the 'actorness' or agent-like capacity of the EU. A dual-majority voting procedure gives greater authority to the larger countries. A European Foreign Ministers may offer greater coherence both to the outside world and in relations between the Council of Ministers and the Commission. And so on. The problem is that this treaty must first be accepted in the European Council and then ratified in each of the 25 member states. The decision by UK prime minister, Tony Blair, to call a referendum in Britain is only one obstacle, albeit an important one. The media pundits are now



convinced that such a referendum will inevitably fail. Even if true, it may be only one failure among many. Referenda on ratification will be held in at least nine countries, including Denmark, Ireland, and perhaps even Poland — all of which have experienced recent bouts of Europessimism.

The notion of a Franco–German–British *directoire* is more believable. However, the potential for contradiction within such a coalition is high. Despite the intensity of the conflict over Iraq, the three countries are actually closet on matters of foreign and security policy. They are also the most capable in terms of projecting force beyond the boundaries of the EU. In these areas, we should expect three-way co-operation to provide leadership, at least so long as such actions do not bring the special relationship between Britain and the United States in question. The prospects for agricultural reform are far more distant. The British position is strongly pro-reform, and the French position is strongly conservative. Personal relations between Blair and Chirac deteriorated dramatically around the Franco–German financial agreement of October 2002 and they remained poor through the CAP reforms of June 2003. Blair's decision to join the Franco–German summit in September 2003 was a reaction to foreign policy and not agricultural policy. The trilateral summit of February 2004 was focused on the Lisbon strategy. These are areas of relative success. But leadership is more important in the context of failure. In that case, close trilateral co-operation is unlikely to be forthcoming.

That leaves a large Europe that is both introspective and indecisive. This was always the nightmare result of enlargement. And there is good reason to believe that it will come about—particularly should the European Council finally agree on a constitutional treaty only to see it resoundingly rejected by the electorates of not one, but several member

states. The implications of this unfortunate scenario remain to be seen. However, some trends are already visible:

- To begin with, the EU will be less able to manoeuvre in multilateral negotiations because EU negotiators will have less autonomy from the domestic political constituencies within diverse member states. Such restrictions will be more apparent in those areas where multilateral negotiations are dependent upon institutional reform at the member state level than in areas where European regulations can have direct effect. For example, the EU can eliminate export subsidies on agriculture more easily than it can dispense with income and price supports altogether. In this way, enlargement will make the EU more coherent as a trading entity, but less effective as a negotiating partner—at least, once again, where EU concessions are dependent upon member state action.
- Second, EU market structural reform will slow down, particularly in relation to common institutions like the CAP. Meanwhile, different national reform agendas will continue to progress under the Lisbon strategy. As a result, the market environment within Europe will become more differentiated and more competitive, even as the market distortions created by common institutions become more prominent and relatively more important.

Of course it is possible that such indecision will provide the opportunity for European institutions to fill the governance gap in Europe. For example, the European Commission could assert more autonomy in the realm of multilateral negotiation and more authority in the encouragement of market-structural reform.

### *Reading the tea leaves*

Speculation along these lines is too early to judge. However, it is possible to establish indicators to watch in the future.

- The incoming commissioner of the European Commission, Jose Manuel Barroso, has called for greater leadership in reforming the Lisbon strategy. As a former Portuguese prime minister, Barroso has personal as well as political and economic reasons for making the Lisbon strategy the centre piece of his new Commission. Nevertheless, the Commission traditionally plays only a supporting and not a leading role in promoting welfare state reform. Moreover, reforming welfare state institutions is politically difficult, and the member states do not appreciate the prospect of heavy-handed interference by the European Commission. Therefore it is worth considering how Barroso's request for a leadership role will play out. If the Council of Ministers gives greater prominence to the Commission in reforming the Lisbon strategy — and Barroso succeeds in introducing meaningful reforms to the process of welfare state reform — it will be a major political victory for the Commission. However, if the member states resist Commission interference and continue to muddle through on their own, it could be a major distraction for Barroso and his Commission colleagues.
- A second area to watch is the ratification of the Constitution. Here it is possible to imagine three scenarios. First, the constitution could be ratified by all member states. This would not solve the many challenges facing the EU, but it would not make them any worse either. Over the long run, the constitution may even succeed in laying the foundations for the development of more efficient institutions. As it stands, the constitution is only a modest set of reforms, but it points in the right direction. The second scenario is more problematic. If a number of member states refuse to ratify the

constitution, then the EU will be stuck with institutions that clearly do not work well with such a large number of member states. Moreover, they will have to rely on these institutions to make decisions about future institutional reform. As a result, progress in European integration will continue at a much slower pace. The third scenario is less dramatic but more fundamentally troubling. If only Britain refuses to ratify the constitution, then the EU will benefit from marginally better institutions but from significantly more tension in relations among the larger member states. The EU will have to make a special accommodation for the UK that could have strongly negative consequences both for the EU budget and for the functioning of the internal market. Such isolation of Britain would also work against the emergence of three-power leadership in foreign affairs.

- A third area to watch is the evolving pattern of macroeconomic governance. Currently, the EU has a mixed system, within which some countries participate in a monetary union and others do not. This system functions because all member states have agreed that the management of fiscal policy and exchange rates is a matter of common interest. During the last several months, however, this notion of common interest has come under strain. Some countries within the single currency — namely France and Germany — have insisted on the right to abandon common rules in order to serve the national interest. Other countries outside the single currency — namely Britain, Denmark, and Sweden — have begun to distance themselves from any notion of ‘common interest’ altogether. Attempts to find a new formula for asserting the need to reconcile common interests and national autonomy has so far proved elusive. Instead, most member states seem to prefer to keep the framework for macroeconomic governance as it is. Nevertheless, calls for radical reform are increasing. Should such calls succeed in

inducing a radical revision of the single currency, they could also jeopardise the macroeconomic stability that has been achieved.

- A final indicator is the negotiation of the multi-annual financial framework. This has already been discussed above. However, the question of the British rebate needs still be to addressed. Currently, the United Kingdom receives compensation for the large net contributions it makes to EU coffers. As part of the financial reform process, the European Commission has proposed that the British rebate be generalised across all net-contributing member states. Should the Commission succeed in convincing the British to accept this reform, it would go a long way to smooth out the larger negotiation of the EU budget. Should the British rebate continue as it is, this would likely result in only minimal increases in financing over the coming years — with all the restrictions that entails. And should the EU succeed in forcing a reluctant British government to accept the loss of its rebate, this could foster anti-European attitudes in Britain that would scupper any hope of leading a successful referendum campaign for the new European constitution.

However these issues play out, it is clear that the future of European integration is a complicated affair. It is also clear that this more complicated Europe is going to be more introspective — at least in the medium-term, if not well into the future. The challenge for countries outside Europe is to engage with the Union as directly as possible, to work to overcome the European tendency toward inertia in decision-making, and to focus on the possibilities that are available in the European marketplace.

<b>Table 1: EU member states, old and new</b>		
	<i>Population (2001–millions)</i>	<i>GDP per capita (2001–Current PPP \$)</i>
Pre-2004 member states		
Austria	8.1	28,423
Belgium	10.3	27,746
Denmark	5.4	29,814
Finland	5.2	26,587
France	59.2	26,820
Germany	82.3	26,428
Greece	10.5	16,757
Ireland	3.8	30,088
Italy	57.8	26,357
Luxembourg	0.4	48,638
Netherlands	16.0	29,456
Portugal	10.3	18,036
Spain	40.3	21,577
Sweden	8.9	26,157
United Kingdom	59.8	25,894
2004 entrants		
Czech Republic	10.3	15,064
Cyprus	0.7	11,567
Estonia	1.4	10,049
Hungary	10.2	12,724
Latvia	2.4	7,876
Lithuania	3.5	8,359
Malta	0.4	9,255
Poland	38.6	9,844
Slovakia	5.4	12,309
Slovenia	2.0	17,772
Source: United Nations, Economic Commission for Europe.		

<b>Table 2: EU employment structures</b>			
	<i>Employment Distribution by Sector (2001) (%)</i>		
	<i>Agriculture</i>	<i>Industry</i>	<i>Services</i>
Pre-2004 member states			
Austria	6	30	64
Belgium	2	26	72
Denmark	3	25	71
Finland	6	17	67
France	4	25	71
Germany	3	32	65
Greece	16	23	61
Ireland	7	29	64
Italy	5	32	63
Luxembourg	2	21	77
Netherlands	3	21	76
Portugal	13	35	53
Spain	6	31	62
Sweden	2	24	74
United Kingdom	1	25	74
2004 entrants			
Czech Republic	5	40	55
Cyprus	5	24	71
Estonia	7	33	60
Hungary	6	34	59
Latvia	15	25	59
Lithuania	16	28	56
Malta	na	na	na
Poland	19	31	50
Slovakia	6	38	56
Slovenia	10	38	51
Source: United Nations, Economic Commission for Europe.			

## **Implications for Southern Africa and the ACP<sup>2</sup>**

The recent developments in EU external relations, as discussed above, will have a major impact on the way in which the EU co-operates and trades with the ACP countries. 2004 was characterised by major changes in the EU, including enlargement, the new European Constitution as legal framework for external action and the new European Parliament and Commission. In addition, the EU is in the process of discussing its overall financial and policy framework for the period 2007–2013 and has initiated the first five year review of the ACP–EU Cotonou Agreement.

Furthermore the EU has started this year the process of discussing its overall financial and policy framework for the period 2007–2013 (Financial Perspectives) and the first five year review of the ACP–EU Cotonou Agreement is also underway at this moment.

### ***2004: Major changes in European foreign policy***

In recent years the EU has been undergoing quite radical changes. Particularly in 2004 a number of important developments took place which in the longer term may contribute to a stronger leadership role of the EU on the international scene:

#### *The enlargement of the EU: Neighbours becoming best friends?*

The enlargement with 10 new member states from Central and Eastern Europe in May 2004 has already had a number of political consequences. Obviously, an EU with 25 member

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<sup>2</sup> This section was contributed by GEERT LAPORTE from the ECDPM.



gives the EU added political weight in the international arena. Closer to home, the EU seems to be more concerned, with its direct neighbours or neighbouring countries which has resulted in the *European Neighbourhood Policy* (ENP) and the *European Neighbourhood and Partnership Instrument* (ENPI). For the next decade one of the key priorities of EU external action will be to support economic development, stability, democracy and security in these neighbouring countries.

*The new European constitution:  
Towards more coherent external relations?*

The new European Constitution, formally signed on 29 October of this year in Rome, may have a major influence on EU's external relations including with the developing world. There is a clear emphasis on poverty eradication as one of the key objectives of external action to all regions. There is also a new legal framework for external action with the creation of a new post of European Foreign Minister (EFM) who will oversee all the external policies (including trade, security and development policies). The EFM will be supported by a new diplomatic corps, the European External Action Service (EEAS) which is likely to include both EC officials and security, trade and development officials from EU member states. This diplomatic corps will strengthen the presence of the EU in every country and region around the world. It is expected that the EEAS and other innovations in the area of external relations will become operational as soon as all EU member states have ratified the Constitution (2005–2006). Only after the ratification, the new European Foreign Minister will take up his position.

In principle, the institutional changes of the constitution hold out the potential of achieving improved coherence in the EU's external policies (promoting stability, international security

and democracy, fight against terrorism, improving trade access and alleviating poverty). One of the key questions in this respect is to see where development objectives will fit in this redefined legal framework for EU external action and in the hierarchy of European foreign policy objectives.

*A new European Commission and Parliament:  
Africa at the heart of European development concerns?*

Portfolios which will have an impact on EU–African relations include: Austrian Benita Ferrero-Waldner responsible for External Relations and Neighbourhood Policy, Belgian Louis Michel (Development and Humanitarian Aid) and British Peter Mandelson (Trade). It is quite interesting to note that the new President of the Commission, Jose Barroso, will chair the informal group of Commissioners concerned with European external relations which clearly underlines the European willingness to play a stronger role on the international scene.

From the profile of the Commissioners dealing with external relations and some of their first policy statements, during EP hearings, there are positive indications that Africa will remain high on the European priority list of development regions. Also within the newly elected European Parliament it can be expected that traditional support for Africa will continue.

*Development and trade:  
Stronger commitments towards the developing world?*

In 2004, the EU has also made progress in helping to realise the development dimension of the WTO Doha Round. A commitment has been made to eliminate European agricultural export subsidies and to substantially reduce trade distorting domestic support in agriculture. Promises were also made for

more duty-free and quota-free treatment of the LDC's for both agricultural and industrial goods. There remains, however, a lot of work to be done by the EU (and other developed countries) in turning these commitments into concrete measures, particularly as it concerns the reform of the Common Agricultural Policy (CAP).

Another important change is the revision of the Generalised System of Preferences (GSP). The new system, that will be applicable from 2006 to 2015, is meant to improve the current GSP system and better take account of specific needs of developing countries.

*The financial perspectives debate:*

*Ensuring visibility and coherence of European external action?*

In principle the Financial Perspectives debate is about the Community's global revenue, expenditure and allocation of resources for the period 2007–2013. This debate has started in 2004 with two EC Communications (February and July 2004) and will be a key issue on the EU agenda for most of 2005 and 2006 with the start of the implementation as of 1 January 2007. However, the debate is not only about revenue levels and allocation of resources. It will give a clear indication of the EU's medium term overall policy objectives and priorities, including three headline objectives:

- the sustainable development of Europe,
- enhancing the meaning of European citizenship and
- Europe as Global Partner including its relationship towards the developing world.

The financial perspectives debate provides an interesting framework for a future EU becoming a more prominent international player. Awareness seems to be growing that the

welfare of Europe will depend of its capacity to contribute to stability and prosperity worldwide. Under the Global Partner heading, the EC proposes a radical simplification of the currently more than 100 external action thematic and regional instruments and budget lines to only six thematic instruments. The two already existing instruments of *Humanitarian Aid* and *Macro Financial support* would be complemented by instruments for *Pre-accession, European Neighbourhood and Partnership, Development and Economic Co-operation and Stability*. This rationalisation should strengthen coherence of Europe's external action and ensure a stronger visibility of European external and development policy. However, the exact content of each of these six instruments as well as the legal, technical and financial questions still need to be further clarified, including the implications of EDF budgetisation.

### ***Changing trends in European aid and trade policies and management***

The EU (Community and member states) now provides more than half of all public aid to the developing world and is the main trading partner in a large group of developing countries. Over the years, it has gradually become a major player in the development process. The changes in EU external relations are likely to have major implications on both the volumes, quality and management of European development funding and the way in which Europe seeks to build new trade agreements.

European trade and aid policies and management will be increasingly determined by the following priorities:

### *Strong focus of European aid flows towards international development commitments*

Achieving the Millennium Development Goals (MDGs) is a key objective of the EU. The EU wants to provide leadership at the UN stocktaking on the MDG in September 2005 by making sure that it can stick to its own commitments on increasing ODA levels (collective target for EU 15 of 0.39% ODA/GNI by 2006 increased to 0.42%) and improved co-ordination and harmonisation of policies and procedures. Progress in achieving the MDG will not only depend of efforts to increase aid levels but also on development friendly global trade regimes and increased efforts to remove policy incoherence in EU external actions (for example, agricultural subsidies).

### *European development money to address domestic concerns*

It is very likely that European foreign policy towards Africa and the rest of the world will be more concerned with self-interest. There is clearly a growing tendency to earmark European development co-operation budgets to address questions that are of serious European concern, including immigration, security, stability and fight against terrorism. In February 2004 the EC adopted a multi-annual programme of some €250 million to allow for the systematic integration of migration issues into the political dialogue and co-operation with developing countries where migration is a crucial issue.

The EU has also been making major efforts in strengthening linkages between conflict prevention, fight against terrorism and development policy. While these measures may enhance European coherence of its external action, there is also an imminent risk that the new concerns and allocations for

security and migration may affect other longstanding development priorities.

*Performance based partnership:*

*More aid for countries that help themselves*

The culture of aid entitlements is long gone and has been replaced by performance-based partnership. Countries and regions that perform well in implementing the objectives of the Cotonou Agreement (democratisation, respect for human rights, rule of law, good governance, poverty alleviation and other international commitments are likely to be rewarded with additional resources. Negative incentives, in the form of decreased aid allocations will be used against those countries that do not perform well. Money can now be reallocated during mid- and end-of-term reviews of the five-year cycle of the European Development Fund (EDF)

### ***Increased European emphasis on disbursement and financial accountability***

In the past years there has been an increasing pressure on the EC to speed up commitment and disbursement rates leading to fast spending mechanisms such as sectoral budget support and debt alleviation. At the same time more rigidity has been imposed on the use of EU funding. New restrictive financial procedures have been put in place, partially because of the scandals under the Santer Commission. This has led to a situation where EC officials invest a disproportionate amount of their time in administrative and accountability matters. The balance seems to be lost between the (necessary) financial accountability and the equally important criteria relating to sustainable development impact. The new financial regulations

do not seem to be adapted to the realities of countries and regions in the developing world. It therefore seems increasingly cumbersome to finance long-term and comprehensive processes or programmes of capacity or institutional development with the new EDF/EC procedures. This trend may also affect EPA trade capacity building initiatives in the various ACP sub-regions.

### *Renewed focus on complementarity, co-ordination and coherence*

Both the Commission and the member states have been putting the debate on the three C's again on the agenda. Although some limited progress has been made many bottlenecks still remain. Aid efficiency and effectiveness can still be considerably improved by defining a clearer task division between the development programmes of the EC and the member states and by increased harmonisation of procedures and alignment with beneficiary countries systems and procedures. In terms of policy coherence some progress has been realised on paper (for example, EU trade policies towards developing world and intention to do away with agricultural subsidies) but the proof of the pudding will be in the eating. In any case the new European constitution holds out a certain potential for substantial improvements in the coherence of EU external action.

### *Promotion of the European role model of regional integration in the developing world*

The EU is also increasingly investing efforts in supporting regional and Pan-African integration. In this respect, the institutional support to the development of the African Union has moved up considerably on the European agenda, mainly

in the area of peace and security (for example, the new Africa Peace Facility). Increasing efforts have also gone in supporting the various regional organisations in Africa and worldwide. The EU is strongly committed to 'export' its own role model and experience of regional integration assuming that this may bring major benefits in terms of peace and security, democracy and economic growth and development.

### *Capitalising on the results of EC External Assistance reform*

The reform of the EC External Assistance has produced substantial progress since the start of its implementation in 2000: quality of strategic planning and programming (for example, Country Strategy Papers) and EC policy documents is increasingly recognised as having improved. Harmonisation and deconcentration (process of devolving staff and decision-making) seem to generate the first positive results, disbursement rates have speeded up, management of EC aid has been brought closer to the beneficiaries by making it more decentralised. New aid instruments have been introduced such as sector wide approaches and budget support.

### *Implications for ACP and (Southern) Africa*

A stronger Europe on the international scene as well as the recent changes in trade and aid policies may have major consequences for the ACP, Africa and the Southern Africa region

### *The EU and the ACP*

There seems to be a growing trend within the EU to gradually move away from historically grown configurations to a more



geographic/ regional or sub-regional association, co-operation and trade agreements (Balkans, Mediterranean, Central Asia, South East Asia, Latin America and Africa). Longstanding historic configurations such as the Group of Sub-Sahara African, Caribbean and Pacific countries (ACP) risk to be most affected by this trend. Another related issue of great concern to the ACP is the budgetisation of the European Development Fund (EDFs) which is linked to the earlier mentioned debate on the Community's medium term expenditure framework (Financial Perspectives). The EC has proposed to finance ACP–EU co-operation from the general Community budget. This would mean that the EDF, composed of member states contributions would be 'budgetised'. The European Commission is committed (as stated in its Communication on 'EDF budgetisation) that the future amount of funding 'will aim as a minimum at maintaining the total level of support to the ACP currently provided through the EDF. This would mean a maximum of some €20 billion available to the entire ACP group from 2007–13. The EC proposal has not yet achieved unanimous acceptance from the EU member states but the expenditure framework for all EC external action for the period 2007–13 will be settled before 2006. This will give a clear indication of where the ACP stands. Major concerns of the ACP in relation to a possible budgetisation include: the loss of the special relationship with the EU, loss of security of funding and multi-annual character of funding and the erosion of the principles of partnership and joint management.

### *The EU and Africa*

The EU seems committed to increase resource allocations to achieve the Millennium Development Goals and to keep Africa on the international agenda.

The EU has well established co-operation agreements at three different geographical levels:

- *national* at the level of each individual African country;
- *regional* with all major African regional organisations in West, Central, East and Southern Africa; and
- *continental* with the African Union as Pan-African institution.

At the same time the EU also supports continental wide policy sectors such as the Africa Peace Facility and the Africa sustainable development and water initiative.

In spite of all these initiatives, the EU does not seem to have yet a coherent and integrated African policy which is reflected by a rather artificial patchwork of EU instruments and agreements: ACP–EU Cotonou Agreement with countries south of the Sahara, Euro–Mediterranean Partnership with North Africa and the EU–South Africa Trade, Development and Co-operation Agreement. Clearly there is a need for a more coherent overall framework of EU trade and co-operation agreements and instruments.

**Box 1: EC and EU Aid allocations to sub-Saharan Africa (SSA),  
1973–2002**

The share of EC Official Development Assistance (ODA) to sub-Saharan Africa (SSA) as a share of total EC managed ODA to all developing countries and regions has been declining considerably from 62% in the period 1973–92 to only 40% in the period 1993–2002. However, net EU ODA (combined aid effort of EC and bilateral aid of the member states) to SSA as a share of total EU ODA is at 43% for the period 1993–2002 (at the same level as for the period 1973–82).

Source: EU Donor Atlas based on DAC online database — Destination of Official Development Assistance and Official Aid Disbursements.

## *The EU and Southern Africa*

In view of the negotiations for Economic Partnership Agreements (EPA) regional groupings such as ESA/ COMESA and SADC have the potential to become more important partners of the EU. Also in terms of development finance Southern Africa will continue to receive an important share of European development funding. Pledges have been made that a possible budgetisation of the EDF would not have any effects on the global funding amount to be allocated to Southern Africa.

### **Box 2: European funding to Southern Africa**

Out of the €15.2 billion current 9<sup>th</sup> European Development Fund to the ACP in grants for the period 2002–07, the Southern African counties, members of SADC, receive some €1.7 billion. The regional indicative programme for the SADC region comprises an additional €101 million. The ESA region (comprising COMESA, EAC, IGAD and IOC) is allocated €223 million. The combined total of both national and regional indicative programmes for the ESA countries amounts to some €3.9 billion. It should, however, be noted that national indicative programmes of countries belonging to both ESA and SADC configurations have been double counted. In addition to the national and regional indicative programmes there are also thematic budget lines (EC budget) or bilateral flows from EU member states.

Source: SADC national and regional indicative programmes, 2002–2007.

An important part of ESA/COMESA and SADC regional indicative programmes is earmarked for the promotion of regional integration and trade. Both regional organisations would like to be ensured that more development funding would be mobilised for the negotiation and implementation of the EPA Agreements, including the cost of adjustment (for example, decrease in custom revenue, loss of employment) and removal of supply-side constraints. Trade capacity building at national level to better come to grips with the possible impact

and implications of EPAs seems to be one of the major weaknesses that need to be urgently tackled.

**Box 3: Regional and National Indicative Programmes for the SADC region: Supporting trade and regional integration**

At the SADC regional level, support for Regional Integration and Trade is the first focal sector of the Regional Indicative Programme (RIP) for the period 2002–2007, with some €35–45 million funds available for these areas. This represents an indicative allocation of between 35% and 45% of the total financial envelope of €101 million. It is expected that this funding will contribute to increased economic growth and reduce poverty through higher levels of regional economic integration and to improve trade negotiating capacities at regional and multilateral levels (including WTO and EPAs). It should foster intra-regional trade flows, improve capacity to formulate trade policies and lead to the easing of budgetary constraints to further trade liberalisation. Regarding regional economic integration, particular emphasis will be given to the removal of barriers to trade (customs duties and procedures, technical regulations, trade facilitation) and to the development of productive sectors. In addition, funds will also be used for the device of a regional cross border payment and settlement system and to support the creation of a regional capital market.

As far as EPAs are concerned, studies will be carried out and technical assistance will be provided for the preparations of the negotiations and the implementation of the agreement. In implementing the response strategy in this focal area, SADC will work closely with other regional organisations also involved in regional economic integration activities, especially with COMESA.

At the country level, the various National Indicative Programmes (NIPs) for the period 2002–2007 earmark very small volumes of resources dedicated to regional integration and trade capacity building. In none of the SADC countries, trade and regional integration have been selected as focal sector. In some countries (Botswana, Lesotho, Namibia and Swaziland) trade and regional integration have been included as a (rather small) part of the non-focal allocations in ‘competition’ with other non-focal sectors or thematic areas. For the other SADC countries, trade and regional integration are not even mentioned in the National Indicative Programme as a specific area of support..

Source: Nicolas Gerard on the basis of SADC national and regional indicative programmes

### *Some practical recommendations for action*

Important strategic questions will be on the agenda of the ACP, Africa and the Southern African region in the next months to come. The Southern African regional organisations need to find out in more detail what the implications will be of the changing priorities of the EU/EC in terms of development finance and trade and how the region can benefit most from the changes in European external relations. The region also will have to look very carefully into current and future development finance opportunities. This means making the best possible use of the existing EDF and other types of funding and anticipating the future changes in development finance in the EU (budgetisation, Financial Perspectives). All this will require action at many fronts including:

- Creating the appropriate governance context (democracy, stability, security etc) able to generate the necessary goodwill amongst EC and other donors to fully support regional initiatives;
- Making sure that EC takes development agenda of Doha Round and development aspects of EPAs serious by arguing for increased development finance to better prepare for the EPA negotiations and deal with major implementation and adjustment costs;
- Stressing the importance of an integrated EU policy on Africa that can ensure a maximum of coherence among existing EU policies, trade and aid agreements and thematic budget lines;
- Analysing the possible policy and budget implications of the Financial Perspectives debate for co-operation between the EU and the ACP and Southern Africa (SADC and ESA);
- Using the ongoing national and forthcoming regional Mid Term Review of the NIPs and RIP to argue for changes in

resource allocation and/or increases based on sound needs and impact assessments;

- Investing in stronger national and regional analytical and lobbying capacities towards EC, EU Member States and European Parliament on all the above mentioned issues.

## Chapter 2: South Africa and the EU

### South Africa's negotiating experience with the EU<sup>1</sup>

#### *Background*

When trying to gain lessons from South Africa's negotiating experience with the EU regarding the establishment of the Trade, Development and Co-operation Agreement (TDCA), it is first of all important to understand the context within which these negotiations took place. The early 1990's were geopolitically a different scene to the new millennium. The EU only had 15 member states and South Africa was the world's darling moving from apartheid to a democratic dispensation. The incredible goodwill that engulfed South Africa at the time was exceptional and surely had an impact on the TDCA negotiations — it is unlikely that any other country or region will find itself in a similar position.

The foundations for the TDCA negotiations were already laid pre-1994, when Sir Leon Brittan approached the ANC — not only to offer support for the transition in South Africa, but also a comprehensive trade agreement to be negotiated as soon as possible. However, the offer of free trade was not received enthusiastically by the ANC at the time, as amongst the leadership there was a prevailing skepticism regarding free trade in general and free trade agreements (FTA's) in particular. This was mitigated to some extent by the ANC's pro-globalisation approach. However, the ANC was still a liberation movement and it would take some time to transform it into a political party able to govern South Africa and engage in highly technical talks with, inter alia, the EU. This was offset by a clear sense that the Lomé Convention was nearing an end

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<sup>1</sup> This section was contributed by Bahle Sibisi from Sangena.

and that viable alternatives had to be found to non-reciprocal benefits from the EU.

At home the ANC was also met with stiff opposition to the idea of concluding a free trade agreement with the EU, as it was against the prevailing economic outlook of the ANC's alliance partners. The trade unions (COSATU) and the communist party (SACP) favoured a socialist approach to economic development, rather than neo-liberal free trade policies. In contrast, South Africa business favoured free trade with its largest trading partner, but given diverse interests within the business community it was not clear how a unified negotiating mandate would be reached. In addition there were concerns that the new government did not have the capacity amongst its civil servants to engage the EU at an appropriate level.

### *South Africa in 1994*

South African society was undergoing fundamental changes in the months leading up to the general elections of April 1994 and the months and years after the new ANC government had been sworn in. New civil servants were appointed in every department, new policies formulated for every ministry and new ways of reaching decisions were found. The National Economic Forum (NEF) — a newly-established tripartite body grouping government, business and labour — was tasked to build a platform from which negotiations in the GATT and with the EU could be launched, in pursuance of which it sought technical input from all sectors of South Africa. The NEF studied lessons learnt in Tunisia and Mexico in their negotiations with the EU. A key lesson learned was that it is critical to seize the initiative in negotiations where possible. For



example, the South African team did this by placing a tariff offer on the table when the EU team did not expect it.

### *The EU*

Although South Africa was presented with a European negotiating mandate, which they claimed would be almost impossible to change as it was based on a consensus reached between the 15 member states, it soon became clear to the South African negotiators that the Europeans were not always clear on what they wanted. Thus the South African government understood that it had to have a clear understanding of how the EU works internally in order to gain the upper hand in the negotiations. Essentially the EU is an undemocratic institution built on democracy. Although the EU would like to speak with a unified voice, the reality is that there are some major differences amongst the member states. Whereas technocrats lead during trade talks, each member state has a say in the content of the mandate and it is here where several contradictions were found. Each of the member states had its own interests to defend. Although the EU expressed a rhetorical commitment to free trade, some individual member states were never interested in actually pursuing this goal.

### *The negotiations*

The biggest contradictions in the EU mandate and amongst the member states were found in the balance between negotiations on agriculture, on the one hand, and the EU's approach to South Africa's development on the other hand. Although the trade agreement was promoted by the EU as a tool that would enhance South Africa's economic development, its highly

protectionist stance on agriculture cast severe doubts over these claims. By highlighting these issues in the South African media, South African negotiators managed to mobilise domestic stakeholders to their cause. By pointing out the contradictions in the EU mandate, South Africa managed to gain a sympathetic ear from most parties involved, even some of the northern EU member states.

Although there were many difficult moments during the talks, South Africa was finally convinced that the free trade deal would be in its best interest by looking at the potential investments the agreement could bring to South Africa. And although it would take many years to conclude the deal, South Africa managed to negotiate an agreement that impressed most outsiders.

### *Lessons learnt*

The most difficult negotiations for the South African team were in fact with its own home constituencies. It proved very difficult to get the private sector, trade unions, civil society, various government departments and even different units within the Department of Trade and Industry on board. However, without the firm backing of these interest groups the negotiations would not have turned out as successfully as they eventually did.

Some of the general lessons learnt by the South African negotiators include:

- The political context within which the negotiations are concluded matter — negotiators, therefore, should be well aware of internal dynamics in the EU.
- There is no unified view within the EU amongst the member states — negotiators must identify partner states that would prove useful to lobby.

- Trade negotiations are driven by technocrats and not by a popular mandate — it is important to understand how to deal with technocrats in this regard.
- Free trade alone is not enough to ensure the attractiveness of any FTA — the EPA negotiators will have to focus strongly on issues of investment and development co-operation as well.
- Negotiators have to take the initiative and turn the table in their favour, rather than simply following the negotiating formula designed by the EU.
- A very deep and detailed understanding of each tariff line is key to a successful negotiation.

## **The future for SA–EU trade relations<sup>2</sup>**

The future of South Africa's trade relations with the EU depends to some extent on the external environment within which it exists and the manner in which new and existing issues are addressed within the Co-operation Council established by the TDCA.

### *External environment*

*The expansion of the EU and implications for South Africa:* The construction and composition of South Africa's most important trading partner has changed dramatically over the last few years. As a wise person once said after being married for more than a decade: 'he would never again marry a wife with so many children'. There is a currently a process underway in South Africa, separate from the review of the TDCA, to assess the cost to South Africa of an enlarged EU. There are of course also huge benefits attached to having a free trade area with an enlarged Europe and the South African Government has expressed itself favourably in that regard.

South Africa has been quite slow in adding the names of the new members to its free trade agreement with the original EU member states. After 6 months, exporters and importers in South Africa are still unable to enjoy the benefits of an enlarged EU market. In April 2004 South Africa, together with the European Commission, initialled an additional protocol extending the TDCA to the 10 new member states. Unfortunately, the legal process has taken much longer than expected but both sides are hopeful that it could be concluded by December 2004. Pending ratification by both the European

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<sup>2</sup> This section was contributed by Wilhelm Smalberger from the SA Department of Trade and Industry.

and South African parliaments it will be put into effect on a provisional basis early in 2005.

*The impact of the EPA negotiations:* The second more obvious change in the external environment is the negotiations between the EU and the ACP. Although South Africa is technically speaking not a formal party to the EPA negotiations it is nevertheless implicated via its membership of both SACU and SADC. The EPA process and the review of the TDCA present a crucial, historical opportunity for South Africa to address the dichotomy in trade policy between the EU and South Africa and the EU and its partners in the Southern African Customs Union.

*Other trade arrangements:* Some of the other changes in the external environment are not so obvious. The EU has in recent years extended benefits to our competitors in the Southern Hemisphere that are taking market share away from our exporters. South Africa should engage the EU to discuss the effects of these developments on its own arrangement with the EU.

### *Unfinished business*

Article 18 of the TDCA makes provision for a review with a view to further liberalisation of tariff lines that are currently either excluded, subject to partial liberalisation, quotas or back loading. In the main these are the industrial policy issues that the negotiators were unable to resolve at the end of the nineties. The question is whether the parties are now in a better position to resolve them:

- In the case of industrial products, both parties are now in better shape to make progress. On the South African side

there is a definite willingness to address very complex issues that for example affect the motor industry.

- In the case of agriculture, the ball seems to be more in the court of the EU. Some of this is caught up in the multilateral debate but, nevertheless, some progress in the extension the scope of the free trade agreement can be expected.
- In the case of fish and marine products, on both sides of the border this is a very sensitive political issue. This sector is still outside the disciplines of the free trade area, although from a trade policy point of view there is no justification for it.

### *Reviewing the TDCA*

The trade chapter of the agreement is a traditional type of agreement focusing on market access for goods only and the question is whether the time is ripe for the two sides to also look at other trade and trade related disciplines. However, in the US and EFTA negotiations SACU has not as yet been able to develop common policies and hence there is a reluctance in South Africa to go beyond what its own policy processes would allow it to do. However, in the traditional market access part, in the area of rules of origin, South Africa is in a position to register progress. SACU is finally considering the possibility of implementing a single SACU origin. When this comes into effect, it ought to substantially affect the cross-border value chain vis-à-vis the EU. This would affect some sectors more than others but in general it should be a very positive development.

### *Conclusion*

In conclusion, it is important to note that the agenda for the review of the trade chapter of the TDCA has not as yet been

finalised. Quite an extensive consultative process via NEDLAC has been had. The South African DTI, together with the European Commission, has also commissioned a joint study in South Africa and the EU. It looks at trade flows and also captures the experiences of economic operators. It ought to give some insight into real economic perceptions around the agreement. The door is therefore still open for stakeholders to bring to the DTI's attention any matter that they think require a review.

### **SA–EU political dialogue<sup>3</sup>**

When it became clear that the Apartheid regime was collapsing and, more decisively after the first general elections in 1994, South Africa and Europe engaged in talks, not on political issues, but on development co-operation, on trade and on other forms of co-operation. Although unspoken, the political agenda was very much there behind these talks. The negotiations surrounding the TDCA and South Africa's accession to the Lomé Convention were long and difficult. With the benefit of the hindsight, it is fair to say that both parties had to find their feet in this new relationship.

With the conclusion of the TDCA in 1999, signs of growing mutual confidence appeared. Although the provisions on political dialogue in the Agreement would not apply until after ratification, the contracting parties added a sentence in the 'Agreed minutes' of the signing of the Final Act of the TDCA, stating that, 'regular political dialogue between the Parties shall commence at the moment that the provisional application of this Agreement enters into effect'.

However, political dialogue was limited, in part due to the ongoing negotiations on fisheries and wine and spirits. But by 2002 the need to formalise existing informal political contacts was such that provisions within the Cotonou Agreement, which calls for structured political dialogue, were evoked. The 2003 Co-operation Council saw an efficient senior officials meeting, preparing the Ministerial Troika of April 2004 in Dublin.

There the ministers discussed a wide range of subjects, from HIV/Aids to enlargement and from Iraq to Zimbabwe and multilateral trade negotiations. Also discussed was the South

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<sup>3</sup> This section was contributed by Philippe Darmuzey from the European Commission.



African celebration of 10 years of Freedom and Democracy, which the EU 'recognised as a remarkable achievement in the wake of the post-Apartheid challenges'. Full agreement was not always reached on all and every one of these themes, but mutual understanding of the other's position was always there.

Today there is a clear agreement to have at least annual ministerial meetings in addition to senior officials and Head of Mission consultations. Moreover, since the ratification and full entry into force of the TDCA, the SA–EU Co-operation Council can meet at a ministerial level.

In this new format, bilateral political dialogue will continue to address issues of relevance for both the EU and South Africa, either nationally, or regionally — such as the development of the European Security Policy, and the AU initiatives for Peace and Security in Darfur and in the Great Lakes region, or internationally with trans-national issues of global relevance, such as the global security challenges posed by terrorism and the proliferation of weapons of mass destruction that call for concerted action at the international level.

At the regional level, SADC and the EU had established a system of political dialogue even before the provisions of Article 8 of the Cotonou Agreement applied. On the occasion of their first Ministerial Conference held in Berlin in 1994, the EU and SADC set up the Berlin Initiative to further the development of relations between the two regions and to establish a comprehensive dialogue. Under this arrangement Ministers meet every two years while regular meetings of Senior Officials take place in between. As with SA–EU political dialogue, the SADC talks provide an occasion for both sides to exchange views on a wide range of issues of mutual interest, whilst adopting a problem-oriented approach.

The most recent meeting at Ministerial level which brought together the SADC Troika (Mauritius, Botswana and Tanzania),

the Troika of SADC's Organ on Politics, Defence and Security Co-operation (South Africa, Namibia and Lesotho) and the EU Troika (the Netherlands, Luxembourg and the European Commission) took place in The Hague on 20 October 2003.

At the meeting the EU and SADC explored the possibilities of co-operating in Election Observation in the region in the light of the 'Principles and Guidelines governing democratic elections', adopted by SADC Heads of State at their Summit Meeting in Mauritius in August 2004. The EU and SADC also had an extensive exchange of views on the theme of 'Peace and Security' and recognised that the EU's African Peace Facility was an important instrument to support African peacekeeping operations and related capacity building. The EU and SADC discussed the possible use of the Peace Facility to assist SADC in the implementation of its peace and security policy in the context of the AU's Peace and Security Agenda.

While the EU and SADC do not always agree on certain issues — for example the situation in Zimbabwe — the dialogue is a useful forum which allows both sides to express clearly their points of view, and thereby seek to contribute to a better understanding of the respective positions.

The parties also engage at the continental level. The comprehensive and detailed Cairo Plan of Action was agreed in 2000 at the first EU–Africa Summit in Cairo. Since then, the dialogue between Europe and Africa has developed into a major forum where a single Africa can engage with a single Europe on continental political issues. The postponement of the Lisbon Summit in 2003 was a painful moment in the dialogue, but it has shown how this dialogue should be organised, what we should talk about and what the objectives are. The focus rests on four clusters: on peace and security, on governance, on regional integration and trade and on key development issues.

Some momentum has been achieved in the Cairo dialogue, as it has delivered tangible results, for example in the field of terrorism and of external debt. A decisive element in improving dialogue was the establishment of the African Union. The African Peace Facility is a good example to illustrate this. The €250 million Facility will support the African Union when it undertakes peacekeeping operations. It will greatly reinforce the political role of the African Union and the Peace and Security Council. At the same time it constitutes an important contribution to one of the key premises of *Nepad*: there will be no development without peace and vice versa.

Evaluating political dialogue at the national, regional and continental level, the striking feature seems to be that success is often born from necessity. Political dialogue was taken in hand, when the need was there, when a crisis arose, be it over Zimbabwe or over wines and spirits. It is also then when dialogue was most effective: when a crisis needed to be addressed or potentially harmful developments averted. This in itself is sufficient justification for holding political talks and continuing them.

## **The economic co-operation chapter in the TDCA<sup>4</sup>**

Due to the fact that the TDCA only came into force on 1 May 2004, most of the TDCA's provisions for 'Economic Co-operation' have to date not been implemented. However, economic co-operation should now start to cover a wide spectrum of areas namely:

- Industry
- Investment promotion and protection
- Trade development
- Micro-enterprises and small and medium-sized enterprises
- Information society (telecommunications and information technology)
- Postal co-operation
- Energy
- Mining and minerals
- Transport
- Tourism
- Agriculture
- Fisheries
- Services
- Consumer policy and protection of consumer health

Given the broad spectrum that is covered by 'Economic Co-operation' we need to examine the relevance of this Chapter on Economic Co-operation within the context of SA-EU co-operation. For many years it has been clear that South Africa enjoys a different relationship with the EU in comparison to

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<sup>4</sup> This section was contributed by Juergen Lovas from the EU Delegation to South Africa.

other Sub-Saharan countries. Most of these countries face macro-economic difficulties such as high fiscal deficits, high public debt, high inflation rates and low foreign reserves that have led to IMF/World Bank supported structural adjustment programmes. Governments had to cut budgetary expenditures and as it is true all over the world, the main cuts were made on social expenditures. In countries that are facing severe poverty, the reduction of access to basic social services — in particular health and education — has had a detrimental social economic impact. As a result, the EU concentrated a substantial part of its development support on the provision of basic social services, including social infrastructure. In this context also macro-economic budgetary support was and is mainly linked to social indicators in the field of health and education.

The situation in South Africa is quite different. South Africa enjoys macro-economic stability, that is, public expenditures are at an overall affordable and sustainable level amounting to about 26% of GDP and the fiscal deficit amounted to between 1.4 and 2.6% over the last few years. Total public debt to GDP ratio amounts to about 40%, the foreign reserves cover more than 20 weeks of imports, and the inflation rate is within the set target of between 3% and 6%. Furthermore, public budget expenditure on social services amounts to about 60% of total non-interest expenditures. In light of this situation donors have to ask in which areas co-operation is justified and where to provide development support that amounts to only about 1.3% of the total government budget and to 0.34% of GDP.

Although South Africa has achieved macro-economic internal and external stability with a GNI per capita of about \$2,800 and has made considerable progress in social and economic transformation since the end of the apartheid regime, it also faces huge income disparities that are reflected in wide-spread and probably increasing poverty. The poverty

rate is at around 45%, in other words, approximately 20 million citizens live below the poverty line. Poverty is largely coupled with high and rising unemployment (currently between 28% and 40% depending on the statistical definition) and widening income inequality (Gini coefficient 0.58). South Africa exemplifies the dual economy: considerable wealth in the hands of the economic actors and beneficiaries of the modern sector (including a developing black African middle class), but a large part of the population totally without access to this wealth.

Unless South Africa can provide an acceptable economic and social perspective to the large majority of its population in the medium term, increasing social tensions can be expected, endangering a stable political, social and economic development. A failure of the South African model would also have incalculable consequences for the region and for Africa.

As a consequence of on the one hand macro-economic stability with the government heavily involved and committed to provide basic social services, and on the other hand this social economic reality with its tremendous unemployment problem and poverty, the EU has come to the conclusion that its co-operation efforts must put an emphasis on promoting equitable and sustainable economic growth that will lead to employment generation.

This support cannot only be linked to the strengthening of the first economy of South Africa, but needs to focus on the second economy covering the emerging and informal sectors, as this part of the economy is of high importance for employment generation.

Economic co-operation between South Africa and the EU must, therefore, play a vital role in SA–EU co-operation. However, it is still not clear how to optimally make use of the provisions for economic co-operation in the SA–EU TDCA, as

this is an area that has hitherto not been explored elsewhere in the world.

### *Some potential interpretations of economic co-operation*

Although Article 50 (Introduction) of the TDCA states that economic co-operation must be of mutual advantage, the specific provisions that follow in the remaining part of the chapter concentrate on the development of South Africa. Certainly, South African investments in Europe have taken place and will continue to be promoted and facilitated, but the overall emphasis of the TDCA's economic co-operation must be to assist South Africa to tackle its poverty problem within a dual economy.

Some of EU's development programs and its efforts in the trade field have addressed the tasks that were formulated under the different Articles of Economic Co-operation. For example, the EU financed the Risk Capital Facility managed by the Industrial Development Corporation (IDC) and the European Investment Bank (EIB), which supports technological incubation centres under the Godisa Programme. The EU also provided assistance to Tabeisa established within the framework of four South African Technicons. The EU also previously supported Nkula and Ntsika and gave budgetary support to the DTI for its Integrated Manufacturing Programme. In addition some regional investment support programmes have received assistance as well as the Wild Coast Spatial Development Initiative, which supports community tourism. All of these projects form part of the implementation of the TDCA's economic co-operation.

However, the question remains whether the existing emphasis of SA-EU co-operation is sufficiently addressing the major social and economic challenges as outlined before and

an analysis must be provided in how far the provisions of the economic co-operation chapter are adequately formulated in this regard. It is clear that the EU can only make a humble contribution towards the enhancement of economic growth and employment generation in South Africa, but in the medium-term a substantial part of this assistance must be part and parcel of a government owned policy, strategy and concrete activities that make a real difference to the employment situation in South Africa. It is indeed important to realise that the ownership of these policies, strategies and activities must be with the government of South Africa and its social and economic actors. Donors can only assist in the process by providing, for example, financial resources. They can assist in the building of capacities and the creation of a social-economic and regulatory environment that allows external companies to increase their investments in South Africa and transfer technological and other know-how.

An option is to establish a task force composed of officials of the GoSA, the EU Delegation, and representatives from the South African civil society. This task force should carefully examine the task formulations indicated under Title 'Economic co-operation' in the TDCA and where needed adapt them to the specific needs of an economic growth strategy with an emphasis on the development of the 'second economy' and thus the requirements of the emerging economy and informal sector. A concentration on the development of only the 'first world economy' with a growth of maybe between 3% and 4% would indeed not be sufficient to address the tremendous unemployment and poverty problem in this country. More efforts will have to be made to stimulate activities within the small and very small entrepreneurial environment and the informal sector. Central, provincial and local government, together with civil society (including the economic actors) will need to provide information on their regions and economic



sectors: including the needs of economic actors, their lack of access to capital, technical and business know-how, training and elements that prevent the development of economic activities leading to poverty alleviation.



## Chapter 3: Southern African–EU Economic Partnership Agreements

### A pending crisis of overlap<sup>1</sup>

Regionalisation has become the global game. The World Bank estimates that between 40% and 60% of world trade occurs within regional trading blocs. But Africa's appetite for integration outstrips that of any other continent, according to a study by the Harvard Institute for International Development. This has led to an unsustainable situation where African countries often belong to four or more regional entities simultaneously.

A close examination of the various regional structures and agreements in southern Africa highlights the potential problems of overlapping membership, particularly among those with commitments to forming a customs union with common external tariffs and those negotiating economic partnership agreements with the EU. Within southern Africa there are a number of regional integration agreements and bilateral agreements taking place within the context of the worldwide multilateral trading system. These include (among others):

- Southern African Customs Union (SACU)
- Southern African Development Community (SADC)
- Common Market for Eastern and Southern Africa (COMESA)
- East African Community (EAC)
- Indian Ocean Commission (IOC)

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<sup>1</sup> This contribution was made by Richard Hess and Simon Hess from Imani Development. This chapter was previously published in *eAfrica*, 2, October 2004.

- Economic Community of Central African States (ECCAS).

While the existence of numerous agreements within the region in itself is not a problem — although it does mitigate the benefits to be obtained from integration — overlapping membership between the groupings has the potential to cause conflict and certainly imposes greater transaction costs on the business communities and governments. As these regional groupings move toward deeper trade and economic integration, these problems become more severe. The move toward free trade areas within the above groupings has so far been technically possible. But the next stage (establishing a customs union) is not.

Within a free trade area each country has autonomous control of their external trade agreements, but they cannot give more preferential treatment to any third party than they give to the current members of the FTA. Within a customs union, however, this autonomy is lost and each member of the CU must adopt the group's common external tariff and apply this rate to all third parties. One country cannot realistically apply two different external tariffs.

This poses a major problem for the regional economic communities mentioned above, which have already implemented or are in the process of implementing a customs union. None of these groups is exclusive, with at least one member state belonging to another southern African entity. In the case of SADC, only Mozambique does not belong to another grouping — although discussions that may lead to Mozambique's membership of SACU are underway. The overlapping multiple agreements would not be such a problem if there was an overall plan to synchronise the common external tariff of each group so that in the end they would all form one large trading bloc.

But such a long-term regional plan does not appear to be in place — other than the ultimate goal of establishing the African Economic Community by 2025.

Not only will there be theoretical, political, and logistical problems with all the above blocs attempting to form their own customs union, but the current agreements as they stand will be in contradiction of one another's treaties. For example, Article XXXI paragraph 3 of the new SACU agreement prohibits members from entering into new agreements with third parties without the consent of the remaining member states. Thus, Swaziland cannot negotiate further with COMESA without the unlikely approval of the rest of SACU.

In terms of the SADC Protocol on Trade (Article XXVIII, paragraph 2), member states cannot enter into a preferential trade agreement with third countries that may:

*impede or frustrate the objectives of [the] protocol and that any advantage, concession, privilege or power granted to a third country under such agreements is extended to other member states.*

Article 56 of the COMESA Treaty states:

Member states are free to enter into bilateral or multilateral agreements provided that such agreements are not, and *would not be, in conflict* and do not undermine the COMESA FTA and CU.

And Article 37 (4a) of the EAC Protocol on the Establishment on the East African Customs Union says:

A Partner State may separately conclude or amend a trade agreement with a foreign country provided that the terms of such an agreement or amendments are *not in conflict* with the provisions of this Protocol.

A formal agreement toward the implementation of another common external tariff is 'in conflict' with the first agreement signed.

Another problem of overlapping membership has arisen with the current Economic Partnership Agreement (EPA) negotiations with the EU. Ideally, each region would negotiate its own agreement, but due to the membership of different blocs, countries in southern Africa have had to create new groups from which to negotiate. South Africa has already negotiated its own agreement with the EU, and SADC has split two other ways as well, with several members joining a selection of COMESA members in pursuit of an agreement with the EU. And that's just one example.

If the current blocs of SACU, SADC, COMESA and the EAC insist on forming their own customs unions, the current form of the regional integration agreements will not be sustainable. Several scenarios could emerge.

### *Scenario One: Equal sharing*

If, due to political reasons, all four groupings have to remain, the distribution shown in Figure 1 would be the most likely and 'fair' scenario, where members are reasonably equally shared across the groups. As Mozambique has indicated a preference to join SACU, it has been placed in the SACU group, but if this does not materialise Maputo would be in the SADC group. Likewise, Madagascar has indicated a preference to join SADC (hence questioning their commitment to COMESA), so they have been placed in the SADC group. Otherwise, the SACU countries would pull out of SADC, the joint SADC/COMESA countries leave COMESA and the EAC countries pull out of their other groups. This scenario does, however, maintain a fragmented approach to integration with many of the gains already achieved being lost.

<b>Figure 1: Equal Sharing Agreement</b>			
<i>SACU</i>	<i>SADC</i>	<i>COMESA</i>	<i>EAC</i>
Botswana	Angola	Burundi	Kenya
Lesotho	DRC	Comoros	<i>Tanzania</i>
<i>Mozambique</i>	<i>Madagascar</i>	Djibouti	Uganda
Namibia	Malawi	Egypt	
South Africa	Mauritius	<b>Eritrea</b>	
Swaziland	Zambia	Ethiopia	
	Zimbabwe	Rwanda	
		Seychelles	
		Sudan	
Note: Italics indicate where it is unsure which group a country may opt to join.			

### *Scenario Two: SADC, SACU merge*

Figure 2 depicts a merger between SACU and SADC — or rather the gradual expansion of SACU to incorporate the rest of SADC — with Tanzania withdrawing from SADC and the COMESA SADC countries withdrawing from COMESA. While this is theoretically possible, given the depth of integration and complexity of the SACU agreement (and the fact that it took eight years to negotiate the new agreement between five existing members) it is unlikely that such a merger could realistically take place in the near future. Nevertheless it is possible. There may however be some ‘cherry picking’ whereby certain SADC countries are invited into the expanded SACU (as is possibly the case currently with Mozambique) and others are left to stay in COMESA. In this scenario we also see the EAC maintaining its identity. There is cohesiveness within East Africa which is only otherwise seen in the SACU region. In this scenario COMESA ends up as a rather weak institution covering the Great Lakes, the Horn and northeast Africa.

<b>Figure 2: SACU/SADC merge</b>		
<i>SACU + SADC</i>	<i>COMESA</i>	<i>EAC</i>
Angola	Burundi	Kenya
Botswana	Comoros	<i>Tanzania</i>
DRC	Djibouti	Uganda
Lesotho	Egypt	
<i>Madagascar</i>	Eritrea	
Malawi	Ethiopia	
Mauritius	Rwanda	
Mozambique	Seychelles	
Namibia	Sudan	
South Africa		
Swaziland		
Zambia		
Zimbabwe		

Note: Italics indicate where it is unsure which group a country may opt to join.

### *Scenario Three: Strong COMESA*

A third scenario, depicted in Figure 3, is that COMESA becomes a dominant group in the region, and forms a customs union in the relatively near future, maintaining all its current members except Swaziland, which has to stay with SACU, but gains Tanzania after an absence of a few years. Thus those joint members of SADC and the EAC are locked into COMESA. This is based on the assumption that the EAC customs union merges with the COMESA customs union or else that the COMESA customs union is formed before that of the EAC. This then just leaves Mozambique, which joins SACU — something that is already on the cards. This scenario may be somewhat more feasible than some of the others, although it will also be difficult as those SADC countries north of the Limpopo may not want to lose the South African connection. The solution



could only be in terms of developing a free trade area between the two remaining blocs of SACU and COMESA.

**Figure 3: Strong COMESA**

SACU	SADC	COMESA	EAC
Botswana		Angola	
Lesotho		Burundi	
Mozambique		Comoros	
Namibia		Djibouti	
South Africa		DRC	
Swaziland		Egypt	
		Eritrea	
		Ethiopia	
		Kenya	
		Madagascar	
		Malawi	
		Mauritius	
		Rwanda	
		Seychelles	
		Sudan	
		Tanzania	
		Uganda	
		Zambia	
		Zimbabwe	

#### *Scenario Four: One happy family*

In terms of the African Union, one happy family covering eastern and southern Africa would be the ideal. Under this scenario all current regional economic communities agree to harmonise their current strategies and form one large regional trading bloc. In time, this bloc would be able to merge with those from Central, West and North Africa to form the African Economic Community, as per the Abuja Treaty of 1991.

The above scenarios depict the kind of options that may be followed. It must be remembered that Europe went through a process of varying memberships, rationalisation and groupings until the current situation was reached earlier this year with a 25-member EU and a four member European free trade area, both of which are linked together by the Agreement on the European Economic Area.

What final bloc or blocs emerge in southern Africa is to some extent less important than the process and the timing by which the rationalisation process takes place. Otherwise, resources (human and financial) that are already scarce will continue to be stretched even further. Some rationalisation has already started. Over the last five years, COMESA has seen the withdrawal of Lesotho, Mozambique, Tanzania and, most recently, Namibia. Seychelles has left SADC. These are choices made for political and economic reasons.

Alongside this, however, is the continuing growth of the problem with the possibility of Mozambique joining SACU and the strong likelihood of Madagascar joining SADC in the near future. Furthermore, Rwanda, while being a member of COMESA (as well as ECCAS) has recently requested membership of both the EAC and SADC, although both institutions have put this request on the back burner. Does this indicate a collapse of COMESA? Probably not, because at the same time COMESA is clearly achieving progress through its free trade agreement with 11 members already trading without any tariff barriers. Furthermore, COMESA has made progress in preparations for the EPA negotiations and is giving strong support to its member states. Hence the decision by Malawi, Mauritius, Zambia and Zimbabwe to negotiate their EPA with selected COMESA states rather than under SADC.

SACU will continue to exist, albeit in a possibly expanded format in years to come. It has been around for a hundred

years and will not disappear overnight. The old arrangement worked for the benefit of its members. The new arrangement is also bringing about benefits for its members. Another important fact is that South Africa is a major player in the region, from both a trade and investment perspective.

Southern Africa may be going through a similar process now to what happened in Europe and may end up with a Southern African Economic Area arising from a free trade agreement between an expanded SACU (possibly merged with SADC or parts thereof) customs union and the COMESA (possibly merged with EAC) customs union. Whichever way the groupings go, it is time for our political leaders now to start making some hard choices, based on an economic as well as political rationale, to make progress with rationalisation.

## **The TDCA, EPA's and Southern African regionalism<sup>2</sup>**

A major plank in the EU's support for Economic Partnership Agreements (EPAs) is to reinforce regionalism among sub-groups of the African, Caribbean and Pacific (ACP) states. But in the Southern Africa region, at least, the effect risks being in completely the opposite direction. The insistence on creating EPAs may drive a wedge between Southern African countries, halting rather than accelerating trade integration.

### *The problem: overlapping trade agreements*

#### *The nature of the problem*

It has long been clear that the position of Botswana, Lesotho, Namibia and Swaziland (BLNS) as both *de facto* (if not in all cases *de jure*) participants in the Trade, Development and Co-operation Agreement (TDCA) and members of an EPA would cause problems. The early assumption was that BLNS would join in an EPA with some or all of the other Southern African Development Community (SADC) and, perhaps, Common Market for Eastern and Southern Africa (COMESA) states. But it was easy to see that SACU's neighbours might be uneasy about the implications of joining in an EPA with BNLS due to fears of leakage from the TDCA.

There is still no definitive guidance on how the EPAs will be structured. In the rhetoric of both sides the EPAs are to be 'development agreements', distinguishing them from 'mere' free trade agreements. They are to be more favourable than is the TDCA, although in ways that have not yet been specified. None the less, despite these unique features the working

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<sup>2</sup> This contribution was made by Christopher Stevens from the IDS. Research was contributed by Jane Kennan.

hypothesis is that they will follow the TDCA at least in respect of the architecture for product coverage.

Under the TDCA, the two partners are making phased tariff reductions to zero over a transition period (12 years for South Africa) on a group of products that account for 90% on average of the value of trade between them. The average comprises liberalisation by the EU on 94% of its imports from South Africa, and by the latter on 86% of its imports from the EU. The partners argue that this meets the requirement of WTO Article XXIV, which requires liberalisation within a free trade agreement to be 'on substantially all trade'.

The importance of this formula is that it allows countries to exclude from *any liberalisation at all* a group of its most sensitive products, and to defer until the end of the transition period liberalisation on another, indeterminate-sized set of items. Undoubtedly, when the EPA negotiations get into full swing there will be a lot of discussion on the size and composition of the exclusions and the timing of the liberalisation. Each EPA member will want to exclude its own most sensitive products, and to defer until the end of the transition period its own semi-sensitive items. Since it may not be possible to include all sensitive products from all members in the excluded group there will be some hard bargaining.

### *Possible 'solutions'*

In the case of BLNS, though, the decision has already been taken under the TDCA. Hence, the products that will be excluded from any liberalisation have already been established, as has the tariff reduction schedule for the rest. Any partners of BLNS's in an EPA would have to:

- accept the TDCA exclusions and timetable; or

- accept BLNS membership of two, separate and different, reciprocal trade agreements with the EU.

Both of these options are problematic. The first is barely conceivable. Under the TDCA the first phase of SACU liberalisation began in 2000 and, by the time the EPAs are due to come into effect (in 2008), only four years will remain before full implementation.

### *Slowing regionalism*

The second option would require the retention of robust rules of origin and customs controls between the BLNS and other EPA members. This would undermine Southern African integration less dramatically than the exclusion of BLNS from any EPA but in a more corrosive, drawn-out fashion. Without such intra-regional border controls, imports from the EU could evade any exclusions or delays that were in the EPA but not in the TDCA.

This problem of heavy border controls would not be avoided in any way by relieving the least developed members of an EPA from reciprocity. The fact, therefore, that Angola, Mozambique and Tanzania (which are currently negotiating with BLNS) are all least developed does not overcome the problem; indeed, it magnifies it. If the EU were, indeed, to agree non-reciprocity, these countries would have an even greater reason to inspect thoroughly all imports from SACU that could have EU origin to ensure that their own barriers to direct imports from Europe were not being evaded.

Flatters has identified the damage being done to SADC integration by the existing rules of origin.<sup>3</sup> The effect of

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<sup>3</sup> Flatters, F. 'SADC Rules of Origin.: Undermining Regional Free Trade'. Paper presented at the TIPS Forum, Johannesburg , 2002.

overlapping trade agreements with the EU could be to delay their removal until 2020 or after. If the EPAs commence in 2008 (which may be optimistic) and allow a maximum ACP implementation period of 12 years (which may be pessimistic), there would not be free access for non-excluded imports from the EU until 2020.

### *Renegotiating the TDCA*

The only alternative would be to exclude BLNS from their EPA. This would, of course, drive a wedge between Southern African states. BLNS would be forced to negotiate on their own. The outcome could be either a separate agreement to the TDCA or a retro-fitting of the latter to include, for BLNS alone, preferences in the EU that they currently enjoy (or may aspire to) that are not available to South Africa.

If the TDCA is to be re-negotiated why not also change the liberalisation schedules which South Africa is implementing to make them more compatible with the needs of SADC members? This option would certainly solve the problem but is not taken further in this paper as being unrealistic. It would require both the EU and South Africa to re-open a done deal. The reasons why the EU might be unwilling to do so are self-evident, but the South African government might be equally reluctant. Unless the '86% of trade' formula were abandoned, any changes to the liberalisation already agreed would require South Africa to include off-setting products that are currently excluded.

What might be feasible (and would be required if BLNS were to use the TDCA as their EPA) would be to extend the EU's liberalisation. This is because the TDCA currently excludes some products (such as sugar) that are important BLNS exports to the EU. The reason this would be feasible is that the nature

of the products means that it would be technically possible to limit the preferences to BLNS suppliers.

### *Identifying the problem products*

Perhaps this analysis is too dramatic. Perhaps the problems will be limited to a handful of products and can be accommodated by political compromise between the EPA members. This section of the paper attempts to 'quantify' the problem in the sense of listing the products that could be problematic. This will indicate whether or not the problem is of a scale that can be managed through the exercise of goodwill and political vision or would require major economic policy changes by the EPA members.

This exercise can only be illustrative at the present stage of negotiations. It will not become clear precisely which products are a cause of concern until each SADC state has identified its sensitive list: the group of products that it wants either to exclude from any liberalisation or to backload to the end of the transition period. Only then will it be evident which items fall into each of the following 'problem categories':

- items that SADC wants to exclude/backload that are being liberalised under the TDCA; or
- items that SADC does not want to exclude/backload that are excluded (or backloaded) under the TDCA.

### *Items that SADC may want to exclude*

An illustration of the potential scale (and possible incidence) of the problem may be gauged by identifying the goods Mozambique and Tanzania currently import from the EU that face the highest and lowest tariffs and comparing these to the provisions of the TDCA. An analogous exercise needs to be



done for Angola. This assumes that the items with the highest applied tariffs are the most sensitive and, hence, the ones that the governments of Mozambique and Tanzania would most like to exclude from liberalisation. This assumption can easily be replaced by a more nuanced one once each country has identified its 'most sensitive' list.

If the TDCA formula were applied to Mozambique and Tanzania they would be able to exclude from liberalisation a group of products accounting in total for 20% of the value of their imports from the EU. This is because as least developed countries they benefit from EBA and, hence, the EU already offers duty free access for 100% of its imports from them. In order to achieve the target of 90% of total trade being liberalised, Mozambique and Tanzania would need to liberalise on only 80% of their imports, that is, they could exclude from liberalisation 20%. Of course, EBA is not an EPA but it is clear from the EU Commission's latest proposals for the reform of the GSP that no country signing a regional agreement will be worse off than it is under the GSP (CEC 2004).

Applying this assumed sensitivity criterion to Mozambique and Tanzania respectively we have identified the group of items imported from the EU in 2002 that face the highest applied tariffs and account for some 20% of imports. This information has been analysed further to identify the degree of overlap with the TDCA and the results presented in Tables 1 and 2.

Application of the 80% formula would allow both countries to exclude many items: 781 items for Mozambique and 745 for Tanzania. In brief:

- Mozambique could exclude all items with an *average* most-favoured-nation (MFN) tariff for the HS6 sub-head of 10% or more (which also equates exactly to all items with a 25% *maximum* MFN).

- Tanzania could exclude all items with an *average* MFN of 18% or more (again, which equates exactly to all items with a 25% *maximum* MFN).

The treatment in the TDCA of these 781 Mozambican and 745 Tanzanian imports has been checked and the results grouped to show whether, and how soon, South Africa is liberalising its imports. The first column in each table identifies the sectors and sub-sectors that receive separate treatment in the TDCA. The next three columns are straightforward as is the last: they indicate whether and when South Africa is liberalising.

The numbers in the cells relate to the items that Mozambique or Tanzania might wish to exclude from the EPA that fall into the relevant category. For example, 66 agricultural items that Mozambique might wish to exclude from liberalisation have already been liberalised by South Africa and a further 17 will be before any EPA commences (Table 1). Only 17 of the agricultural items that Mozambique might wish to exclude from liberalisation are also excluded under the TDCA. In total, out of the 781 items that Mozambique would be able to exclude under the 80% formula only 32 are excluded completely under the TDCA. Of the remainder, 207 (that is, 168 plus 39) will already be fully liberalised by the time an EPA begins in 2008. For Tanzania (Table 2) the proportions are very similar.

Sector	Already liberalised	Liberalisation by	
		2005	2012
Agricultural	66	17	52
Fisheries			
Manufactures	96	15	256
Textiles/clothing	2	7	9
Footwear			1
Motor	4		3
<b>Total</b>	<b>168</b>	<b>39</b>	<b>321</b>

**Table 1 (continued)**

Sector	Partial liberalisation — See Table 3 for schedule/extent									No liberalisation
	B	F	G	I	J	K	L	M	N	
Agricultural										17
Fisheries										9
Manufactures										
Textiles/clothing				141	25	11	1			1
Footwear	34									
Motor		2	1					4	2	5
<b>Total</b>	<b>34</b>	<b>2</b>	<b>1</b>	<b>141</b>	<b>25</b>	<b>11</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>32</b>

Notes:

- (a) The 781 highest-tariff HS6 imports from the EU in 2002 which cumulatively accounted for not more than 20% of total imports from the EU.
- (b) The TDCA schedules are at 8 digits of the South African nomenclature; the Mozambican imports from the EU analysed here are at HS6. In calculating the figures in this table, only the latest possible scheduled liberalisation has been taken into account. So an HS6 import that has some 8-digit elements due for liberalisation in 2005 and some in 2012 has been counted under 2012. And one that has some 8-digit elements that were liberalised in 2003, others that will be liberalised in 2012, and others that will be partially liberalised by 2012 has been counted under 'partial liberalisation'. In addition, as items liberalised on entry into force of the TDCA are not listed at all in the schedules, it is possible that any or all of the HS6 imports analysed encompassed 8-digit sub-headings in the South African nomenclature that were liberalised in 2000.

Source: Eurostat 2003; UNCTAD TRAINS; EC 1999.

<i>Sector</i>	<i>Already liberalised</i>	<i>Liberalisation by</i>	
		<i>2005</i>	<i>2012</i>
Agricultural	27	10	31
Fisheries			
Manufactures	124	57	314
Textiles/clothing	1	3	9
Footwear			1
Motor	6		1
<b>Total</b>	<b>158</b>	<b>70</b>	<b>356</b>

**Table 2: (continued)**

<i>Sector</i>	<i>Partial liberalisation</i> — see Table 3 for schedule/extent										<i>No liberalisation</i>
	<i>B</i>	<i>C</i>	<i>F</i>	<i>I</i>	<i>J</i>	<i>K</i>	<i>L</i>	<i>M</i>	<i>N</i>		
Agricultural											16
Fisheries											6
Manufactures											5
Textiles/clothing				60	28	10					1
Footwear	26										
Motor		2	2					3	1		1
<b>Total</b>	<b>26</b>	<b>2</b>	<b>2</b>	<b>60</b>	<b>28</b>	<b>10</b>	<b>0</b>	<b>3</b>	<b>1</b>		<b>29</b>

Notes:

- (a) The 781 highest-tariff HS6 imports from the EU in 2002 which cumulatively accounted for not more than 20% of total imports from the EU.
- (b) The TDCA schedules are at 8 digits of the South African nomenclature; the Tanzanian imports from the EU analysed here are at HS6. In calculating the figures in this table, only the latest possible scheduled liberalisation has been taken into account. So an HS6 import that has some 8-digit elements due for liberalisation in 2005 and some in 2012 has been counted under 2012. And one that has some 8-digit elements that were liberalised in 2003, others that will be liberalised in 2012, and others that will be partially liberalised by 2012 has been counted under 'partial liberalisation'. In addition, as items liberalised on entry into force of the TDCA are not listed at all in the schedules, it is possible that any or all of the HS6 imports analysed encompassed 8-digit sub-headings in the South African nomenclature that were liberalised in 2000.

Sources: Eurostat 2003; UNCTAD TRAINS; EC 1999.

Some of the items that South Africa has not excluded, though, will be liberalised only partially. This is covered by the columns labelled 'B' to 'N' in Tables 1 and 2. The treatment to be accorded to these items is set out in Table 3. The column headings in Tables 1 and 2 refer to the row labels for Table 3 (which is derived directly from Annex III of the TDCA). Hence, for example, the 34 footwear items that Mozambique might wish to exclude from liberalisation all fall into the TDCA category 'Footwear and Leather 2'. These items will not be fully liberalised by South Africa under the TDCA. Rather, the initial tariff of 30% will be reduced to 20% by year 9 (that is, 2009).

		<i>Yr 1</i>	<i>Yr 2</i>	<i>Yr 3</i>	<i>Yr 4</i>	<i>Yr 5</i>	<i>Yr 6</i>
A.	Footwear & leather 1	20	18	16	14	12	11
B.	Footwear & leather 2	30	29	28	27	26	25
C.	Motor 1	15	14	13	12	11	
D.	Motor 2	30	28	25	23	20	19
E.	Motor 3	10	9	8	7	6	
F.	Motor 4	20	19	18	17	16	16
G.	Motors partial 1	-5pp	-5pp	-5pp	-5pp	-5pp	-5pp
H.	Motors partial 2	MFNat	MFNat	MFNat	-5pp	-5pp	-5pp
I.	Textiles - clothing	40	37	34	31	29	26
J.	Textiles — fabrics	22	20	19	17	15	13
K.	Textiles - household	35	32	29	26	24	21
L.	Textiles — yarns	17	15	14	12	10	8
M.	Tyres 1	25	23	21	19	17	15
N.	Tyres 2	15	14	13	12	11	10
O.	Tyres 3	20	18	16	14	12	10
P.	Tyres 4	30	27	24	21	18	15

<b>Table 3: Schedule for partial liberalisation by South Africa under the TDCA (continued)</b>							
		<i>Yr 7</i>	<i>Yr 8</i>	<i>Yr 9</i>	<i>Yr 10</i>	<i>Yr 11</i>	<i>Yr 12</i>
A.	Footwear & leather 1	10					
B.	Footwear & leather 2	24	22	20			
C.	Motor 1						
D.	Motor 2	18	16	15	13	12	10
E.	Motor 3						
F.	Motor 4	15	14	13	12	11	10
G.	Motors partial 1	-5pp	-5pp	-5pp	-5pp	-5pp	-5pp
H.	Motors partial 2	-5pp	-5pp	-5pp	-5pp	-5pp	-5pp
I.	Textiles - clothing	23	20	(a)			
J.	Textiles — fabrics	12	10	(a)			
K.	Textiles - household	18	15	(a)			
L.	Textiles — yarns	7	5	(a)			
M.	Tyres 1						
N.	Tyres 2						
O.	Tyres 3						
P.	Tyres 4						
Note:							
(a) In the period from year 8 to year 12, South Africa would provide EU exports with a preference margin of around 40% compared to MFN tariffs.							
Source: EC 1999: Annex III, List 5.							

None of the products covered by Table 3 will be fully liberalised. Taking this into account, two thirds of Mozambique's excluded items and almost four fifths of Tanzania's will be fully liberalised under the TDCA. Some of the remainder may have their tariffs reduced to below those of Mozambique and Tanzania. This is quite likely given that 25% is the maximum tariff of any of the 80% of these countries' imports that are not excluded and all of the product groups in Table 3 apart from 'motors partial' will have their SACU tariffs reduced to below this level under the TDCA.

### Items that SADC may want to liberalise

At the other end of the spectrum, there may be products that Mozambique and Tanzania want to liberalise (or to keep at low tariffs) but which are excluded or only partially liberalised under the TDCA. Both countries would be at liberty to liberalise whichever products they wanted — but the SACU states would have the same interest in avoiding the circumvention of the TDCA. Hence, South Africa would need to retain robust controls on imports from Mozambique or else any restrictions it retained on imports from the EU could be circumvented.

HS6	Description	South African liberalisation under the TDCA <sup>b</sup>			
		Before 2008	After 2008	Partial	None
170111	Raw sugar, cane				X
271000	Petroleum oils&oils obtained from bituminous minerals,o/than crude etc				X
630900	Worn clothing and other worn articles				X
730511	Pipe,line,i/s,longitudinally subm arc wld,int/ext cc sect,dia >406.4mm	X			
730512	Pipe,line,i/s,longitudinally wld w int/ext circ c sect,ext dia>406.4mm	X			
730519	Pipe,line,I or s,int/ext circ cross sect,wld,ext dia >406.4mm,nes	X			
730890	Structures&parts of structures,i/s (ex prefab bldgs of headg no.9406)		X		

<i>HS6</i>	<i>Description</i>	<i>South African liberalisation under the TDCA <sup>b</sup></i>			
		<i>Before 2008</i>	<i>After 2008</i>	<i>Partial</i>	<i>None</i>
842139	Filtering or purifying machinery and apparatus for gases nes		X		
850423	Liq dielectric transf havg a power handlg capacity exceedg 10,000 KVA		X		
853710	Boards,panels,includg numerical control panels,for a voltage < V>		X		
870323	Automobiles w reciprocating piston engine displac > 1500 cc to 3000 cc		X		X
870421	Diesel powered trucks with a GVW not exceeding five tonnes			X	
870899	Motor vehicle parts nes		X	X	X
<p>Note:</p> <p>All imports from the world in 2002 which accounted for 0.5% or more of total import value and for which the SACU MFN tariff is potentially higher than the current national tariff (and greater than 10%).</p> <p>Where a cross appears in more than one column for the same item, this reflects different treatment under the TDCA of different 8-digit elements of the HS6 heading. And, as items liberalised on entry into force of the TDCA are not listed at all in the schedules, it is possible that any or all of these HS6 imports encompasses 8-digit sub-headings in the South African nomenclature that were liberalised in 2000.</p> <p>Sources: ITC TradeMap; SADC Secretariat; EC 1999</p>					



<b>Table 5: Tanzania: Major sensitive imports from the world <sup>a</sup> — South African liberalisation under the TDCA</b>					
<i>HS6</i>	<i>Description</i>	<i>South African liberalisation under the TDCA <sup>b</sup></i>			
		<i>Before 2008</i>	<i>After 2008</i>	<i>Partial</i>	<i>None</i>
401120	Pneumatic tires new of rubber for buses or lorries			X	
620343	Mens/boys trousers and shorts, of synthetic fibres, not knitted			X	
630900	Worn clothing and other worn articles				X
730890	Structures&parts of structures,i/s (ex prefab bldgs of headg no.9406)		X		
870210	Diesel powered buses with a seating capacity of > nine persons			X	
870323	Automobiles w reciprocating piston engine displacg > 1500 cc to 3000 cc		X		X
870333	Automobiles with diesel engine displacing more than 2500 cc		X		X
870421	Diesel powered trucks with a GVW not exceeding five tonnes			X	
Note:					
(a)	All imports from the world in 2002 which accounted for 0.5% or more of total import value and for which the SACU MFN tariff is potentially higher than the current national tariff (and greater than 10%).				
(b)	Where a cross appears in more than one column for the same item, this reflects different treatment under the TDCA of different 8-digit elements of the HS6 heading. And, as items liberalised on entry into force of the TDCA are not listed at all in the schedules, it is possible that any or all of these HS6 imports encompasses 8-digit sub-headings in the South African nomenclature that were liberalised in 2000.				
Sources:	ITC TradeMap; SADC Secretariat; EC 1999				

Identifying the potential scale of such a problem is a more time-consuming exercise because Mozambique and Tanzania have many items on which MFN applied tariffs are already low. However, a feel for the issue can be obtained by looking at the countries' major imports from the world of products for which SACU MFN tariffs are high (and which are therefore relatively more likely to have been restricted under the TDCA).

This is done in Tables 4 and 5, for Mozambique and Tanzania respectively. These list all imports from the world in 2002 which accounted for 0.5% of these countries' total imports and for which the SACU MFN tariff is greater than 10% and potentially higher than theirs. Neither table is very long and, of course, may not accurately describe the items that either Mozambique or Tanzania would choose to include in their liberalisation. But, with this caveat, they do at least suggest that this is a serious problem.

Of the 13 sub-heads in Table 4, covering Mozambique, almost half are items that will either not be liberalised under the TDCA, or for which liberalisation will be only partial. For the eight sub-heads in Table 5, covering Tanzania, the proportion is even greater: seven out of the eight include items for which the TDCA offers either no liberalisation or only partial tariff reductions.

### *Retro-fitting the TDCA*

If the non-SACU states were to decide in due course that they could not afford to enter an EPA that included BLNS how difficult would it be for the latter to safeguard their access to the EU market. This boils down to the answers to a political and a logistical question:

- would the EU agree either to re-open the TDCA or to negotiate a parallel accord with the sole purpose of granting certain preferences to BLNS but not to South Africa;
- how difficult would it be to keep BLNS exports of the items covered by this extension separate from, and uncontaminated by, South African products?

The answer to the second question is likely to have a bearing on the answer to the first. It would be churlish on the part of the EU (and strongly opposed by at least some member states) to curtail Swazi exports of sugar and Botswana/Namibia sales of beef merely because no other SADC state is willing to enter an EPA with them. And any architecture for the continuation of these preferences will require measures to prevent leakage to South Africa. Retro-fitting the TDCA would be no more difficult (provided South Africa did not insist upon re-opening its own terms at the same time) than any other bespoke arrangement for BLNS.

Tables 6–9 take the main EU imports from each of BLNS in 2002 that face positive MFN tariffs and compare the treatment under Cotonou and the TDCA. If BLNS are given post-2007 treatment that is no better than under Cotonou and do not diversify their exports then the only ‘problem items’ will be those listed in the tables where the TDCA does not provide for equivalent access. These two assumptions of neither access improvement nor diversification are, of course, unrealistic. But all four states can build more realistic scenarios and then replicate this exercise which, at least, provides a benchmark on how difficult it would be to retro-fit the TDCA as of today.

The expectation must be that the logistical problems are surmountable. This is because BLNS have had better access to the EU than South Africa for three decades and so it must be possible to keep their exports separate. There already exists, for example, an established system for sugar, beef and, more

problematic, citrus. The tables suggest that these are the only significant problem items apart from fish unless South Africa and the EU agree a fisheries accord.

<b>Table 6: Botswana: Top exports<sup>a</sup> to the EU in 2002 for which EU MFN tariff not zero</b>				
<i>CN_2002</i>	<i>Description</i>	<i>Share of total (%)</i>	<i>Cotonou tariff</i>	<i>EU liberalisation under the TDCA</i>
0201300 0	Fresh or chilled bovine meat, boneless	9.1	0% + 24.2€/100 kg net	To be reviewed periodically
8544309 0	Ignition wiring sets and other wiring sets for vehicles, aircraft or ships (excl. those for civil aircraft of subheading no 8544.30-10)	7.0	0	2003
Notes:				
(a) Highest-value items accounting cumulatively for 90% of total export value to the EU.				
Source: UNCTAD TRAINS.				

<b>Table 7: Lesotho: top exports<sup>a</sup> to the EU in 2002 for which EU MFN tariff not zero</b>				
<b>CN_200 2</b>	<b>Description</b>	<b>Share of total (%)</b>	<b>Cotonou tariff</b>	<b>EU liberalisation under the TDCA</b>
0305620 0	Cod 'gadus morhua, gadus ogac, gadus macrocephalus', salted or in brine only (excl. fillets)	7.6	0	Elimination in equal annual steps starting Yr 6 after entry into force of Fisheries Agreement
6110309 1	Men's or boys' jerseys, pullovers, cardigans, waistcoats and similar articles, of man-made fibres, knitted or crocheted (excl. lightweight fine knit roll, polo or turtle neck jumpers and pullovers and wadded waistcoats)	6.2	0	2006
0305699 0	Fish, salted or in brine, but neither dried nor smoked (excl. herrings, cod, anchovies, fish of the species boreogadus saida, lesser or greenland halibut, pacific halibut, atlantic halibut, pacific salmon, atlantic salmon, danube salmon an	5.6	0	Elimination in equal annual steps within 3 years of entry into force of Fisheries Agreement
6109100 0	T-shirts, singlets and other vests of cotton, knitted or crocheted	4.5	0	2003
6204623 9	Women's or girls' trousers and breeches, of cotton (not of cut corduroy, of denim or knitted or crocheted and excl. industrial and occupational clothing, bib and brace overalls, briefs and track suit bottoms)	2.0	0	2003
Notes:				
(a) Highest-value items accounting cumulatively for 90% of total export value to the EU.				
Source: UNCTAD TRAINS.				

<b>Table 8: Namibia: Top exports<sup>a</sup> to the EU in 2002 for which EU MFN tariff not zero</b>				
<i>CN_2002</i>	<i>Description</i>	<i>Share of total (%)</i>	<i>Cotonou tariff</i>	<i>EU liberalisation under the TDCA</i>
03042055	Frozen fillets of cape hake 'shallow-water hake' 'merluccius capensis' and of deepwater hake 'deepwater cape hake' 'merluccius paradoxus'	20.9	0	Elimination in equal annual steps starting Yr 4 after entry into force of Fisheries Agreement
02013000	Fresh or chilled bovine meat, boneless	9.2	0% + 24.2€/100 kg net	To be reviewed periodically
03037811	Frozen cape hake 'shallow-water hake' 'merluccius capensis' and deepwater hake 'deepwater cape hake' 'merluccius paradoxus'	7.7	0	Concessions 'shall be envisaged in the light of the content and continuity of the Fisheries Agreement'
03037981	Frozen monkfish	6.2	0	
03026966	Fresh or chilled cape hake 'shallow-water hake' 'merluccius capensis' and deepwater hake 'deepwater cape hake' 'merluccius paradoxus'	5.3	0	
03049047	Frozen meat of hake 'merluccius', whether or not minced (excl. fillets)	3.7	0	Elimination in equal annual steps starting Yr 4 after entry into force of Fisheries Agreement
08061010	Fresh table grapes	2.9	0 to MFN	2010
02023050	Frozen bovine boned crop, chuck and blade and brisket cuts	1.4	0% + 17.6€/100 kg net	To be reviewed periodically
03037590	Frozen sharks (excl. dogfish)	1.3	0	Elimination in equal annual steps within 3 years of entry into force of Fisheries Agreement

<b>Table 8: Namibia: Top exports<sup>a</sup> to the EU in 2002 for which EU MFN tariff not zero (continued)</b>				
<i>CN_2002</i>	<i>Description</i>	<i>Share of total (%)</i>	<i>Cotonou tariff</i>	<i>EU liberalisation under the TDCA</i>
03042095	Frozen fillets of saltwater fish (excl. cod, fish of the species boreogadus saida, coalfish, haddock, redfish, whiting, ling, tuna, fish of the species euthynnus, mackerel, fish of the species orcynopsis unicolor, hake, sharks, plaice, flo	1.2	0	Elimination in equal annual steps starting Yr 6 after entry into force of Fisheries Agreement
03037998	Frozen saltwater fish, edible (excl. salmonidae, flat fish, tunas, skipjack, herrings, cod, sardines, sardinella, brisling or sprats, haddock, coalfish, mackerel, sharks, eels [anguilla spp.], sea bass, hake, fish of the genus euthynnus,	1.1	0	Elimination in equal annual steps within 3 years of entry into force of Fisheries Agreement <sup>b</sup>
03037993	Frozen pink cusk-eel 'genypterus blacodes'	0.9	0	Elimination in equal annual steps within 3 years of entry into force of Fisheries Agreement
03037987	Frozen swordfish 'xiphias gladius'	0.7	0	Elimination in equal annual steps within 3 years of entry into force of Fisheries Agreement
Notes:				
(a) Highest-value items accounting cumulatively for 90% of total export value to the EU.				
(b) Due to frequent tariff code changes, it is not absolutely certain what code this item appears under in the TDCA. However, based on the description, it is believed that the TDCA schedule shown here is correct.				
Source: UNCTAD TRAINS.				

<b>Table 9: Swaziland: Top exports<sup>a</sup> to the EU in 2002 for which EU MFN tariff not zero</b>				
<i>CN_2002</i>	<i>Description</i>	<i>Share of total (%)</i>	<i>Cotonou tariff</i>	<i>EU liberalisation under the TDCA</i>
17011110	Raw cane sugar, for refining (excl. added flavouring or colouring)	62.2	0	To be reviewed periodically
54025200	Filament yarn of polyester, incl. monofilament of <67 decitex, single, with a twist of >50 turns per metre (excl. sewing thread, yarn put up for retail sale and textured yarn)	5.4	0	2000
08054000	Fresh or dried grapefruit	3.9	0	2000
22071000	Undenatured ethyl alcohol, of actual alcoholic strength of $\geq 80\%$	2.6	0	To be reviewed periodically
08051050	Fresh sweet oranges (excl. sanguines and semi-sanguines, navels, navelines, navelates, salustianas, vernas, valencia lates, maltese, shamoutis, ovalis, trovita and hamlins)	2.5	0 to MFN	To be reviewed periodically
20083071	Grapefruit segments, prepared or preserved, containing added sugar but no added spirit, in packings of $\leq 1$ kg	2.3	0	2003
20083090	Citrus fruit, prepared or preserved (excl. added spirit or sugar)	2.2	0	2000
08051030	Fresh navels, navelines, navelates, salustianas, vernas, valencia lates, maltese, shamoutis, ovalis, trovita and hamlins	2.1	0 to MFN	To be reviewed periodically



<b>Table 9: Swaziland: Top exports<sup>a</sup> to the EU in 2002 for which EU MFN tariff not zero (continued)</b>				
<i>CN_2002</i>	<i>Description</i>	<i>Share of total (%)</i>	<i>Cotonou tariff</i>	<i>EU liberalisation under the TDCA</i>
20082079	Pineapples, prepared or preserved, containing added sugar but no added spirit, with sugar content of = < 19 %, in packings of = < 1 kg	1.8	0	2010
20082099	Pineapples, prepared or preserved, in packings of < 4.5 kg (excl. added sugar or spirit)	1.7	0	2010
02013000	Fresh or chilled bovine meat, boneless	1.4	0% + 24.2€/100 kg net	To be reviewed periodically
38249099	Chemical products and preparations of the chemical or allied industries, incl. those consisting of mixtures of natural products, n.e.s.	1.0	0	(b)
Notes:				
(a) Highest-value items accounting cumulatively for 90% of total export value to the EU.				
(b) Due to frequent code changes it is unclear what tariff code this item appears under in the TDCA.				
Source: UNCTAD TRAINS.				

### *What next?*

The seven SADC states have begun negotiations on an EPA, and it would be quite wrong to assume that these will not continue to a successful conclusion. At the same time, it would be foolhardy and imprudent to assume that the problems described in this paper will simply be pushed to one side and that the result will not be either a dramatic rift in the region or

a more subtle corrosive slow-down of integration made necessary by the need to check on EU goods.

So it would be sensible and forward-looking to consider alternatives that are 'outside the box'. One such alternative is to overcome the problem of overlapping agreements by expanding SACU. The threat to Southern African regional integration is occurring at precisely the time that the new revenue-sharing formula gives SACU an opportunity to look further afield. The stresses created by the EU may provide a strong incentive to consider new ways to cement regional economic integration. This is why a parallel paper at the SAIIA workshop examines the feasibility of using SACU expansion *inter alia* as a way of neutralising the anti-regionalism bias introduced by the EPAs.

Clearly, SACU expansion would have major implications for both existing and potential entrants. They go well beyond a comparison of *current* trade policy. Given that EPAs will reduce the trade taxes that countries receive, for example, the SACU system that places more emphasis on domestic tax raising could well be attractive. So the point of comparison needs to be between an expanded SACU and a possible split of Southern Africa into two sub-regions, each of them agreeing to liberalise substantially towards the EU but not necessarily towards each other.

## **Variable Geometry — What Future for Southern African Integration?<sup>4</sup>**

### **Introduction**

Variable Geometry recognises the fact that within a regional grouping there are some countries, or sub-groups of countries, which are able to implement regional economic integration at a faster pace ('variable speed') than other countries and, in the foreseeable future, are able to achieve a higher degree of integration than others, but which complements the larger integration process.

If market integration through trade preferences or other means is to proceed on a uniform basis, it is likely to be at the pace of the slowest member and, to avoid this, it is necessary to adopt a more flexible approach. The COMESA Treaty, for example, recognises that it is possible to have a core group of member countries which are prepared to implement, or maintain, a customs union with a Common External Tariff, with the rest of the membership constituting itself as a Free Trade Area. Other forms of integration, for instance, those involving fiscal and monetary policy convergences, can be handled similarly, with co-operation for particular purposes involving overlapping groups.

The main dangers of implementing regional integration programmes using a variable geometry approach lie in the need to avoid administrative complexity and the need for consistency in the obligations assumed by countries towards different aspects and institutions of the main regional integration arrangement vis-à-vis the core sub-groups. If the administration gets too complex the integration process will, at

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<sup>4</sup> This contribution was made by Mark Pearson from the COMESA Secretariat.

worst, collapse under the administrative burden, but will, at least, lose momentum through a loss of cohesion and a common purpose. If the obligations towards a common goal become inconsistent, this will also weaken the integration process.

Some argue that this variable geometry approach to integration has weakened integration at the all-Africa, or continental, level. The Treaty establishing the African Economic Community (AEC) and the OAU's Lagos Plan of Action, envisaged all countries on the continent moving to economic integration through the activities of Regional Economic Communities (such as COMESA, ECOWAS and SADC). The OAU added the concept of 'subsidiarity' to the variable geometry approach, meaning that decisions on integration would be taken at the lowest level rather than at the highest level ('bottom up' rather than 'top-down'. The approach of the OAU seemed to be eminently sensible, especially given the various levels of economic development of African countries. However, because there was no overall guiding process, the RECs not only adopted a variable speed approach but also adopted a variable geometry approach involving the adoption of different agendas, with some moving towards an economic community, while others confined themselves to a programme of regional co-operation, and not aspiring to be a regional trading arrangement. Even those RECs which aspired to be customs unions moved in isolation, developing and adopting CETs without consultation with the rest of the continent.

### ***Background***

As is well known, the Southern and Eastern African region has a multiplicity of regional integration organisations and there is

a perception, or possibly a danger, that this multiplicity leads to duplication, a waste of effort and resources and a rivalry and animosity which the region cannot afford.

Table 1 gives a summary view of Eastern and Southern African countries' memberships of the main regional economic integration arrangements and this information is also given in Annex 1.

Table 2 gives a summary of the main activities of SADC, EAC and COMESA (assuming that the SACU Secretariat will confine itself to the smooth operation, and possible expansion, of SACU). As can be seen from Table 2, there are overlaps in policies as well as memberships of RECs. Countries that are signatories to a number of both international and regional trade agreements face the potential problem of having to conform to different tariff reduction schedules, rules of origin and other requirements. This has created a complex set of incentives facing investors, producers, importers and exporters.

<i>Country</i>	<i>COMESA</i>	<i>SADC</i>	<i>SACU</i>	<i>EAC</i>
Angola				
Botswana				
Burundi				
DR Congo				
Comoros				
Djibouti				
Eritrea				
Ethiopia				
Kenya				
Lesotho				
Madagascar				
Malawi				
Mauritius				
Namibia				
Rwanda				
Seychelles				
Somalia				
South Africa				
Sudan				
Swaziland				
Tanzania				
Uganda				
Zambia				
Zimbabwe				

Note: Light shading in the SADC column indicates that Madagascar is in the accession stage to SADC membership.

<b>Table 2: Main areas of intervention by regional organizations<sup>(a)</sup></b>			
<i>REC</i>	<i>Trade policies</i>	<i>Trade related policies</i>	<i>Functional policies</i>
<b>COMESA</b>	FTA by 2000 and Customs Union by a date to be determined.	Standards, Customs Management and Procedures, SPS, Private Sector Development, Investment Policies, Competition Policy, Public Procurement, Movement of Persons, Tax Harmonisation, Monetary Harmonisation, Trade (transport) Facilitation, Air Traffic Liberalisation and Telecoms.	Agriculture and Food Security, Infrastructure, Conflict Prevention, Transport, Energy, Fisheries.
<b>EAC</b>	FTA and Customs Union by 2004	Standards, Customs Procedures, SPS, Capital Market Development, Private Sector Development, Investment Policies, Competition Policy, Movement of Persons, Tax Harmonisation, Monetary Harmonisation	Agriculture and Food Security, Infrastructure, Development of Human Resources, Science and Technology, Labour, Tourism and Wildlife Management, Health, Social & Cultural Activities, Political Affairs, Regional Peace & Security & Defence.
<b>SADC</b>	FTA by 2008	Standards, Customs Procedures, SPS, Capital Market Development, Private Sector Development, Investment Policies, Competition Policy, Tax Harmonisation, Monetary Harmonisation	Food, Agriculture and Natural Resources; Infrastructure and Social Sector; Tourism and Mining.
(a) There are a number of cross-cutting policies pursued by all RECs, including gender and environment			

Although there may be disadvantages to a country being a member of two or more regional integration organisations,

such as conflicting programmes in trade and trade related issues, financial costs of multiple memberships and a possible waste of resources through duplication of effort, there could also be advantages to multiple memberships. Regional integration organisations are created and governed by their member countries for specific purposes. These purposes may be essentially political in nature; may be to promote trade; maybe to promote regional co-operation; or maybe to create economic ties with a powerful economic neighbour. Multiple memberships of regional organisations only becomes a disadvantage if the member countries allow the regional organisations they have created to address issues outside their original mandates so that the activities of two regional organisations overlap and create a situation whereby the programmes of RECs contradict each other.

In theory, one could expect that, if a country is a member of two regional organisations, it would use its dual membership to ensure that the objectives, and programmes, of the two organisations do not either overlap, or contradict, each other. However, in practice, at least in Eastern and Southern Africa, there have been occasions where this has not happened. For example, SADC came to recognise the need for a trade integration programme considerably later than COMESA, and only after South Africa joined SADC. Even then, at the start of the SADC programme, signs of co-ordination were encouraging in that, for example, SADC agreed on the use of the COMESA Rules of Origin. However, not long into negotiating the SADC Trade Protocol, proposals for Rules of Origin changed dramatically so that the Rules of Origin adopted by SADC in its Trade Protocol bear no resemblance to the Rules of Origin SADC originally started out with, which were based on COMESA's Rules of Origin. Although COMESA and SADC have agreed to move to FTAs, there are major differences in both timetables and implementation between the



FTAs. The COMESA FTA covers all products conforming to its Rules of Origin and all COMESA countries are encouraged to adopt a full FTA immediately. The SADC Trade Protocol came into force on 25 January 2000 and tariff reductions will be done in three phases under category A, B and C with category C referring to the most sensitive products. Contrary to the recommendation by COMESA to move immediately to an FTA will full product coverage, SADC expect to have a partial FTA in place by 2008 and a full FTA in place by 2012.<sup>5</sup>

Although it could be argued that co-ordination of REC programmes should be done by the member states of the RECs themselves, this has not happened, and the issue of co-ordination has been passed on to the RECs themselves. The RECs have established various Task Forces to improve co-operation, co-ordination and information dissemination but this is at the implementation level (and some policy co-ordination) but not at the political level.

This is perhaps the paradox of regional integration. At one level it is recognised that regional integration, if managed effectively, will greatly assist African countries in playing a more effective and efficient part in the global environment but, if proliferation continues, and if the process is not managed correctly, and internal contradictions are not resolved, the process could replace, or at least undermine, the multilateralism that is emerging through the WTO process.

### *Variable geometry, EPA negotiations and regional integration*

For effective regional integration to take place, there are a number of pre-conditions which need to be in place, including:

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<sup>5</sup> SADC has also now agreed to move to a customs union.

- a strong political commitment to regional integration;
- the countries making up the regional integration grouping are at peace with each other and have an established democratic and accountable rule of law;
- member States are relatively economically stable;
- the economic environment is 'market-friendly' and open to trade with third countries;
- there is a degree of complementarity among economies;
- the existence of a regional economic grouping institution which is sufficiently strong and which has a clear mandate, adequate resources and political support;
- a flexible institutional framework, permitting progress at different speeds ('variable geometry');
- broad participation by the private sector and civil society; and
- a setup where responsibility for dealing with an issue is kept as close as possible to the population concerned ('subsidiarity').

Although the pre-conditions may vary in importance, what should be noted is that, over the last decade, most of the pre-conditions listed above have been put in place, with variable geometry being only one of the pre-conditions.

Another issue to bear in mind is the potential impact EPA negotiations will have on regional integration. Some commentators have suggested that the EPA negotiations will negatively affect existing regional integration arrangements and will unnecessarily divide the region by forcing countries to take decisions on configuration which are not in the interests of regional integration. This is perhaps attributing more importance to EPA negotiations than they deserve. EPAs are only one part of the regional integration conundrum facing the

region and do not force new alignments. They may have focussed the discussions on the contradictions which exist in RTAs earlier than would otherwise happened (but even this is doubtful) but have not introduced any new issues, as regards regional integration, which were not already there.

The challenge, therefore, which faces the countries involved in EPA negotiations is to use the EPA negotiations to strengthen the regional integration process and to use the resources provided through the EPA process to address issues of contradiction, most of which already existed in the region before EPA negotiations were introduced. Some of these issues include:

- *COMESA and EAC*: COMESA and EAC are both moving to a customs union in roughly the same time period but it is obvious that a country cannot belong to more than one customs union, unless the customs unions have the same CET and the same trade policies, in which case the customs unions could be merged into one. Uganda and Kenya belong to both COMESA and EAC so will need to decide, eventually, which Customs Union they wish to be a part of, or how EAC can be used to fast-track COMESA.
- *SADC and EAC*: Tanzania is a member of both SADC and EAC and the same argument which applies to EAC (except, in this case, in relation to the dual membership of Tanzania) and COMESA also applies to EAC and SADC.
- *SACU and SADC*: SADC has notified its intention to move to a customs union. Given that five out of eleven SADC members are already members of the SACU customs union, and every other SADC member (with the exception of Tanzania) is also a member of COMESA it is difficult to see how SADC is going to implement this customs union. The logical approach would be to extend the membership of

SACU, but SACU would appear to have already tried this approach, with little, if any, success to date.

- *SADC and COMESA*: At present members of both COMESA and SADC are expected to implement the COMESA FTA and the SADC Trade Protocol, with trade preferences offered within the two RTAs being different. This does not seem, at the moment at least, in practice, to create a problem for economic operators as they simply use the most advantageous terms of trade. However, as the SADC FTA starts to be implemented more effectively, there is a possibility of trade diversion (such as when a commodity which was sourced from outside the region is now sourced from within the region as a result of trade preferences not increased efficiencies) and trade deflection (with commodities, for example, coming from Europe via the TDCA into a country that is both a SADC and COMESA member and then being trans-shipped to a COMESA country through the COMESA FTA).
- *TDCA and SADC EPA*: EPA negotiations are meant to have a trade and a development component. The TDCA is a trade agreement between SACU (including Botswana, Lesotho, Namibia and Swaziland — BLNS) and the EU so even before EPA negotiations start the BLNS countries already had a trade agreement with the EU. The EC has consistently stated that the finances available for development are those allocated to the European Development Fund, which will be used in accordance with the EDF's agreed Regional and National Indicative Programmes (RIPs and NIPs). Realistically, (or unless there is a significant change of heart by the EU and its Commission) between now and when the EPAs are to be agreed (end-2008) there is little which can be negotiated in the development context which is not already

agreed in the EDF9 NIPs and RIPs<sup>6</sup> as little progress on convincing the EC to provide additional resources to ACP countries should be expected. This being the case, the focus of the SADC EPA negotiations can only be on negotiating an FTA for its three members which are not part of the TDCA, these being Mozambique, Angola and Tanzania. If this is at variance with the TDCA this will create further inconsistencies in SADC so the logical step would be to not negotiate a SADC EPA trade component but simply ask the 3 countries not covered by the TDCA to accept the provisions of the TDCA. This, however, will mean that these three countries will need to accept market access provisions into the EU which are not as favourable as they now have.

- *ESA EPA and SADC EPA*: The ESA EPA also faces the same predicament with the development dimension of EPAs as the SADC EPA and is addressing this within the framework of the all-ACP–EC negotiations. On the development component of EPAs, rather than focussing on additionality of resources (which is an all-ACP aspect) ESA is focussing on how they can make access to EDF, more timely and generally easier, without losing any accountability. On the trade side, ESA is concentrating on trying to address how to negotiate an FTA with the EU which maximises the benefits and minimises the costs to the region. In order to reduce any

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<sup>6</sup> In the framework of the all-ACP–EC negotiations, the ACP side has consistently expressed the view that EDF and other resources which are currently available to the ACP are insufficient to meet the needs of ACP countries, particularly for eliminating obstacles to trade including those related to infrastructure. For this reason, additional resources are required so that ACP can effectively implement development-oriented EPAs. The EC has made its view clear: the resources available for financing of development co-operation in the next five years have been agreed in the framework of the Cotonou Agreement, and that this question is not up for renegotiations in the framework of EPA negotiations.

contradictions in the region, it was hoped that COMESA and SADC could have negotiated with the EC as one (hence the ESA acronym) but this was not achieved and now the ESA EPA negotiating group comprises 16 COMESA countries, four of which are also SADC members. If the SADC EPA negotiations result in a trade agreement significantly different to that of the ESA EPA, and the EPA configurations remain the same, this will further add to the region's internal contradictions.

- *ESA EPA and COMESA*: The provision in the Cotonou Agreement for EPAs to strengthen regional integration could best be done, in the Eastern and Southern Africa context, if COMESA and SADC joined forces to negotiate an EPA, with the Secretariats supporting their countries as a group in the negotiations. COMESA made an effort to adopt this configuration but met with strong opposition from a few SADC member states and, after this configuration was rejected by seven SADC countries and South Africa, ESA was left with 16 COMESA countries. It was agreed that the COMESA Secretariat would provide support to the negotiations as the lead Secretariat, but IGAD, EAC and IOC Secretariats also assist. The potential problem to this approach, and, in this case, the splitting of ESA from COMESA, is that it becomes more difficult to align COMESA programmes and activities with ESA programmes and activities. However, this is an administrative issue which is being addressed.
- *Euro-Mediterranean FTA and COMESA FTA and CU*: The Euro-Mediterranean FTA is signed between Egypt (also a COMESA FTA member), Tunisia, Morocco and Jordan as a group and the EU and is expected to be implemented by 2010. This agreement will also need to be monitored in terms of trade creation, deflection and diversion effects as well as

possible contradictions with the COMESA regional integration agenda. It should also be noted that Egypt is negotiating FTAs with ECOWAS and ECCAS and the same principles as the Euro-Med FTA apply.

### *Southern African integration — The way forward*

The way forward, and a resolution of what the Secretary General of the AUC has referred to as an ‘institutional cacophony’ and what the World Bank has referred to as a ‘Spaghetti Bowl’, probably lies as much in a political resolution as it does in a technical or administrative solution. If, for example, COMESA and SADC merged<sup>7</sup> as part of the AUC’s planned rationalisation of RECs the discrepancies between the RTAs could be removed and the two Secretariats could specialise on specific activities. There would also need to be rationalising and possible ‘down-sizing’ of the two Secretariats. This would allow countries in the Eastern and Southern Africa region to concentrate on building their own internal markets and removing supply-side constraints in the region, rather than addressing the fictitious enemy within.

However, what is more likely to happen is that, for the foreseeable future, the status quo will be maintained and the REC Secretariats will be requested to continue to co-ordinate implementation of activities and reduce contradictions to the minimum. This will involve putting instruments in place which reduce trade deflection and trade diversion but which reduce the efficiencies of the regional market.

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<sup>7</sup> The same result could be achieved if all countries joined COMESA and all countries joined SADC.

## **Legal conundrum: SACU, the TDCA and EPAs<sup>8</sup>**

### *The relevance of the legal and institutional context*

The trade arrangements under discussion here are embodied in legal instruments (international agreements) involving sovereign states or existing international organisations. These instruments create legal obligations for the states involved, establish specific institutions with certain powers and require domestic incorporation and responses from the member states. In some instances provision is made for the adjudication of disputes invoking the implementation or interpretation of the agreement under question.

It is well known that developing countries experience serious capacity constraints regarding the implementation of such rules-based dispensations. South Africa is somewhat of a regional exception but for the rest of the region the new developments with respect to negotiating EPAs and giving effect to the new SACU agreement pose considerable challenges.

EPAs offer, in principle, an opportunity to address development issues and promote regional integration. However, this will require many critical reforms in existing structures; of policy, legal and institutional nature. The basic purpose of this paper is to mention some of the legal issues and to emphasise that this aspect may not be ignored. Insufficient emphasis on legal and institutional dimensions will hamper the implementation of existing and new agreements and will impact quite negatively on the gains to be had. It may also jeopardise the international legal basis of an institution such as SACU.

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<sup>8</sup> This contribution was made by Gerhard Erasmus from TRALAC.



Sound legal arrangements not only promote the attractiveness of markets to traders and investors, they provide for certainty, predictability and transparency. A 'rule of law' dimension is at stake. This aspect should also be related to general governance issues within the states of the region — thus addressing another concern and a cause of underdevelopment and poverty.

The conclusion of Economic Partnership Agreements will impose new arrangements on existing institutions and organisations. There is a danger that overlapping membership of trade arrangements may complicate their functioning. Uncertainties and new burdens should be prevented. When negotiating such new agreements care should be taken to harmonise them with existing ones. A proper understanding of the legal arrangements already in place is required right from the start.

### *The existing arrangements*

A brief sketch of the new SACU agreements and the TDCA will provide a picture of the legal and institutional landscape already in existence. One could add SADC to the list of Southern African institutions to be taken into account, but for the present discussion it is not necessary. SADC is a free trade area under construction and engaged in its own reforms at present. SACU and the TDCA are rules-based dispensations of some degree and potential building blocs for the new generation of arrangements to be added by EPAs. Insufficient attention to legal and institutional aspects may, however, transform them into stumbling blocks.

SACU is a Customs Union with a common external tariff (CET) and provides for the free movement of goods among the

five member states.<sup>9</sup> The TDCA is a bilateral arrangement between the EU and South Africa; technically conceived as a free trade agreement. These two types of arrangements (a customs union and a free trade agreement) differ in degree of integration between the members and the nature of the legal arrangements. South Africa is the dominant economy of the region and it is often stated that the BLNS countries (who are active participants in the Lomé trade arrangements, unlike South Africa) are 'de facto part of the TDCA.' Matters are, however, more complicated.

Direct trade in goods between South Africa and the EU is conducted via the TDCA; in so far as it covers trade in goods. Between the BLNS countries and the EU the provisions of the Lomé arrangements apply, although the goods of LDCs (such as Lesotho) enjoy free access to the EU under the EBA arrangement. The different status of the SACU members compounds the legal picture. There is no single arrangement vis-à-vis third states. When EPAs are negotiated they will have to be harmonised with the legal characteristics of SACU and its common external tariff will have to be given effect to. If this is not done, the essential legal quality that enables SACU to function as a customs union and enjoy the exceptions provided for in GATT Article XXIV, may be in jeopardy. The common external tariff part of SACU should not be eroded to such an extent that SACU becomes unrecognisable as a customs union.

Article 31 of the SACU Agreement has to provide some of the answer to these problems. It contains the following elements:

- Member states of SACU 'may maintain preferential trade and other related arrangements existing at the time of entry into force of this Agreement'.

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<sup>9</sup> Article 18, SACU Agreement. All references are to the SACU Agreement signed on 21 October 2002. It entered into force on 15 July 2004 and replaced the previous arrangement of 1969.

- With respect to future trade negotiations with third parties a ‘common negotiating mechanism’ will be established by the member states.
- No member may on its own enter into new preferential trade arrangements or amend existing ones without the consent of the other members.
- ‘When goods imported by a Member State from outside the Common Customs Area under a preferential agreement are exported to another Member State, the normal import duties applicable to such goods when imported into the rest of the Common Customs Area will be charged. Any difference between the normal duty and the duty originally charged on these goods shall be paid into the Common Revenue Pool.’<sup>10</sup>

These provisions call for some comments. In terms of Article 31(4) it is not permitted simply to further export goods imported under a special, preferential arrangement applicable to a specific SACU member and a third party to other SACU members. By way of example — goods imported into South Africa from the EU under the TDCA, may not be treated as goods ‘grown, produced or manufactured in the Common Customs Union,’<sup>11</sup> which are obviously exported free of customs duties to other SACU members. Neither does Article 19 apply; which determines that a SACU member shall not impose any duties on goods which were imported from outside the Common Customs Area on importation of such goods from the area of any other Member State.’ This is the ‘normal’ position and typical of a customs union. Article 19 is, however, qualified by an important provision — ‘except as otherwise provided in this Agreement.’ Article 31(4) is such a provision and is *lex specialis*.

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<sup>10</sup> Article 31(4), SACU Agreement.

<sup>11</sup> Article 18(1), SACU Agreement.

The result is that re-exportation of goods brought into South Africa under the TDCA can only happen and such goods are re-exported to the BLNS states if the 'normal import duty applicable to such goods' is then charged at the border between those SACU states. Apart from the fact that this imposes capacity constraints, legal complications and opportunity costs for traders, it will undermine the common external tariff in direct proportion to the number of such ad hoc preferential arrangements with third parties.

The revenue available to the Common Revenue Pool of SACU will be affected by preferential trade agreements with third parties. One may argue that this is a consequence of trade liberalisation, and that the excise component of the Pool is probably the more important future source of income. If trade agreements with third parties are, however, conducted on the basis of involving SACU as a whole, then it is done through a mechanism taking all consequences into account and hopefully in terms of a joint external trade policy. This will prevent a fragmented picture. In principle Article 31(4) should prevent loss of revenue as a result of ad hoc trade agreements involving only a particular SACU member. However, the implementation of all such ad hoc agreements will become very cumbersome and endanger the 'substantially all trade' requirement of Article XXIV, GATT. It will also make the collection trade data more complicated — a factor which impacts directly on the manner in which payments out of the Pool is calculated.

There may even be rules of origin implications. This could happen when transformation into other products taken place of products under an *ad hoc* agreement, before re-exportation to another SACU member.

The TDCA and some other external preferential arrangements with third parties involving particular BLNS

states predate the coming into force of the SACU agreement.<sup>12</sup> They qualify for the exception created in Article 31(1). It should be noted that this exception is unqualified and not covered by a proviso; as is often the case in regional trade agreements. In the case of SADC there is, for example, the requirement that members must bring such arrangements in line with these obligations under the new agreement.

### *Some of the implications*

EPA configurations involving SACU member states cannot be determined and make to function in a haze of legal uncertainty; they are conceived to operate on a clear legal basis, to provide for reciprocity, the integration of the members in a new (or existing) organisation and for remedies. At the same time the new SACU agreement foresees a rather sophisticated legal instrument; with common institutions and policies; together with a Tribunal with jurisdiction over all aspects 'regarding the interpretation or application of this Agreement, or any dispute arising hereunder at the request of the Council'.<sup>13</sup>

It should also be remembered that SACU is at present negotiating several FTAs; such as with the USA, EFTA and Mercosur.<sup>14</sup> The same is planned with India and China. This will pose further legal challenges and it will have technical and capacity implications for legislatures and administrators when

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<sup>12</sup> Swaziland for example, enjoys a special arrangement with COMESA. There are also other bilateral arrangements, such as between Malawi and South Africa.

<sup>13</sup> Article 13(1), SACU Agreement.

<sup>14</sup> A preferential trade agreement has since been concluded with Mercosur and was signed in Bello Horizonte, Brazil on 16 December 2004. It is seen as a first phase and negotiations will continue.

the necessary national laws have to be drafted and implemented in order to reap the benefits, harmonise and distinguish the various arrangements, protect rights and provide remedies. It may serve as a reminder that the FTA between the USA and Morocco, concluded in June 2004, is a very comprehensive instrument with 22 chapters. It covers far more than only trade in goods; services, intellectual property, investment, competition, the environment etc. are also dealt with. Formal dispute resolution is, in addition, provided for.

This is the general model that the USA wants to apply in the FTAs negotiated with other countries or regional organisations. SACU as such cannot enter into such an arrangement; as its agreement essentially covers only trade in goods.<sup>15</sup> This means that a FTA with the USA will consist of different layers of agreements involving the individual SACU members for disciplines going beyond the coverage of the SACU agreement. The new SACU is an international organisation with legal personality but has competence only over what the agreement covers.<sup>16</sup>

It is often forgotten that the negotiation and signing of an international agreement is not the end of the legal process. Before implementation can start important national constitutional requirements must also be complied with. In the case of South Africa Section 231 of the Constitution contains detailed provisions on the approval by Parliament of certain agreements. Ratification is only possible after completion of all internal procedures. Trade agreements are technically complicated in that they frequently grow in stages and the

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<sup>15</sup> There are some elementary provisions on transport and agriculture is further refined.

<sup>16</sup> Article 4(1), SACU Agreement.

details often appear in subsequent protocols or annexes.<sup>17</sup> The agreement itself may be a 'framework'; to be supplemented by additional instruments. They may also have to be approved by national legislatures. This is a basic principle of the constitutional state; the separation of powers principle may not be undermined by executive measures (such as international agreements) disguised as part of the law of the land. International agreements, cannot, in any case, be applied as part of the law of the land. They have to be enacted into 'national legislation'.<sup>18</sup>

### *What is to be done?*

- Legal arrangements on trade offer many advantages; provided they are clear, transparent and effective. Awareness of the legal ramifications should be part of the basic toolkit of negotiators. They should produce legal instruments that take the implementation implications into account and are harmonised with and promote existing arrangements. Where follow-up action and implementation in the member states have to be undertaken in order to give effect to new obligations, the necessary capacity should be provided for and harmonised implementation should follow. The relevant SACU institutions should be involved in such exercises.
- Negotiations have to be guided by sound and co-ordinated policy. All relevant role-players, and in particular the private sector, the real traders, should be involved in policy formulation. There must also be the necessary SACU policy.

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<sup>17</sup> In the case of SACU there are detailed provisions in part eight of the agreement on new common policies to be worked out. Article 41 provides for binding annexes which form 'an integral part' of the SACU Agreement.

<sup>18</sup> See sections 231 and 239 of the South African Constitution.

A customs union must, by definition, have an external trade policy.

- Article 31(2) of the SACU Agreement provides part of the answer and needs urgent implementation. The common negotiating mechanism provided for should be established and the necessary terms of reference be adopted. This will provide an opportunity for SACU institutions to become involved and to develop terms of reference that will be related to the bigger picture; including what individual members have already agreed in terms of bilateral agreements with third parties. The common negotiating mechanism cannot be an *ad hoc* instrument.
- South Africa is at present (in the absence of a common negotiating mechanism) responsible for all negotiations on behalf of SACU. A common SACU mechanism will allow the BLNS states to become more active and have their needs directly articulated. It will also make them co-responsible for SACU policies.
- Negotiations with particular third parties should be monitored throughout and feedback be given to the Council and other SACU institutions such as the Secretariat. There should be a nerve centre in SACU to co-ordinate and harmonise all these negotiations. SACU should speak with one voice and plan as such for the subsequent implementation of agreements. The SACU secretariat can fulfil this function and is under some obligation to do so.<sup>19</sup> For this to happen it should be given the necessary capacity as a matter of urgency.
- The coverage of the SACU agreement should be viewed in a holistic fashion. Where necessary provision should be made for agreement and co-operation in other trade disciplines

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<sup>19</sup> Article 10(8), SACU Agreement.



(such as services, investment, and competition and trade remedies) where logically required. This is necessary in order to speak with one voice to third parties, have a common external trade policy and to promote the implementation of international obligations in a harmonised manner. At a certain point it becomes artificial to treat trade in goods as hermeneutically sealed off from the services and competition consequences that will follow in a common customs area covering substantially all trade and locked into layers of external agreements based on a different, more comprehensive logic. In terms of Article 2 of the SACU agreement the organisation is under an obligation to 'promote the integration of the member states into the global economy through enhanced trade and investment'. The practical implementation of this objective is rather urgent for a region with serious developmental challenges.

- The SACU agreement provides for its own refinement and subsequent development through new annexes and the joint policies of Part Eight of the agreement. These avenues must be used and the 'common policies and institutions' of the agreement be realised.
- It may be necessary to learn from experiences elsewhere and to consider 'mixed agreements' of a particular kind to address pressing needs in those areas where competences between SACU and national institutions are not yet sufficiently demarcated. The members should co-operate in the subsequent implementation of whatever is adopted.
- The flaw in Article 31(1) of the SACU agreement should be addressed and existing preferential trade arrangements with third parties should be harmonised with the new SACU Agreement. This can be done when discussing and adopting a common negotiating mechanism for SACU.

- Consider the future impact on SACU of an EPA involving the BLNS countries (and perhaps even new members) but apparently excluding South Africa, which already has its own TDCA-style EPA. There are several crucial issues to be decided; its membership is one. Reciprocity and a wide scope of disciplines in a separate EPA which excludes South Africa must further impact on the common external tariff of SACU and its common policies. Article 31 may then become largely redundant. If this happens the very existence of the customs union as technically conceived under Article XXIV GATT may be in jeopardy. It is claimed that simultaneous membership of an FTA and a customs union is in principle possible. But up till what point will this remain feasible if the members of the original customs union are locked into so many different configurations that the original organisation can only speak as a skilful ventriloquist?
- The TDCA is at present under review. In terms of Article 31(3) of the SACU agreement this is a matter that requires the 'consent of other member states'. This provision should be used as the avenue to discuss and decide the many questions about the future of SACU and its individual members. The law should be a tool to further the interests of all parties and stakeholders such as the private sector; it must never become an instrument of obfuscation.

## **EPA's and the ACP — Learning from other regions<sup>20</sup>**

### *Generic lessons for the ACP for trade negotiations*

- Although the hard work of the EPA talks will mostly take place at the technical level, it is extremely important that in all ACP countries there is a high level of government commitment and leadership. Many of the decisions will be made at the political level and it is crucial that the ACP countries make use of any 'moral weight' available to them. In addition, strong lead ministers will have to be in place to give the process momentum and to provide leadership and inspiration to the technical negotiations.
- Trade negotiations can be overwhelming at first, so all ACP countries need to clearly identify their individual goals in a trade agreement with the EU. The success and relevance of any EPA to individual ACP states will depend on how effectively 'real' substantive issues were initially identified by a country or region, and rigorously pursued during the talks. It will further be important to build a cohesion of views between key partners and regions. Countries that have the highest vested interest and potentially the most to gain or lose in an EPA should be placed in the driving seat of the negotiations.
- It will be very important to build strong co-ordination mechanisms with clear lead responsibilities within each region that is negotiating with the EU. This co-ordination needs to take place at multiple levels, including intra-government and intra-state level. In addition, there needs to be strong co-ordination between ACP capitals and the ACP secretariat in Brussels.

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<sup>20</sup> This contribution was made by San Bilal from the ECDPM.

- A flexible negotiating structure will be to the advantage of the ACP countries. Small and competent negotiating teams at all levels (national, regional and global) will be key to a successful negotiation. Where capacity is minimal in ACP governments, secondments from the private sector and Centres of Excellence should be encouraged.
- It will be to the ACP's advantage to invest in strong analytical capacities and technical expertise. The ACP states should draw on external expertise for preparatory analysis where its own analytical capacity is weak. The analysis should in all cases be pro-active, practical and solution-orientated.
- These negotiations should ideally not occur in isolation, but should draw on a broad base for consultation, including the private sector. The negotiating team should ensure a public-private dialogue mechanisms to be put in place. This mechanism could help ensure that common interests in both the private and public sectors are clearly defined and defended. Regional platforms for the private sector should be established and nurtured, for both large and small businesses. As highlighted above, the private sector could be drawn into the negotiating team to provide expertise and hands-on experience of businesses' needs in the ACP states. The higher the profile in the public debate and media the stronger the negotiating team.
- It will be crucial to define and build a lobbying and negotiating strategy. In order for the negotiations to run smoothly and in the best interest of the ACP states, the responsibilities of the political and technical players need to be clearly defined. All players need to build up their competence and understanding about EU systems. This will allow the negotiators to anticipate and pre-empt the European decision making process. The value of lobbying the EU member states and the European parliament should not

be underestimated. It is often the case that the European public will be more sympathetic than the technocrats. It is, therefore, important to maintain contacts and to seek the support of European public opinion and European media.

- It will be to the benefit of all ACP countries if the role and value of all global ACP institutions are clearly defined. In this regard the subsidiarity principle should be applied. These institutions could play an important role in exchanging information on progress made during each of the EPA negotiations. They could also be used to pool relevant ACP expertise. Ambassadors serving in these institutions should be used to keep the various groups informed.
- All ACP countries need to be wary of excessively making use of European Technical Assistance. Clearly, the European interest in ensuring that ACP negotiators are effectively equipped to challenge the EU in trade talks, is ambiguous. ACP countries should rather focus on implementing a comprehensive capacity building strategy, which does not exclusively rely on European Union aid for funding.



## Chapter 4: Conclusion

### Concluding remarks<sup>1</sup>

During the two-day conference, the participants were often in heated debate about the motives and objectives of the EU in negotiating EPAs with the ACP states. Some Southern African participants expressed the view that the process is purely driven by self-interest and follows a ruthless liberalisation motive. Although one should not entirely discard this point of view, there is probably a healthy balance involved in which the EU is genuinely concerned with the development and integration of the ACP into the world economy. The focus on partnership and development assistance, that was so important under Lomé, is by no means diminishing. The conference, however, highlighted that there remains misunderstandings about the structure and future of EU aid to ACP states and one senses that if the ACP states could have confidence in the sustainability of EU development assistance to their regions, the debate surrounding the EPAs could move forward towards designing trade agreements that are both WTO compatible with and address developmental issues.

The conference highlighted yet again that regional integration is the defining character of the EU's approach to the EPA negotiations and that this approach has opened a long dormant can of worms in the Southern African region. Although regional EPAs should provide the best basis for economic development and integration of the ACP states, the reality in Southern Africa is that regional integration is a conundrum of overlapping memberships and goals. Integration is especially not evident amongst the two groups

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<sup>1</sup> This section was contributed by Geert Laporte, Peter Draper and Talitha Bertelsmann-Scott.

that have emerged as the EPA negotiating blocs. Importantly, the conference provided some pointers as to how the regional spaghetti bowl could perhaps be untangled. The preliminary research by Stevens and Stern (not included in this report, but due for publication shortly) on the expansion of SACU is very important in this regard.

The conference further highlighted that the ACP states are somewhat ill-prepared for the negotiations and that the bulk of the preparatory work for free trade areas will be homework, rather than discussions with EU technocrats surrounding the multitude of tariff lines. However, the EPAs will have a positive effect on regional integration in as far as it forces Southern African states to closely examine their trade regimes and to have regular contact with their partners in the region. The spin-offs of this process will far outweigh any benefits that the EPAs might offer. This conference was essentially a contribution to this process, which hopefully will be built on and expanded in the coming months and years.

During the concluding panel of the conference, which included Tswelopele Moremi (SACU Executive Secretary), Boitumelo Morewagae (SADC EPA Chief Negotiator), Anders Henriksson (DG Development, EC) and Mark Pearson (COMESA), the overwhelming sentiment expressed was that conferences like these are most useful in sharing information, research and experiences with policy-makers and negotiators. However, to some extent, the vast amount of information available is not adequately managed or disseminated to regions in need.

### *Trade capacity building*

Trade capacity building (TCB) has become a fashionable new area of development. Problems of poor capacities for trade



policy making and negotiation in African countries are well known and donors are increasingly willing to tackle these problems by making large amounts of funding available for TCB. However, there is also an imminent risk that increased donor interest in TCB may lead to a duplication of efforts and a multitude of one-shot and quick disbursement type of events (for example, seminars) without a clear strategic vision on sustainable long term capacity building.

A comprehensive capacity building strategy should try to integrate in a harmonious way some of the following components:

- *Information management capacities*: There is no lack of information on the various trade negotiating issues. Policy makers are flooded with information from different sources which they cannot absorb. What is needed at this stage, is tailor-made, practical and policy relevant information on various aspects of the negotiations (both on substance and process). It also seems to be important to invest more in mechanisms that can select, synthesise and analyse existing information from an independent point of view.
- *Analytical capacities*: Concrete and practical analysis is needed on various aspects related to the negotiations. This could include sound analysis on the regional configurations in South and Eastern Africa and their implications on the various countries, impact analysis of EPAs on each of the countries, particularly in terms of the implications for development and poverty alleviation and analysis of various technical issues related to the negotiations (for example, agriculture, fisheries, special and differential treatment, SPS, competition policy and investment).
- *Capacity for multi-stakeholder participation*: In recent years it has almost become a ritual to make strong political statements in favour of participation of non state actors (private sector,

farmers, NGOs) and other actors (for example, local governments) in trade policy making. In practice, however, the quality of the dialogue with these actors has been quite disappointing because of different factors: lack of government commitment, lack of legitimacy of non-state actors (NSAs), lack of capacity of NSAs to provide value added in the trade negotiating process, lack of effective mechanisms for effective public-private dialogue. Strategic approaches towards effective participation could learn lessons from existing mechanisms such as the National Economic Development and Labour Council (NEDLAC) in South Africa and the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM).

- *Lobby capacity*: Also in this respect lessons could be learnt from countries like South Africa and other regions that have gone through trade negotiating processes. In relation to the negotiations at the level of the WTO and the EU more investments could be made in strengthening the Embassies in Geneva and Brussels, a more pro-active lobbying towards strategic member states as well as building alliances with the European Parliament and the Northern (European) NGOs. An effective trade lobbying strategy should also move beyond purely trade matters and make the linkage with other policy areas (for example, implications of European debate on Financial Perspectives on EU–Africa relations).

## Glossary

ACP	African, Caribbean and Pacific
AEC	African Economic Community
ANC	African National Congress
BLNS	Botswana, Lesotho, Namibia and Swaziland
BOCCIM	Botswana Confederation of Commerce, Industry and Manpower
CAP	Common Agricultural Policy
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
COSATU	Congress of South African Trade Unions
CU	Customs Union
DTI	South African Department of Trade and Industry
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EEAS	European External Action Service
EFM	European Foreign Minister
EFTA	European Free Trade Area
EIB	European Investment Bank
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
ESDI	European Security and Defence Identity
ESDP	European Security and Defence Policy
EU	EU

FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade (WTO)
GDP	Gross Domestic Product
GNI	Gross National Income
GSP	Generalised System of Preferences
IDC	Industrial Development Corporation
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
IOC	Indian Ocean Commission
LDC	Least Developed Country
MDG	Millennium Development Goals
MEP	Member of European Parliament
MFN	Most Favoured Nation
NATO	North Atlantic Treaty Organisation
NEDLAC	National Economic Development and Labour Council
NEF	National Economic Forum
Nepad	New Partnership for Africa's Development
NIP	National Indicative Programme
NSA	Non-State Actor
OAU	Organisation of African Unity
ODA	Official Development Assistance
REC	Regional Economic Community
RIP	Regional Indicative Programme
RTA	Regional Trade Agreement
SACP	South African Communist Party
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAIIA	South African Institute of International Affairs
SSA	Sub Saharan Africa

TCB	Trade Capacity Building
TDCA	Trade, Development and Co-operation Agreement
TEC	Treaty Establishing the European Community
WTO	World Trade Organisation