

UNIVERSITY OF CAPE TOWN

ADVANCED SCHOOL FOR LEGAL STUDIES-FACULTY OF LAW



**EFFECTS OF THE ECONOMIC PARTNERSHIP AGREEMENTS ON REGIONAL
INTEGRATION IN AFRICA**

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AWNDR001

LLM Dissertation

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March 2017

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Dedication:

To the continent of Africa: Our best days are certainly ahead of us.

Acknowledgment

I would like to thank my supervisor, Prof. Ada Ordor for her support and guidance that made it possible for me to complete my research on time.

I would also like thank my parents, my family, Petrina Awinador and Kwabena Kesse for being my support systems and for their endless faith in me.

I would like to thank one of my role model's Dr Kwame Nkrumah for lighting an ever burning torch of Pan-Africanism in the content and paving a way for many generations to believe and aspire for something greater than themselves.

Finally, I would to thank the Almighty father whom without which all this wouldn't be possible.

Everything I am, all that I have, live for and believe in, is because of Him.

I am eternally grateful!

DECLARATION

I hereby declare that I have read and understood the regulations governing the submission of Master of Laws dissertation, including those relating to length and plagiarism, as contained in the rules of the university, and that this dissertation conforms to those regulations.

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Darkowa Awinador-Kanyirige

Abstract

After gaining independence, African states embraced the idea of regional integration as an approach to boost economic development on the continent. This was evident in the new regional organizations that were predominantly generated among developing states in the southern hemisphere.¹ Majority of these organizations, e.g. Economic Community of West African States (ECOWAS) and Southern African Development Community (SADC), have continuously been striving to deepen social, political and most importantly economic integration and cooperation in Africa. In an attempt to further the regional integration agenda, there have been quite a number of colonial cross-border arrangements with EU. Assessed based on conventional integration theories by scholars like Ernst B. Haas, the prerequisites for effective regional economic integration in Africa, appear to be less successful, juxtaposed with the more developed and economically independent European Union.² Although regional organizations like ECOWAS and SADC have managed to establish free trade areas (FTAs), they have failed to attain their agenda of establishing customs unions. Agendas of this kind among other things, are pertinent to consolidating the regional integration process. Even though several issues may be identified as causes of the inefficiency of the integration scheme on the continent, this paper explores the effect of north south trade agreements, in this case the economic partnership agreements (EPAs), on regional integration processes in Africa.

¹ Peter Draper, Durrel Halleon, Philips Alves, et al., "SACU, Regional Integration and the Overlap Issue In Southern Africa" South African Institute of International Affairs, no.15 (2007): 10, http://sarpn.org/documents/d0002411/SACU_SAIIA_Jan2007.pdf

² Anatasia Obydenkova et al., Comparative regionalism: Eurasian cooperation and European integration. The case for neofunctionalism, no.2(2011): 90 http://ac.els-cdn.com/S187936651100008X/1-s2.0-S187936651100008X-main.pdf?_tid=4188a22a-f2b6-11e6-98ff-00000aab0f27&acdnat=1487077707_b039d806148b42d1b35cfef7fbdd191b

List of Acronyms

ACP- African, Caribbean Pacific

AGOA- African Growth and Opportunities Act

AU-African Union

BLS. Botswana, Lesotho and Swaziland

BNLS- Botswana, Namibia, Lesotho and Swaziland

CET-Common External Tariff

COMESA-Common Market for Eastern and Southern Africa

CPA-Cotonou Partnership Agreement

EBA-Everything But Arms

ECOWAS-Economic Community of West African States

EDF-European Development Fund

EPAs Economic Partnership Agreements

EU- European Union

FDI-Foreign Direct Investment

FTA- Free Trade Area

GATS- General Agreement on Trade in Services

GATT- General Agreement on Tariffs and Trade

GSP-Generalised System of Preferences

LDC- Least Developed Country

MFN- Most Favoured Nation

NAFTA-North Atlantic Free Trade Agreement

REC-Regional Economic Community

RTA-Regional Trade Area

SACU-Southern African Customs Union

SADC-Southern African Development Community

TDCA-Trade Development and Co-operation Agreement

WTO-World Trade Organization

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Chapter One

Introduction

Africa's declining share in global trade and production clearly shows that the continent continues to operate at the periphery of the global economy. According to the United Nations Conference on Trade and Development (UNCTAD), majority of sub-Saharan Africa's 47 states are underdeveloped.³ Furthermore they have relatively small populations and low per capita income levels, which invariably affect the size of their markets.⁴ As a result, African states have leaned towards regional integration as a key tool, to drive their states into a novel era of economic growth and development.

The dynamics and advancement of this regional integration process are massively affected and dependent on the revision of trade arrangements between the EU and ACP (African, Caribbean and Pacific) states enforced by the Cotonou agreement.⁵ Thus the previously established trade relations driven by unilateral preferences provided solely by the EU are expected to be governed by EPAs (Economic Partnership Agreements). The intent is to control cooperation and trade, instituting new trade regimes between the ACP regions and the EU determined by clear and specific criteria.⁶ Concurrently, this new partnership is expected to facilitate all efforts for regional cooperation and implement the relevant measures to support emerging partner regions.

³ Africa's least developed: lands of opportunity, Africa Renewal Online, accessed February 10, 2017, <http://www.un.org/africarenewal/magazine/august-2011/africas-least-developed-lands-opportunity>

⁴ Peter Draper, Durrel Halleon, Philips Alves, et al., "SACU, Regional Integration and the Overlap Issue In Southern Africa" South African Institute of International Affairs, no.15 (2007): 10, http://sarpn.org/documents/d0002411/SACU_SAIIA_Jan2007.pdf

⁵ ACP-EU Cooperation After 2020: Towards a New Partnership?, Advisory Council On international Affairs accessed, February 10, 2017, <http://aiv-advies.nl/download/b8e0a7d4-968c-43b9-89c0-2f6bb2164fd8.pdf>

⁶ Ibid.

However, more than a decade after the launch of the EPA negotiations in Africa, its beneficial impact on regional integration continues to be vague.⁷ This was evident during the negotiations, as they failed to factor in the already existing regional economic communities on the continent, further complicating the already frangible state of affairs.⁸ Hence, despite the EPAs key objective to further regional integration in Africa, it appears their present effect is more disintegration in the RECs. Thus the main essence of this research is to assess the impact EPAs are having on regional integration by drawing from outcomes in two major regional blocs - ECOWAS AND SADC.

Chapter one of this study commences with a brief synopsis of the concept of regional integration, and the four key elements which states confront to facilitate this process. It then continues with a more expansive explanation of the concept by looking at an overview of regional integration. Based on the overview, the most relevant form of regional integration instituted in Africa is highlighted: economic integration. It is then follows with a detailed explanation of this process by way of a description of the six levels of economic integration.

Chapter two follows with an assessment of the ACP-EU Partnership, by laying-out the historical background of the trade relations between the two regions. It then looks at the Lomé Convention which symbolized the birth of the trade relationship between the EU and ACP. It then continues with an assessment of the EC bananas dispute which played a significant role in transforming the nature the EU-ACP trade arrangement from preferential to reciprocal. This is related to the next subject on the birth of the Cotonou Agreement.

Chapter 3 assesses the first case study which is the ECOWAS EPA. It looks at the negotiation procedure and structure between the EU and ECOWAS regions. It then discusses the interim agreements signed by Ghana and Ivory Coast. This helps lay a foundation to finally assess the effect the EPA, in its entirety, has on integration in the region.

⁷ New Trade Pacts Threaten Regional Unity, Africa Renewal, accessed, February 10, 2017, <http://www.un.org/africarenewal/magazine/october-2008/new-trade-pacts-threaten-regional-unity>

⁸ Ibid.

Chapter 4 looks at the second case study which is the SADC EPA. It also focuses on the negotiation process and structure. Additionally it assesses the interim agreement which was signed by Lesotho, Botswana, Mozambique, Swaziland and Namibia. In conclusion it looks at the effects the agreement has on integration in the region.

Finally, chapter 5 makes a comparative analysis of the ECOWAS and SADC EPA. Drawing from the analysis and the above case studies, it makes an assessment of the effects the EPAs generally have on regional integration in Africa.

General Overview of Regional Integration

1.1 Concept of Regional Integration

Regional integration involves the growth of “economic, institutional, and political linkages between countries that share geographical proximity.”⁹ It is equally the advancement of interdependence between states through the eliminating of constraints and obstructions to support cooperation. Notwithstanding, this arrangement is further facilitated through the reduction of trade barriers between the involved parties. In establishing and sustaining regional integration, states are confronted with four key strategic decisions:

1. States that will constitute the regional group.
2. The external policy of the regional group towards non-members.
3. The depth of the integration process, taking into consideration interdependence.
4. The vastness of the integration process considering which areas of institutional, economic, political cohesiveness will be incorporated.¹⁰

These core elements form the basis of the regional integration agenda and its relevance to global trade. However, to understand the concept better it is necessary to look at the regional integration in its entirety especially, the key dynamics that influenced its emergence.

⁹ Vincent Tanyanyiwa, Constance Hakuna at al., “Challenges and Opportunities for Regional Integration in Africa: A Case Study of SADC” *Journal Of Humanities And Social Science* No.12 (2014) 106, <http://iosrjournals.org/iosr-jhss/papers/Vol19-issue12/Version-4/P019124103115.pdf>

¹⁰ Regional Integration and the EPAs, South Centre, accessed February 10, 2017, <https://www.southcentre.int/analytical-note-march-2007-5/#more-3745>

1.2 Key Definitions

The essence of regional integration lies in its capacity to give states which are distinct and separate the avenue to unite on the basis of common dependence and shared interest.¹¹

However relevant to this process, is the issue of state sovereignty to certain extents, to achieve a collective objective. Ernest Haas defined this notion from a political perspective as the, “process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political proclivities toward a new center, whose institutions possess jurisdiction over the pre-existing national states.”¹²

From an economic standpoint, it is a series of activities through which states within the same geographical region, unite to pursue like objectives and policies regarding issues of economic development or a particular economic field of shared benefits.¹³ This is usually, for the common benefit of all parties (participating states) involved. Conversely, from a trade perspective, it is expressed as the commercial policy of giving preferential treatment to a select group of nations within the configuration by eliminating or reducing trade barriers.¹⁴

The leading theory supporting regional integration is however, centered on the work of Jacob Viner.¹⁵ According to Viner (1950) regional integration is not bound to create an advantageous outcome in economic efficiency.¹⁶ He was of the opinion that regional integration and specifically the impacts of trade creation, can potentially have trade diversion effects on participating states and even third party states that are non-party to any agreement.¹⁷ This is a

¹¹ Ibid

¹² Boussiratou Gbadamassi et al., “Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes” University of Ghana (2014): 15
[http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi %20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf](http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf)

¹³ Ibid., 15

¹⁴ Regional Integration and the EPAs, South Centre, accessed February 10, 2017,
<https://www.southcentre.int/analytical-note-march-2007-5/#more-3745>

¹⁵ George C. Lwanda et al., “Can EPAs strengthen regional integration in southern Africa: A qualitative analysis” No.27 (2011):6 <https://www.yumpu.com/en/document/view/10528743/can-epas-strengthen-regional-integration-in-southern-africa-a-5>

¹⁶ Ibid., 6

¹⁷ Lwanda et al., “Can EPAs strengthen regional integration in southern Africa: A qualitative analysis,” 6

very relevant view that will be discussed further in a later section (under Regional Trade Agreements).

Researchers such as, Vanek (1965), Ohyama (1972), and Kemp (1964) built further on Viner's theory. The key difference in their opinion was,

“It is always possible for a regional integration agreement, formed among an arbitrary group of countries, to structure itself in such a way as to make the member countries better off without making any of the non-member countries worse off.”¹⁸

Years Later, Krugman (1991) developed the term “economic geography.”¹⁹ Which seeks to define the factors that lead to regional concentration of economic activity. It is founded on the notion that there is a desire for increasing returns to scale.²⁰ Krugman's analysis shows that the ultimate causes of the location of economic activity will be trade cost considerations and economies of scale.²¹ He further explains that, economies of scale can be developed in regional blocs by focusing production activity in a specific location instead of running different activities in separate countries.

1.3 The development of Regional Integration

It is thus evident based on early works by Viner that regional integration is not a new phenomenon. It emerged during the post war era in Europe through the formation of the ECSC (European Coal and Steel Community) in 1951, the EEC (European Economic Community) in 1957 and the EFTA (European Free Trade Association) in 1960.²² The levels of economic growth

¹⁸ Report on Regional Cooperation in the ACP, ACP EU Joint Assembly, accessed February 10 2017, http://www.europarl.europa.eu/intcoop/acp/94_01/020_00_01_en.htm

¹⁹ George C. Lwanda et al., “Can EPAs strengthen regional integration in southern Africa: A qualitative analysis” No.27 (2011):6 <https://www.yumpu.com/en/document/view/10528743/can-epas-strengthen-regional-integration-in-southern-africa-a-5>

²⁰ Ibid., 6

²¹ Lwanda et al., “Can EPAs strengthen regional integration in southern Africa: A qualitative analysis,” 6

²² Boussiratou Gbadamassi et al., “Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes” University of Ghana (2014): 15, accessed on February 10, 2017 http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integr

attained by the European community from this integration process acted as a catalyst to developing nations especially within the African continent to integrate their economies in the late 1950's into the early 1960s.²³ The aim was also to secure the benefits of economic integration while guarding themselves from the vast competition and know-how of the European Economic Community which had dominated the global trade arena. This further led to the creation of several integration structures worldwide such as LAFTA (The Latin American Free Trade Association) in 1960, CACM (Central America Common Market) in 1961, UDEAC (Central African Economic and Customs Union) in 1964, ASEAN (Association of South-East Asian Nations) (1976) and CFTA (Caribbean Free Trade Association) in 1968.²⁴

Within the African region, integration has been based on the customary model of political cooperation through economic cooperation and geographical proximity and contiguity of states.²⁵ However, dominant external and internal forces are considerably transforming economic associations within the African continent and with the rest of the world at large. Relevant features of these changes are evident with the new trade geography, in which developed nations seek deeper cooperation with less developed states, mainly, through new institutions of international trade like the World Trade Organization (WTO) and bi-lateral trade agreements such as Economic Partnership Agreements (EPAs).²⁶

Furthermore, the changes in the global trading system have been a major driving force in Africa's regional integration agenda.²⁷ With the evolving of the world trading regime in the last 20 years, there has been a general understanding that free trade is essential for economic

[ation%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf](#)

²³ Caroline Freund, Emanuel Ornelas et al., "Regional Trade Agreements" Policy Research Working Paper No.5314 (2010):7 accessed on February 10, 2017

<https://poseidon01.ssrn.com/delivery.php?ID=756021072024120100121080088011023069047032009051054004022098008100099011051019060042123082098104117105003012035106103089066123080068007117014121087127065074089008025119083083066081103015072&EXT=pdf>

²⁴ Maurice Schiff et al., Regional Integration and Development (Oxford: Oxford University Press, 2003),2.

²⁵ Regional Integration and Trade in Africa: Augmented Gravity Model Approach, African Development Bank, accessed February 10, 2017,

https://www.afdb.org/uploads/tx_lafdbpapers/Regional_Integration_Trade_in_Africa_1373530866.pdf

²⁶ Ibid.

²⁷ S K B, Asante Regionalism and Africa's Development (1997) Macmillan Press Ltd London

growth.²⁸ The GATT (General Agreement on Tariffs and Trade) which was established over 50 years ago but later changed into the WTO has played a key role in the reduction of tariff and non-tariff barriers.²⁹ This has propelled the expansion of world trade and greater integration of world markets. The response of regions and states response to these new developments have to a reasonable extent influenced their share of the benefits of the new dispensation of trade liberalization.

Nonetheless, Africa has unfortunately had a marginal role in global trade, with supply-side constraints and restrictions in market access with the major economies being a primary cause.³⁰ Additionally limited intra-African trade due to fragile regional integration has also played a key role in constraining prospects for learning-by-doing for African states. The domestic markets are not functioning at an optimal level to offer substantial avenues for or adequate support for the export sector to survive or endure during inevitable shocks in the international market.³¹

It is for this reason that regional integration has become a critical focus for African states as this stands to be the ultimate tool to ensure a large market size for trade facilitation and a stimulus for regional economic development. According to Adebayo Adedeji, “economic cooperation among African states is a sine qua non for the achievement of national socio economic goals, and not an “extra” to be given thought to after the process of development is well advanced.”³² Thus due to the risky and extremely competitive international export market, a larger African

²⁸ Regional Integration and Trade in Africa: Augmented Gravity Model Approach, African Development Bank, accessed February 10, 2017,

https://www.afdb.org/uploads/tx_lafdbpapers/Regional_Integration_Trade_in_Africa_1373530866.pdf

²⁹The GATT years: from Havana to Marrakesh, World Trade Organization, accessed February 10, 2017

https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm

³⁰ Ashford C. Chea et al., Sub-Saharan Africa and Global Trade: “What Sub-Saharan Africa needs to do to maximize the Benefits from Global Trade Integration, Increase Economic Growth and Reduce Poverty?” International Journal of Academic Research in Business and Social Sciences, 2, no.4 (2012) 360

<http://www.hrmars.com/admin/pics/726.pdf>

³¹ Ibid., 360

³² Boussiratou Gbadamassi et al., “Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes” University of Ghana (2014): 15, accessed February 10, 2017
http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

market presents an advantage for corporations in the continent to learn by doing while emphasizing the necessity for deeper regional integration.

1.4 Regional Economic Integration

As previously discussed, regional integration has been the major objective of African states for the realization of economic development. Hence regional economic integration has taken center stage in national state policies in the continent.³³ There are several levels of interdependence when dealing with regional economic integration. They range from fairly weak integration agreements to fairly robust and strong agreements. Generally speaking there are six stages of economic integration namely; a preferential trade agreement (also described as a preferential trade area), free trade area (FTA), a trade bloc, a common market, a customs union and an economic and monetary Union (the highest form of economic interdependence). Figure I.0 shows these stages and their main characteristics.

³³ Ibid.,16

Figure 1: The key features of the six stages of regional integration

Integration Arrangement	Free Trade Among Members	Common Commercial Policy	Free Factor Mobility	Common Monetary and fiscal policies	Central government
Preferential Trade Area (PTA)	No	No	No	No	No
Free Trade Area (FTA)	Yes	No	No	No	No
Customs Union	Yes	Yes	No	No	No
Common Market	Yes	Yes	Yes	No	No
Economic Union	Yes	Yes	Yes	Yes	No
Political Union	Yes	Yes	Yes	Yes	Yes

Source: Development Planning Division, Working Paper Series No. 27

I. Preferential Trade Area:

Here member states impose lower tariffs on imports produced by other members rather than on imports from non-member states. This is done whilst preserving the privilege to single-handedly control tariffs on imports from non-member states³⁴.

II. Free Trade Area:

This happens to be the most fundamental type of economic cooperation. Here member states eliminate all barriers to trade amongst themselves but are allowed to unilaterally establish

³⁴ Preferential Trade Agreements, Yale Economics, accessed February 10, 2017, <http://www.econ.yale.edu/~srinivas/PrefTradeAgreements.pdf>

trade policies with nonmember states.³⁵ A typical example is NAFTA (the North Atlantic Free Trade Agreement).

III. Common Market:

This provides for the formation of economically integrated markets between member states. Here not only are trade barriers removed but also any impediments relating to the movement of capital and labor between member states.³⁶ Similar to a customs union, member states establish a shared trade policy to govern trade with states that are nonmembers of the common market. The Common Market for Eastern and Southern Africa (COMESA) is a good example of this.

IV. Customs Union

This type of integration allows for economic cooperation similar to that of a free trade zone. Additionally all barriers to trade are eliminated between member states. The key difference however between this form of integration and a free trade area is that the member states consent to engage in trade with non-member states in like fashion. An example is the Gulf Cooperation Council (GCC).³⁷

V. Economic and Monetary Union

³⁵ Jo-Ann Crawford et al., *The Changing Landscape of Regional Trade Agreements* (Geneva-WTO Publications), 3.

³⁶ *Ibid.*, 3

³⁷ Customs Union, GCC-STAT, accessed February 10, 2017,

<http://gccstat.org/images/gccstat/workshops/IMTSWorkshop-GCCSTAT-UNSD-2016-0-/day2/Day2-SessionIII.b-GCCSTAT-Data-compilation-in-the-case-of-GCC-CU.pdf>

Here states enter into an economic cooperation to eliminate barriers to trade and implement shared economic policies.³⁸ In this cohesive economic union member states also adopt a common currency. A typical example is the EMU (European Economic and Monetary Union).

VI. Trade Bloc

This is simply an intergovernmental agreement that entails the removal of regional barriers to trade. Tariffs or non-tariffs barriers are either reduced or completely removed. Some trading blocs in creating economic cooperation have led to agreements that are more substantive than others.³⁹

Underpinning the above stages of regional economic integration is the key concept of Regional trade agreements and to better analyze the effects of the EPA on regional integration in Africa it is pertinent to effectively discuss regional trade agreements.

1.5 Regional trade agreements

Relevant to this research and even regional integration as a whole is Regional Trade Agreements (RTAs). In simplified terms RTAs are intergovernmental agreements that promote and regulate trade undertakings in particular regions of the world. Regional trade agreements have the possibility of exclusively seeking trade integration or could likely constitute a broader regional integration agreement that aspires for deeper integration consisting of governance, political matters and trade policies. The main goal of RTAs is the elimination of trade barriers between contracting parties.

The WTO recognizes RTAs as agreements that adhere to particular laid out standards. As RTAs increasingly cover both trade in goods and services, the standards that pertain to trade in goods

³⁸ European Economic and Monetary Union (EMU), Investopedia accessed, February 10, 2017
<http://www.investopedia.com/terms/e/emu.asp>

³⁹ Trading blocs, Economics Online, accessed February 10, 2017,
http://www.economicsonline.co.uk/Global_economics/Trading_blocs.html

is “substantially all trade”⁴⁰ and for services they extend to “substantial sectoral coverage.”⁴¹ Although the World Trade Organization is fundamentally the only institution that governs global trade, the increase in the rate at which RTAs are being sought after makes them a force to be reckoned with in the multilateral trading system.

Nevertheless, to ensure that RTAs complement and not substitute the global trading system, the WTO has established certain regulations that must be fulfilled to ensure compatibility. The fulfillment of these regulations is guaranteed by the obligation to give notice under GATS article V 7(a) and GATT article XXIV 7 (a).⁴² These regulations compel members of an RTA to inform the WTO about their instituted agreements. They also require contracting parties to undergo an evaluation process in a committee established for RTAs and assess whether they meet the requirements specified in them.⁴³

Significantly, over 250 of them have been notified to the WTO.⁴⁴ Additionally it is estimated that more than half of global trade is presently undertaken within prospective or already legitimized regional trade agreements. This new trend of forming RTAs has therefore influenced a shift from the traditional notion of regional integration being primarily between states of close geographical proximity.⁴⁵ States are now extending their relations beyond their neighbors and this is evident in the novel development of North-South regional trade agreements.

Furthermore it is imperative to note that, this fast growing trade relation between developed and developing states has not only undermined geographical immediacy but further incorporated a broader range of negotiating regions comprising of trade in services.⁴⁶ Some

⁴⁰ The WTO and preferential trade agreements: From co-existence to coherence, World Trade Organization, accessed, February 10, 2017, https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf

⁴¹ Ibid.

⁴² General Agreement on Tariffs and Trade 1994, World Trade Organization, accessed February 10, 2017, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_09_e.htm

⁴³ Ibid.

⁴⁴ Caroline Freund et al., “Regional Trade Agreements” Policy Research Working Paper no.5314 (2010) 3 <https://poseidon01.ssrn.com/delivery.php?ID=31202511612211212610112200607112712008503501900903409074124013044063038024017056001028068118006100026070033067098073067077089083000109023024071074005027119087078025000125019111004073001002&EXT=pdf>

⁴⁵ Ibid.,3

⁴⁶ WTO Symposium on Assessment of Trade in Services, World Trade Organization, accessed, February 11, 2017 https://www.wto.org/english/tratop_e/serv_e/symp_mar02_unctad_e.doc

examples of the North-South regional trade agreements comprise of the US-Chile Free Trade Agreement (FTA) of 2003, the EU South Africa Trade Development and Cooperation Agreement (TDCA) of 1999, and the Economic Partnership Agreement between the EU and the ACP countries (EPAs).⁴⁷

Trade relations, which were once founded on unilateral non-reciprocal preferences given to developing states through North-South relations, are now being changed to reciprocal trade agreements covering a vast range of areas.⁴⁸ This is illustrated in the conversion of the preference-giving Lomé Convention to the reciprocity centered Cotonou Agreement between the 79 ACP states and the EU. Alternative preferential trade agreements also include Japanese and Canadian Generalized System of Preferences for developing states and the United States' African Growth and Opportunities Act (AGOA) and its Generalized Scheme of Preferences (GSP). However, by negotiating reciprocal regional trade agreements like the EPAs, developing states give up their advantageous rights to non-reciprocal agreements. This is a policy change that has substantial consequences on developing state's policy options and most importantly regional integration arrangements specifically in the case of African states.

Relevant to the discussion on liberalization initiatives or the removal of trade barriers under RTAs is 'trade creation.'⁴⁹ This is a vital term used when these initiatives generate trade that would not have otherwise existed. These initiatives lead to a specific country receiving the supply of goods or/and services from the most competent producer of the product. As a result, trade creation usually generates an output of enhanced economic welfare. On the other hand, 'trade diversion' describes biased trade liberalization which deters or diverts trade away from the more competent supplier not party to the RTA, to the advantage of the less competent supplier party to the RTA. In certain cases trade diversion may be robust enough to offset trade

⁴⁷ Ibid.

⁴⁸ CARICOM: Challenges and Opportunities for Caribbean Economic Integration, CRS Report for Congress accessed February 11, 2017 http://www.sice.oas.org/TPD/CAR_EU/Studies/CRSCARICOM_Challenges_e.pdf

⁴⁹ Caroline Freund et al., "Regional Trade Agreements" Policy Research Working Paper no.5314 (2010) 3 <https://poseidon01.ssrn.com/delivery.php?ID=31202511612211212610112200607112712008503501900903409074124013044063038024017056001028068118006100026070033067098073067077089083000109023024071074005027119087078025000125019111004073001002&EXT=pdf>

creating impacts and thus minimize a state's national welfare. Equally, in certain situations national welfare may advance in spite of trade diversion.

An illustration of trade creation is seen in table 1.1. Take for example that the cost of production of Textiles in Nigeria; Ghana and Indonesia are \$50, \$40 and \$30 respectively. In this case no tariffs are imposed on Textiles from Indonesia and Ghana by Nigeria. This means Nigeria would opt to import its palm oil from Indonesia before considering Ghana if her obligation is not totally met by the low-cost producer (Indonesia).

Figure 2: Price of Textiles in Nigeria, Ghana and Indonesia

Country	Cost of Production (\$)
Nigeria	50
Ghana	40
Indonesia	30

Source: Author's Compilation

Trade Diversion

All the same, if Nigeria and Ghana for example decide to have an FTA with a common external tariff, yet Nigeria imposes a 50% non-discriminatory import duty on Textiles products the results will be as follows:

Figure 3: Price of Textiles in Nigeria, Ghana and Indonesia after 50% import duty

Country	Cost of Production (\$)
Nigeria	50
Ghana	40
Indonesia	45

Source: Author's Compilation

Thus Nigeria will be importing palm oil from Ghana at the price of \$40. Based on this development, import would have moved from the cheapest supplier (Indonesia) to the high cost supplier Ghana that is within the FTA or customs union. This scenario is thus termed as trade diversion from Indonesia whereby import from a more effective producing state has been replaced by imports from a less effective state within an economic integration union. Yet, it also implies trade creation towards Ghana.

According to Robinson (1996) a key determining factor of the accomplishment of any regional trade agreement is that the dissemination of losses and/or gains should be cautiously assessed.⁵⁰ The second step is to establish cautiously through-out, recompense mechanisms.⁵¹ Underpinning, all this is that, for an RTA to be successful all members must be ready to forgo some amount of state sovereignty to a supranational body.⁵² Hence an approach of this nature identifies that in most cases there will usually be an outcome of winners and losers, a trend quite common to trade partnerships between the EU and ACP states.

⁵⁰ George C. Lwanda et al., "Can EPAs strengthen regional integration in southern Africa: A qualitative analysis" No.27 (2011):6 <https://www.yumpu.com/en/document/view/10528743/can-epas-strengthen-regional-integration-in-southern-africa-a-5>

⁵¹ Ibid., 7

⁵² Lwanda et al., "Can EPAs strengthen regional integration in southern Africa: A qualitative analysis," 7.

Chapter Two

Africa and EU Trade Relations

2.1 ACP-EU Partnership

The relationship between the ACP states and the EU can be traced back to 1957 when the European Common Market formed under the Treaty of Rome was established.⁵³ The main purpose of the treaty was to finally institute a joint market between European states. This arrangement was however expected to encounter complications, due to its scheme that provided preferential treatment to external regions with which certain members still had colonial ties.⁵⁴ Moreover, in the event where a common market was instituted among the European states it would imply the application of a common external tariff to all imports into the region excluding those from former colonies.⁵⁵

As a result, France insisted that Part IV was incorporated into the agreement, thus creating a legal basis to permit the issuing of preferential treatment to imported products from previous colonies.⁵⁶ Furthermore the customs duties imposed on imports from other states with special

⁵³ E. Kameni, "Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC" *University of Botswana Law Journal* 127 (2008) 129, [file:///C:/Users/william/Downloads/7UBotswanaLJ127%20\(1\).pdf](file:///C:/Users/william/Downloads/7UBotswanaLJ127%20(1).pdf)

⁵⁴ *Ibid.*, 129.

⁵⁵ Lorand Bartels et al., "The Trade and Development Policy of the European Union" *European Journal of International Law* 18, no 4 (2007) 720 https://oup.silverchair-cdn.com/oup/backfile/Content_public/Journal/ejil/18/4/10.1093/ejil/chm042/2/chm042.pdf?Expires=1487543758&Signature=FfqUHUUpBx3ksKF0WDrTNnQJCbZ64thaQw-tnz3ljNB2CXKcFteZLeJdaltKGsgbDsj05M9V-6gCLcE1vuoNZs7ebPJbsJLha3fRIytePstPs9LmNpRHEm2tlKiorFsSVa13VTaaNB-Xq2HHnqMB5triBt-gfdslFwRUkqJZOuolbvAN2v5Ue~8EVJdua6MmNu-sMh0ynsyVpUCdYEA6fsGDheiqY46GiB10uAzaPeUK3ll1cxFNmPDCGto8-iQ7UDMEzaUD9M43i309B3FLhjHO-4oc08aNb3BrvpEC777KDIjfZu~xt7WObGqJ4jPbp86kH61lJvWxYoTME6P2A__&Key-Pair-Id=APKAIUCZBIA4LVPVW3Q

⁵⁶ *Ibid.*, 720

relations with European states and former colonies had to be gradually repealed.⁵⁷ This also included the abolition of tariffs pertaining to products from member states.

Since then, the EU-ACP trade relationship has been controlled by a number of conventions starting from the Yaoundé I to the Cotonou Partnership Agreement (CPA).⁵⁸ The Yaoundé convention paved the way for the Lomé Agreements (Lomé I 1976, Lomé II 1981, Lomé III 1985, Lomé IV 1989) which was tailored towards promoting economic integration between the Associated African and Malagache countries and the European Common Market.⁵⁹ It created a trade and support system that allowed products from previous European colonies free entry to the European market. Against this backdrop, it is necessary to further discuss the agreement that significantly influenced trade relations between the EC and African states.

2.2 The Lomé Convention

As already mentioned, the Lomé Convention (a preferential trade arrangement) was pivotal to the trade relationship between the EC and ACP.⁶⁰ It was categorized as a highly inventive development cooperation trade regime. Non-reciprocal trade preferences and numerous export price stabilization mechanisms, including foreseeable aid flows with its administration

⁵⁷ Bartels et al., "The Trade and Development Policy of the European Union" 721

⁵⁸ E. Kameni, "Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC" University of Botswana Law Journal 127 (2008) 129, [file:///C:/Users/william/Downloads/7UBotswanaLJ127%20\(1\).pdf](file:///C:/Users/william/Downloads/7UBotswanaLJ127%20(1).pdf)

⁵⁹ Lorand Bartels et al., "The Trade and Development Policy of the European Union" European Journal of International Law 18, no 4 (2007) 722 https://oup.silverchair-cdn.com/oup/backfile/Content_public/Journal/ejil/18/4/10.1093/ejil/chm042/2/chm042.pdf?Expires=148754375&Signature=FfqUHUUpBx3ksKF0WDrTNnQJCbFz64thaQw-tnz3ljNB2CXKcFteZLeJdaltKGsgbDsj05M9V-6gCLcE1vuoNZs7ebPJbsJLha3fRlytePstPs9LmNpRHEm2tIKiorFsSVa13VTaaNB-Xq2HHngMB5triBt-gfdslFwRUkqUZOuolbvAN2v5Ue~8EVJdua6MmNu-sMh0ynsyVpUCdYEA6fsGDheiqY46GiB10uAzaPeUK3ll1cxFNmPDCGto8-iQ7UDMEzaUD9M43i309B3FLhjHO-4oc08aNb3BrvpEC777KDlJfZu~xt7WObGqJ4jPbp86kH611JvWxYoTME6P2A_&Key-Pair-Id=APKAIUCZBIA4LVPVW3Q

⁶⁰ Lomé Convention, Agriculture and Trade Relations between the EU and the ACP Countries in 1975-2000, TradeAG, accessed December 8 2016, <http://ageconsearch.umn.edu/bitstream/18853/1/wp060020.pdf>

was delegated solely to the ACP.⁶¹ The Lomé agreements were thus perceived to be very advanced strategies that would eventually support governments of ACP states to attain their development objectives.

However over the years, especially after the cold war, the Lomé convention came under immense pressure.⁶² This ultimately affected the arrangement's capacity to achieve expected results. Thus although the Lomé Convention provided ACP countries with preferential access to EU markets, their share in EU imports declined from almost 8 percent in 1975 to 2.8 percent in 2000.⁶³ Furthermore it was quite remarkable that developing states which were not even ACP members and which did not profit from the preferential trade agreement performed better in their exports to the EU than the ACP states.⁶⁴ This surprise outcome was such that, commodity protocols and the export price stabilization procedures which provided sustenance to several small ACP states did not create the much required export diversification of the ACP.

Additionally, in 2007 more than three quarters of imports that entered the EU from the ACP comprised of primary goods largely energy (42%) and agricultural products (23.8%).⁶⁵ Also significant was the fact that 31 ACP states in 2006 depended solely on one agricultural product for over 20 percent of their total export incomes, thus resulting in 10.2 percent of EU agricultural imports coming from the ACP.⁶⁶ Similarly in 2007 the sum of goods from the ACP barely accounted for 2.82 percent of the EU's total imports.⁶⁷ Thus the decline of prices on the EU market owing to its common agricultural policy meant that ACP exports experienced

⁶¹ Ibid

⁶² From the Lome Convention to the Economic Partnership Agreements: an assessment of trade relations between the ECOWAS and the EU, Academia.edu, accessed December 8, 2016 http://www.academia.edu/625050/From_the_Lome_Convention_to_the_Economic_Partnership_Agreements_an_assessment_of_trade_relations_between_the_ECOWAS_and_the_EU

⁶³ The Cotonou Agreement: An EU Replicate, European Consortium for Political Research, accessed December 8, 2016 <https://www.google.com.gh/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=ecpr>

⁶⁴ E. Kameni, "Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC" University of Botswana Law Journal 127 (2008) 130

⁶⁵ Ibid. 130

⁶⁶ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed December 8, 2016 <http://ecdpm.org/wp-content/uploads/2013/11/EPA-Negotiations-Regional-Integration-Africa-2008.pdf>

⁶⁷ E. Kameni, "Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC" University of Botswana Law Journal 127 (2008) 130

tremendous loss from agricultural exports. Besides all the unsatisfactory outcomes of the preferential trade regime of the EU in favor of ACP states there was growing tension between the obligations of the WTO and the preferential arrangement.

The preferential access the ACP obtained to EU markets at reduced or zero tariffs without the need for reciprocity was viewed as a violation of the MFN (Most Favored Nation) principle.⁶⁸ Previously, parties to the GATT accepted certain preference programmes as vehicles of economic development and trade liberalization for developing states. They incorporated them in a number of waivers safeguarded under the GATT for the Lomé Conventions.

However in 1979, after the adoption of the enabling clause by parties to the GATT a deviation was made from the MFN principle at the end of the famous Tokyo round.⁶⁹ Additionally the intrinsic prejudice between ACP and non-ACP developing states on historical lines (since the ACP members primarily comprise of former European colonies) did not conform to the WTO criteria and thus failed to fall under the enabling clause.⁷⁰ The clause on the other hand permitted developed states to differentiate in favor of developing states but did not permit developing states to discriminate amongst themselves. Therefore certain preferential treatment like those given to the ACP states was not covered by the enabling clause unless it was on the basis of justifiable needs.⁷¹

The relationship of the ACP countries with the EC lasted for a reasonable period of time without objections from parties to the GATT. The trade arrangement was governed by the frequent modification of the Lomé Convention. In spite the effort to maintain this preferential trade relationship, the buildup of political and socio-economic changes in the ACP states; including critical tension on the international scene, emphasized the need for a re-examination of

⁶⁸ Cosmas Milton, Obote Ochieng et al., "The EU-ACP Economic Partnership Agreements and the 'Development Question': Constraints and Opportunities Posed by Article XXIV and Special and Differential Treatment Provisions of the WTO" *Journal of International Economic Law*, 10, no.2 (2007) 365 <https://academic.oup.com/jiel/article-abstract/10/2/363/808820/The-EU-ACP-Economic-Partnership-Agreements-and-the?redirectedFrom=fulltext>

⁶⁹ *Ibid.*, 366

⁷⁰ E. Kamenj, "Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC" *University of Botswana Law Journal* 127 (2008) 129

⁷¹ *Ibid.*, 130

cooperation among the two regions.⁷² The turn of events reached a climax in the mid-1990s when the legitimacy of the trade arrangement was tested in the EC-Bananas dispute. The aftermath of this case led to a turnaround in the trade relations between the ACP states and the EU.

2.3 The EC Bananas dispute I, II and III

The EC bananas dispute consisted of three separate GATT/WTO cases.⁷³ The first two cases Bananas I and II were introduced under the GATT 1947 by five banana supplying Latin American states namely- Nicaragua, Colombia, Costa Rica, Guatemala and Venezuela.⁷⁴ As stated above, the preferential treatment ACP states gained from the EU continued without any objections from the parties to the GATT. In 1993 following the EC-bananas dispute I & II, specific meaning was finally given to the compatibility and legality of the ongoing preferential treatment in accordance with GATT provisions.⁷⁵ The interpretation was evident in the introduction of Regulation 404/93 by the EU on 1 July 1993 which underscored favorable treatment of imports from ACP states and local producers.⁷⁶

The regulation instituted by the EU did two noteworthy things. First it created a tariff system and highlighted certain key objectives listed in the details of the preamble.⁷⁷ These included but were not limited to, the permitting of the gratis movement within the EC region, a shared

⁷² Bonapas Onguglo, Taisuke Ito et al., How to make EPAs WTO compatible?:Reforming the rules on regional trade agreements, no.40 (2003)16 <http://ecdpm.org/wp-content/uploads/2013/11/DP-40-Make-EPAs-WTO-Compatible-Reforming-Rules-Regional-Trade-Agreements1.pdf>

⁷³ European Communities — Regime for the Importation, Sale and Distribution of Bananas, World Trade Organisation, accessed December 10, 2017 https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm

⁷⁴ Ibid.

⁷⁵ European Communities- Regime For The Importation, Sale, and Distribution of Banannas, World Trade Organization, accessed December 10 2016, [http://www.worldtradelaw.net/reports/226awards/ec-bananas\(226\)\(us\).pdf.download](http://www.worldtradelaw.net/reports/226awards/ec-bananas(226)(us).pdf.download)

⁷⁶ Council Regulation (EEC) No 404/93, European Union law, accessed December 10, 2016 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31993R0404>

⁷⁷ Ibid.

market for goods from the agricultural sector, and the recognition of the international commitments of the EC particularly the Lomé Convention.⁷⁸

Prior to the institution of the novel regulation, 62% of banana imports into the EC originated from Latin America in comparison to 18% which originated from the ACP states. Thus based on the directive of the displeased Latin American states (Nicaragua, Colombia, Costa Rica Guatemala and Venezuela) two separate GATT panels were created to decide on the legitimacy of the newly introduced banana arrangement.⁷⁹ The deduction the panel reached in its 1993 and 1994 unimplemented reports was that, the preferential treatment extended to ACP countries was not in accordance with the principles of the GATT.⁸⁰ The report released in 1993 expressed the view that some areas of the banana trade arrangement engaged in by certain EC member states was not in accordance with a number of GATT obligations.

Similarly, it was discovered that based on the panel report of 1994, certain areas of the shared cooperation for the trade in banana would be non-conforming to GATT rules after 1 July 1993.⁸¹ It also indicated that, the Lomé Convention comprised of states that were not parties to the GATT and simultaneously not in accordance with provisions under article XXIV of the agreement. The main issue underlined in this regard, was the non-reciprocity clause and the point that the preferential trade arrangement did not foster the liberalization of “substantially all trade”⁸² between ACP countries and the EC. As a result the Lomé Convention was found as

⁷⁸ European Communities- Regime For The Importation, Sale, and Distribution of Banannas, World Trade Organization, accessed December 10 2016, [http://www.worldtradelaw.net/reports/226awards/ec-bananas\(226\)\(us\).pdf.download](http://www.worldtradelaw.net/reports/226awards/ec-bananas(226)(us).pdf.download)

⁷⁹ Ibid.

⁸⁰ E. Kameni, “Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC” University of Botswana Law Journal 127 (2008) 129

⁸¹ European Communities- Regime For The Importation, Sale, and Distribution of Banannas, World Trade Organization, accessed December 10 2016, [http://www.worldtradelaw.net/reports/226awards/ec-bananas\(226\)\(us\).pdf.download](http://www.worldtradelaw.net/reports/226awards/ec-bananas(226)(us).pdf.download)

⁸² Commentary on development, globalization, and trade by Jonathan Dingel, Columbia University, accessed December 12 2016, <http://www.columbia.edu/~jid2106/td/archives/2008/06/overestimating.html>

an illegitimate ground to validate the incongruities for preferential treatment under article 1 of the GATT regarding imported bananas from the ACP.⁸³

Moreover, due to a lack of consensus by the GATT contracting parties and the EC, neither of the two reports was adopted, mainly because, it is basic procedure under the GATT that a consensus is necessary for the adoption of panel reports.⁸⁴ Despite the lack of consensus, the panel decision led to the amendment of the EC banana trade arrangement. This entailed four of the disgruntled states entering into a new trade relationship with the EC, namely the Framework Agreement on Bananas (BFA). Furthermore in exchange for not requesting the adoption of the panel report, these four states demanded some concessions which consisted of the power to issue export certificates and the allocation of specific quotas.

i. EC Bananas III Dispute

All the same, it is the EC Bananas III case that is specifically linked to the decision that influenced the renegotiation of the Lomé convention. Ecuador, Honduras, Guatemala, Mexico and the US brought a claim against the EC in 1995 for its banana trade arrangement. The complaint pertained to the sale, importation and distribution of bananas instituted by the council regulation (EEC) 404/93 of February 1993.⁸⁵ It was also centered on the joint cooperation of the trade in bananas and ensuing EC administrative and legislation provisions including those under the BFA. However, it is essential to note that there were two main elements that the claim pertaining to the EC banana trade arrangement focused on, namely, the EC's licensing methods non-traditional ACP bananas (specifically the activity function rules operator category rules) and country specific distribution of tariff quotas.

⁸³ A Review of the Interim Economic Partnership Agreement between Ghana and the European Union, Centre for Policy Analysis, accessed December 12, 2016, <https://www.cepa.org.gh/researchpapers/Ghana74.pdf>

⁸⁴ Understanding the WTO, World Trade Organization, Accessed December 12, 2016 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

⁸⁵ Council Regulation (EEC) No 404/93, European Union law, accessed December 10, 2016 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31993R0404>

The findings and conclusion of the panel highlighted that the apportionment of tariff quotas to a select few instead of all members based on their considerable interest in exporting bananas to the EC was not in accordance with article XXII of the GATT.⁸⁶ This provision of the GATT is highly relevant in this case since it deals with the non-discriminatory administration of quantitative limitations. Likewise, it was also discovered that certain features of the EC licensing arrangement discriminated against the import of bananas from Latin American states. It created disadvantageous situations for competition in comparison with the beneficial arrangement for the import of bananas from the ACP.⁸⁷ This was a violation of articles 1.2 and 1.3 of the licensing agreement.⁸⁸ More importantly, due to the banana trade arrangement's impact on the service providers of the complaining parties, the agreement was held to be nonconforming with the MFN clause in article II of the GATT and article XVII of the General Agreement on Trade in Services (GATS).⁸⁹ The panel thus suggested that the Dispute Settlement Body (DSB), require the EC to align its import arrangement in accordance with its commitments under the Licensing agreement, GATS and GATT.⁹⁰

Hence, the EC sought a GATT/WTO waiver to permit it to maintain its preferential agreement with the ACP states. A waiver was granted but expected to terminate by the year 2000.⁹¹ Parties to the Lomé Convention thus have to develop a trade relationship that was compliant with their commitments under the WTO. This led to the creation of the CPA (Cotonou Partnership Agreement) in 2000.

⁸⁶ EC Bananas III Dispute, World Trade Organization, accessed December 12, 2016
https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds27sum_e.pdf

⁸⁷ Ibid.

⁸⁸ Agreement on Import Licensing Procedures, World Trade Organization, accessed December 12, 2016
https://www.wto.org/english/res_e/booksp_e/analytic_index_e/licensing_01_e.htm

⁸⁹ Ibid.

⁹⁰ European Communities- Regime For The Importation, Sale, and Distribution of Banannas, World Trade Organization, accessed December 10 2016, [http://www.worldtradelaw.net/reports/226awards/ec-bananas\(226\)\(us\).pdf.download](http://www.worldtradelaw.net/reports/226awards/ec-bananas(226)(us).pdf.download)

⁹¹ E. Kamenj, "Reflections on the Interim Economic Partnership Agreement Between the European Union and SADC" University of Botswana Law Journal 127 (2008) 129

2.4 Cotonou Agreement

As mentioned previously the creation of the current ACP and EU arrangement was as a result of a waiver approved by members of the WTO. After the EC-Bananas dispute, panels of the GATT encouraged the EU to pursue a waiver for its non-reciprocal trade agreement with ACP states. However the process involved in obtaining the waiver proved rather challenging as some Latin American banana exporting states, the Philippines and Thailand committed to blocking the procedure. It took compensatory amendments in the nature of concessions for the waiver to be eventually granted in November 2001. Moreover before that date, in an attempt to guarantee full compliance with WTO obligations in June 2000, the EU signed the Cotonou Agreement with 77 ACP states. The agreement came into effect in April 2003 and its basic objective is reflected in Article 36 (1) which stipulates that

“In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organization (WTO) compatible trading arrangements, removing progressively barriers between them and enhancing cooperation in all areas relevant to trade.”⁹²

There are five main pillars underpinning the Cotonou agreement, including key objectives to alleviate poverty, establish new economic and trade partnerships as well as the development of a more strategic approach to cooperation.⁹³ The agreement further provides for the negotiation of the EPAs and for its full implementation by 2007.⁹⁴ Within the agreement, it is explained that the EPAs must institute a time frame for the gradual elimination of trade barriers between the contracting parties in conformity with article XXIV of the GATT.⁹⁵ Additionally the agreement includes a revision clause which makes provision for its modification every five years.⁹⁶ Based on this clause, in May 2004, negotiations were launched to re-examine the CPA

⁹² Article 36 (1), The Cotonou Agreement

⁹³ Article 19, The Cotonou Agreement

⁹⁴ Article 37 (1), The Cotonou Agreement

⁹⁵ Article 36(1), The Cotonou Agreement

⁹⁶ Article 95 (1), The Cotonou Agreement

and this was finally concluded in February 2005.⁹⁷ The overarching purpose of the re-examination procedure was to develop the quality and efficiency of the ACP-EU partnership, thus leading to the birth of the Economic Partnership Agreement.

2.5 The Economic Partnership Agreements

The weaknesses of the Lomé Conventions provided a backdrop for the creation of the Cotonou agreement. To address these challenges the ACP and the EU consented to drastically reform of the ACP-EU trade arrangement, through deliberations on a new development framework known as the Economic Partnership Agreements (EPAs).⁹⁸ The EPAs have not only efficiently substituted a trade agreement branded by unilateral trade preferences (Lomé Convention), but have also been perceived as compatible with article XXIV of the GATT and at the while being more integrated and development driven.⁹⁹

The economic partnership agreements are characterized as free trade arrangements. They are negotiated by the 75 ACP member states and the EC on behalf of the EU member states. The founding principle of this trade arrangement is the concept of reciprocity, thus retreating from decades of unilateral trade preferences by members of the EU to ACP countries.

Article 37 (1) of the Cotonou Partnership Agreement (CPA), it establishes that negotiations on the EPAs would commence in September 2002 and finally conclude no later than December 2007.¹⁰⁰ At the launch of the negotiations ACP states were split into six different regional groupings and each discussed a separate EPA agreement with the EC. The Cotonou Agreement further lays out four basic principles on which the EPA should be established.

⁹⁷ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed December 14, 2016 <http://ecdpm.org/wp-content/uploads/2013/11/EPA-Negotiations-Regional-Integration-Africa-2008>

⁹⁸ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed December 14, 2016 <http://ecdpm.org/wp-content/uploads/2013/11/EPA-Negotiations-Regional-Integration-Africa-2008.pdf>

⁹⁹ Ibid.

¹⁰⁰ The Cotonou Agreement, European Commission, accessed December 14, 2016 http://ec.europa.eu/europeaid/regions/african-caribbean-and-pacific-acp-region/cotonou-agreement_en

- I. *Reciprocity*: One of the key elements of an economic partnership agreement is the institution of an FTA. This intent is to gradually eliminate substantially all restrictions to trade between the parties involved.¹⁰¹ Furthermore it is a significant shift in the EU-ACP trade relationship and a fundamental necessity to ensure that the EPAs are WTO compliant, in this case particularly compliant with Article XXIV of the GATT. Moreover it signifies the first time ACP states would, on a reciprocal basis, have their markets open to products from the EU in an attempt to maintain their preferential entry to the EU market. The predominant justification for reciprocity rests on the norm that the ACP states liberalizing their markets in favour of the EU will augment competition with the economies of the ACP. Hence motivating foreign and local investment and the essential modification of their economies would foster development and growth.

- II. *Differentiation*: substantial value is directed towards special treatment and differentiation which confirms the North-South feature of the trade relationship. According to article 35.3 of the Cotonou Partnership Agreement, the EPAs will factor in the various stages of development of the contracting parties.¹⁰² Thus the EPAs are required to provide adequate room for special and differential treatment, asymmetry and flexibility. Moreover, small and vulnerable economies, landlocked states and small islands including LDCs are particularly expected to gain from differential and special treatment.

- III. *Development*: it is pertinent that the EPA negotiations are put in the context of the entire development goals of the CPA and ACP states. In order for the EPAs to be beneficial to the ACP countries it must be “politically sustainable, economically meaningful and socially acceptable.”¹⁰³ Therefore the EPAs cannot be characterized as regular trade arrangements. Instead they are constructed and designed to be

¹⁰¹ Article 37(7), Cotonou Agreement

¹⁰² Ibid.

¹⁰³ Economic partnership agreements (EPAs): the ACP regions and their relations with the EU, European Centre for Development Policy Management, accessed December 14, 2016, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.496.6032&rep=rep1&type=pdf>

development-centered agreements to facilitate economic growth and development in ACP states. This will eventually aid in eradicating high levels of poverty.

Regionalism: the EU evidently anticipates its negotiations with the ACP regional groups although it has not entirely ruled out the likelihood of finalizing agreements with individual states; an arrangement known as interim agreements. The norm of establishing upcoming trade cooperation on regional integration originates from the belief that regional integration is a fundamental means towards deeper integration into the global economy. It is additionally a stepping stone for the stimulation of investment and securing the needed trade restructurings (CPA Art. 35.2).¹⁰⁴ Thus ensuring the implementation of the EPAs within the various regional blocks is fundamental to the realization of the major objectives of the agreement.

¹⁰⁴ Article 35(2), The Cotonou Agreement

Chapter 3

ECOWAS EPA

Introduction

Since independence there has been significant support from African heads of state for regional integration. This has become an essential element of their development goals evident in the several regional integration arrangements (RIAs) in the continent. The West African sub-region has been to a large extent one of the success stories of deeper integration in Africa.¹⁰⁵

Established on 28 May 1975, the Economic Community of West African States (ECOWAS) consists of 15 West African countries.¹⁰⁶ Within its ambit is another integration arrangement known as the West African Economic and Monetary Union. Additionally, ECOWAS members have significantly improved macro-economically by attaining growth rates above 5%, placing them with the most vigorous developing regions in the world.¹⁰⁷

ECOWAS which reflects the African paradigm for integration follows a linear market model.¹⁰⁸ This form of integration comprises of a step by step approach beginning with the integration of labour, goods and capital markets, ultimately leading to fiscal and monetary amalgamation. A process that usually starts with a Free trade Area (FTA), a customs union, common market and

¹⁰⁵ Regional Integration in Africa, FAO Corporate, accessed, October 14, 2016, <http://www.fao.org/docrep/004/y4793e/y4793e0a.htm>

¹⁰⁶ Economic Community of West African States, International Democracy Watch, accessed October 14, 2016 <http://www.internationaldemocracywatch.org/index.php/economic-community-of-west-african-states->

¹⁰⁷ Economic Integration, Trade Facilitation and Agricultural Exports Performance In ECOWAS Member States, African Development Bank, accessed, October 14, 2016 https://www.afdb.org/uploads/tx_lafdbpapers/ECONOMIC_INTEGRATION_TRADE_FACILITATION_AND_AGRICULTURAL_EXPORTS_PERFORMANCE_IN_ECOWAS_MEMBER_STATES.pdf

¹⁰⁸ Regional Integration in Africa, World Trade Organization, accessed, October 14 2016 https://www.wto.org/english/res_e/reser_e/ersd201114_e.pdf

then followed by the incorporation of fiscal and monetary matters to finally institute the economic union.¹⁰⁹

The EU for a number of years has been one of Africa's main investment, development and trade partners. As already highlighted in the previous chapter, trade between the two regions was regulated by a number of Lomé Conventions, thereby giving African states with the exclusion of South Africa, unilateral advantageous access to EU markets. It was in June 2000 that African countries and the EU took the progressive step of ratifying the Cotonou Agreement which enabled talks of WTO acquiescent Economic Partnership Agreements.¹¹⁰ It is evident that the nonreciprocal agreements under the Lomé Convention would have to be altered to make room for a new policy arrangement under the EPA. The proposed direction was for the individual states to unilaterally disregard all quantitative restrictions and tariffs that made up the general system of preference in Lomé.¹¹¹ This would then be substituted with a reciprocal trade liberalization arrangement for virtually all ongoing trade among the EU and ECOWAS states.

The fundamental objectives of the ECOWAS-EPA include but are not limited to:

- I. Ensuring developing and least developed countries gain additional cutbacks off tariff appreciation in EU markets,
- II. Instituting the steady liberalization of ECOWAS countries markets towards the EU in accordance with WTO rules,
- III. The considerable minimization of policies that interfere with trade in exchange for the removal of preferential treatment and the elimination of non-tariff barriers to trade,
- IV. To take into full consideration the peculiar developmental interests and demands of the ECOWAS region.¹¹²

¹⁰⁹ Preferential Trade Agreements, Yale Economics, accessed October 16, 2016

<http://www.econ.yale.edu/~srinivas/PrefTradeAgreements.pdf>

¹¹⁰ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹¹¹ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹¹² Ibid.

The EPA in principle is intended to be adjustable within the confines of the WTO provisions in instituting the time frame of product coverage, interim periods and the level of disproportionalities; in the planned schedule for eliminating the different market blockages.¹¹³ Moreover contrary to WTO law, the exact threshold at which goods can be exempt from liberalization has still not been established although it has been a key item of discussion. Nonetheless there is much optimism that most, if not all products will be included in the proposal for reciprocal liberalization.¹¹⁴ Thus despite the term “substantially all”¹¹⁵ not being clearly articulated, the EU has over the years expressed its view on its meaning in WTO talks. It has proposed a quantifiable approach in interpretation as pertaining to the amount of trade covered, instead of qualitative analysis which is seen as ideal by certain members in the WTO.¹¹⁶ Article XXIV of the WTO agreement, explains “substantially all”¹¹⁷ as 80% to 90% of all trade between contracting parties.¹¹⁸ This indicates that the ECOWAS states are likely to be required to open up almost 85% of its market to the EU.¹¹⁹

3.1 Negotiation Principles

¹¹³ Economic Partnership Agreement, Economic Community of West African States, accessed October 16, 2016 <http://www.ecowas.int/doing-business-in-ecowas/epa/>

¹¹⁴ Ibid.

¹¹⁵ Commentary on development, globalization, and trade by Jonathan Dingel, Columbia University, accessed December 12 2016, <http://www.columbia.edu/~jid2106/td/archives/2008/06/overestimating.html>

¹¹⁶ Regional Integration and the EPAs, South Centre, accessed February 10, 2017, <https://www.southcentre.int/analytical-note-march-2007-5/#more-3745>

¹¹⁷ Ibid.

¹¹⁸ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹¹⁹ Ibid.

The general negotiating directive of the EPA is to create procedures that safeguard complete adherence of RTAs between the EU and ACP countries with appropriate WTO requirements.¹²⁰

The quintessence of the EPA presents a series of amendments to the conventional trade relations between ACP countries and the EU. Although the goal is to guarantee that the accomplishments of the Lomé and Cotonou Conventions are sustained, it is also evident that the trade relations between the EU and ACP will have to be significantly restructured to ensure that they become compatible with WTO regulations.

The EPA negotiations with African, Caribbean and Pacific countries (ACP) have been in two major phases. The first phase of negotiations resulted in the adoption of a joint report by the EC Commissionaires for Trade and the Ministers of ACP countries.¹²¹ Although there were some issues left pending at the end of this phase, the general outcome showed substantial levels of convergence.

The direct EPA talks with ECOWAS states (Nigeria, Ghana, Benin, Cape Verde, Burkina Faso, Gambia, Cote d'voire, Guinea, Mali, Guinea Bissau, Niger, Senegal Liberia, Sierra Leone, Togo) was launched on the 6th October 2003.¹²² The directives of negotiations focused on these key points: the development of a Free Trade Area (FTA) beginning by 1st January 2008 between the EC and the West African region; cooperation on trade related issues, priority to development and poverty reduction, improving competitiveness, improving the market access for West African export products; and deepening the West African integration process.

The actual blueprint for the agreement was adopted on the 4th of August 2004. It outlines the strategies, objectives and processes for the negotiations, taking into consideration a proposed

¹²⁰ James Thuo Gathii, "The Cotonou Agreement and economic partnership agreements," in *Realizing The Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, ed. United Nations (United Nations, 2013) 262

¹²¹ Report no. ACP/00/118/03 Rev.1 –ACP/EC-/NG/NP/43. See EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹²² Ibid.

schedule and problems likely to arise.¹²³ Furthermore, the structure of the agreement was organized around 5 technical concepts. These are; an free trade area, customs union & trade facilitation; quality control, norms and related services; technical barriers to trade and sanitary and phytosanitary (TBT & SPS) measures; service, intellectual property; and productive sectors.¹²⁴

Notwithstanding, the well outlined roadmap for the negotiations, the subsequent years following its adoption in 2004 showed minimal progress; more or less thwarting ECOWAS' goal of concluding a complete regional EPA by June 2009.¹²⁵ Coupled with this, in the last period of the year 2007, the already long drawn-out negotiations between the West African sub-region and the EC were additionally side-tracked. It was substituted with bilateral negotiations between the EC and individual countries in the region. This fostered the ratification of interim agreements by Ghana and Cote d'Ivoire. Notwithstanding these setbacks, in 2008 negotiations proceeded with the forging of a comprehensive action plan.¹²⁶

3.2 Negotiating Structure

Negotiations were conducted on the ECOWAS side by the Regional Negotiating Committee (RNC) and that of the EU by the European Commission.¹²⁷ The talks were at three levels i.e. that of chief negotiator, the senior officials and the technical experts.¹²⁸ At the level of chief negotiators, the Regional Negotiating Committee (RNC) was directed by the ECOWAS Executive

¹²³ James Thuo Gathii, "The Cotonou Agreement and economic partnership agreements," in *Realizing The Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, ed. United Nations (United Nations, 2013) 262

¹²⁴ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹²⁵ Ibid.

¹²⁶ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹²⁷ Overview of the Regional EPA Negotiations, In Brief, Accessed October 18, 2016, <http://ecdpm.org/wp-content/uploads/2013/11/IB-14B-Overview-Regional-EPA-Negotiations-West-Africa-EU-EPA-2006.pdf>

¹²⁸ Ibid

Secretary assisted by the head of the West African Economic and Monetary Union (WAEMU) Commission. Member states were also permitted to elect as part of the delegation, three experts.¹²⁹ At the senior officials' level, the RNC delegation was headed by the ECOWAS Deputy Executive Secretary for Policy Harmonization with the assistance of the WAEMU Commissioner for Tax, Customs, and Trade Policy. At the technical experts' level, the delegation comprised of the directors of trade from the ECOWAS Executive Secretariat and the WAEMU Commission.¹³⁰

Additionally, a joint group was created to give coordinating support and secretarial services to this round of talks. The Regional Preparatory Task Force (RPTF) was also established to ensure coherence and connectedness between development cooperation funding and the EPA negotiations. It is also relevant to note that, the hands-on method decided on for the procedure of the talks allowed for the participation of non-state actors at every level of the negotiations, to guarantee that their opinions were also taken into consideration.¹³¹

3.3 Issues Raised

I. Cost of Reciprocity

The cost of allowing the EU greater access to the ECOWAS market was a central issue of the negotiations between the two parties. The probable adverse implications that can arise as an outcome of this big step was highlighted under two main areas. First, opening trade with the EU could potentially escalate competition on the local markets. Although internationally advantageous for consumers, it can affect firms and local producers who mostly have constrained capacity scope, to compete with products from the EU due to supply-side limitations.

¹²⁹ Overview of the Regional EPA Negotiations

¹³⁰ Overview of the Regional EPA Negotiations, In Brief, Accessed October 18, 2016, <http://ecdpm.org/wp-content/uploads/2013/11/IB-14B-Overview-Regional-EPA-Negotiations-West-Africa-EU-EPA-2006.pdf>

¹³¹ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

Again, tariff liberalization can cause a substantial decrease in government revenues, thus resulting in immense reductions in public expenditure especially for sectors such as education and health. It is a fact that majority of West African states are highly reliant on customs duties which make up an average of 2.5% of GDP and 14.7% of government revenue.¹³² This is very significant for states like Gambia and Sierra Leone which are significantly dependent on imports and are already under pressure in relation to the enforcement of the ECOWAS CET.

II. Supply-Side Constraints

A crucial objective for ECOWAS states is to guarantee that the EPA procedure supports growth and development, allowing for the clear indication that market access hardly connotes a step towards development and economic diversification.¹³³ The unsatisfactory outcomes from the Lomé preferential and non-reciprocal trade system serve as a good stimulus for this cause. The main aim of ECOWAS has been to establish through this process, timely technical and financial assistance to improve supply capacity, competitiveness, and a favourable business setting. The goal here is to support the economies in the region while ensuring they benefit from their trade relation with the EU. The areas considered for support were infrastructure services, human resource development, macroeconomic policy, transport and enterprise upgrading.¹³⁴

III. Market Access

The EPA negotiations provided an avenue for ECOWAS states to guarantee more lucrative entry into the European Union market in accordance with WTO requirements for vital export products. Although it was established that the ECOWAS region would be awarded an

¹³² Economic Integration, Trade Facilitation and Agricultural Exports Performance In ECOWAS Member States, African Development Bank, accessed, October 14, 2016
https://www.afdb.org/uploads/tx_lafdbpapers/ECONOMIC_INTEGRATION_TRADE_FACILITATION_AND_AGRICULTURAL_EXPORTS_PERFORMANCE_IN_ECOWAS_MEMBER_STATES.pdf

¹³³ Ibid.

¹³⁴ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

“Everything but Arms”¹³⁵ style duty, it is not sufficient to enhance access to EU markets. It is for this reason, that emphasis was placed on developing ECOWAS member states’ capacity to adhere to the European Union’s rules of origin, technical barriers to trade and especially its sanitary and phytosanitary measures (SPS).¹³⁶

IV. Agriculture

Agriculture is at the core of the ECOWAS economy. Thus, one of the key goals here was to find in cooperation with farmers, organizations and the private sector, a shared category of items which should be considered with safeguard mechanisms exempted from the trade liberalization scheme.¹³⁷ Additionally the European Union’s Common Agricultural Policy (CAP) and its effects in respect to declines in market prices and trade distortion were addressed. Furthermore concerning the entry of goods from the ECOWAs region into the EU market, the issue of adherence to the rules of origin and SPS measures was raised and pursued enthusiastically in the negotiations.¹³⁸ This led to the conclusion that, tailored and adequately advanced programmes must be formulated and enforced to improve competitiveness and the supply capacity of the agriculture sector in conjunction with ensuring regional inventiveness.

V. Regional Integration

¹³⁵ Overview of the Regional EPA Negotiations, In Brief, Accessed October 18, 2016, <http://ecdpm.org/wp-content/uploads/2013/11/IB-14B-Overview-Regional-EPA-Negotiations-West-Africa-EU-EPA-2006.pdf>

¹³⁶ Ibid.

¹³⁷ Economic partnership agreements (EPAs): the ACP regions and their relations with the EU, European Centre for Development Policy Management, accessed December 14, 2016, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.496.6032&rep=rep1&type=pdf>

¹³⁸ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

Regional integration has been a fundamental objective of the EPA negotiation process, mainly because it is a key to championing the assimilation of ECOWAS states into the global economy.¹³⁹ Although substantial results have been achieved in the WAEMU grouping with its finalized monetary union, the integration process in ECOWAS is still far from completion. Thus the EPA negotiations, focused on the extent to which issues like tariff and non-tariff barriers impeding regional trade would be addressed. Moreover, there are several challenges the ECOWAS region is encountering in respect to the implementation of regional decisions on a national level. A typical example was clear in the participation of Mauritania in the ECOWAS-EU EPA, while not being a member of ECOWAS, having withdrawn in 2001 due to internal political unrest.¹⁴⁰ Hence, the goal of the negotiations was to ensure that the EPA advances the region's central goal (integration), and address all impediments opposed to achieving this cause.

3.4 Interim Agreements (Ghana and Ivory Coast)

As previously mentioned, during the negotiations for the ratification of a regional EPA, Ivory Coast and Ghana each signed an interim EPA (IEPA). Although the agreement signed by the two parties are very much alike, they are clearly country specific and talks for a complete regional ECOWAS EPA will eventually replace these interim agreements.¹⁴¹ Both Ghana and Ivory Coast initialed their IEPA in December 2007.¹⁴² It is however interesting to note that, Ghana has experienced considerable changes, mainly in its annexes and standstill clause since then. The

¹³⁹ Ibid.

¹⁴⁰ Shadowy fate of ECOWAS—EU EPA: Gambia, Nigeria hold their pens, The Torch, accessed October 18, 2016, <https://torchongambia.wordpress.com/2016/03/02/shadowy-fate-of-ecowas-eu-epa-gambia-nigeria-hold-their-pens/>

¹⁴¹ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁴² Ibid.

clause for example was reviewed to include a common tariff for the ECOWAS region (CET).¹⁴³ Annex II of the agreement which outlines the limits of Ghana's timetable for the liberalization of its economy, was also modified. It was changed from the obligation to slowly "liberalize certain products within a category known as group A in five tranches (2009-2013)"¹⁴⁴ to the commitment to liberalize these products in the Group A category by January 1, 2013.

Additionally, annex II as a result of certain amendments now consists of an extra levy on the CIF (Cost, Insurance and Freight) for Export Development and Agriculture Investment Banking, extending to the end of 2017.¹⁴⁵ Nevertheless, the EPA interim agreement focuses solely on the trade in goods and does not extend to other sectors of liberalization such as government procurement and trade in service.

With regards to Ivory Coast, it began its first phase of tariff dismantling in the early months of 2008 and projected to complete the process by 2022.¹⁴⁶ The first tranche of goods liberalized over a period of five years characterized roughly 60% of the country's imports from the EU in the years 2004 to 2006. Moreover with less than 10% of imports bound for tariff cuts starting from 2018, it appears that Cote d'Ivoire's liberalization process was profoundly front-loaded.¹⁴⁷

Looking at market access offer for example, since 1st January, 2008 imports from Ghana have gone into the EU free of duty and quotas. In reciprocity, Ghana committed to liberalizing 80% of goods from the EU signifying 81% of tariff lines over a period of 15 years (January 2008 to

¹⁴³ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 20
http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

¹⁴⁴ Ibid., 20

¹⁴⁵ Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes," 22.

¹⁴⁶ The new EPAs: comparative analysis of their content and the challenges for 2008, Overseas Development Institute, accessed October 20, 2016, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1739.pdf>

¹⁴⁷ ¹⁴⁷ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 22
http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

January 2022).¹⁴⁸ Cote d'Ivoire, on the other hand liberalized 81 percent of imports from the EU which represents 89% of tariff lines. Additionally, its liberalization schedule is divided into three tranches while that of Ghana is divided into five.¹⁴⁹

Cote d'Ivoire's first tranche 2008-2012 consists of 59.5% of goods liberalized, the second 2013-2017 consists of 10.6% of goods to be liberalized, and the third tranche 2018-2022 consists of 9.9 percent of goods bound to be liberalized, constituting 80% of its market.¹⁵⁰ In respect of exclusions, the basket of goods exempted from the liberalization process is equivalent to Cote d'Ivoire's imports from the European Union from 2004 to 2006. The sum of the excluded goods is 643, of which almost two-thirds currently face the highest tariff of 20% whereas a little over one third constitutes agricultural products.¹⁵¹

Most of the EU liberalized items are chemical products, industrial equipment e.g. turbines, pumps generators, etc., and vehicles (cars, etc.). Within the excluded items of the IEPAs from liberalization are about 1038 products of which 32.5 percent are agricultural products that are already within WTO requirements.¹⁵² Out of the excepted products 7.1 percent are mainly plastics and products within that category with 6.2 percent fish and aquatic invertebrates and 5.8 percent consisting of edible meat offal. Other exempted products are fruits, vegetables, nuts which make up approximately 5.4 percent of the sum of eliminated lines in the chapter regarding the Harmonized System.¹⁵³

¹⁴⁸ Ibid., 23

¹⁴⁹ Gbadamassi et al, "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" 24

¹⁵⁰ The new EPAs: comparative analysis of their content and the challenges for 2008, Overseas Development Institute, accessed October 20, 2016, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1739.pdf>

¹⁵¹ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 22
[http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi %20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecawas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf](http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecawas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf)

¹⁵² Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 22
<http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi %20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecawas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf>

¹⁵³ Ibid, 24

The agreement also requires the elimination of taxes. Thus the EU, Cote d'Ivoire, and Ghana are expected not to increase already existing export duties or introduce new ones.¹⁵⁴ There are however exceptions in cases that involve environment protection, infant industries, or the protection of the stability of the currency value. The condition for these exceptions is giving prior notice to the European Community.¹⁵⁵

In addition, the interim economic partnership agreements include a Most Favoured Nation (MFN) Clause. It necessitates that the contracting parties to the agreement must treat each other equally especially if one of them ratifies an FTA with a configuration, which is a chief trading economy, any non-EU state or another developed country. The clause is also a well-balanced control of policy space, by requiring contracting parties to accord to each other any form of improvement in treatment.¹⁵⁶

Also in the IEPA for Cote d'Ivoire and Ghana is a standstill provision.¹⁵⁷ This specifies that new tariffs cannot be added and removed. Likewise a tariff may not be augmented or re-instated once eliminated. Hence under the IEPA Ghana is restricted from augmenting its existing tariff levels or adding new ones. This happens to be conflicting with the WTO requirement which establishes that the applied tariff is usually a lot lower than the bound rate.¹⁵⁸ Although this standstill clause is clearly stipulated in article 15 of the interim EPA, there is a concession reformation only with regard to regional integration.

Lastly it also consist of a rules of origin clause (article 4) which explains that goods can be classified as products from both countries, thus granting them entry to markets in the EU.¹⁵⁹ In the case of Ghana, the current rule of origin explains that goods that can be categorized as

¹⁵⁴ The new EPAs: comparative analysis of their content and the challenges for 2008, Overseas Development Institute, accessed October 20, 2016, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1739.pdf>

¹⁵⁵ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁵⁶ Ibid.

¹⁵⁷ Article 15, Ghana under the interim economic partnership agreement, GhanaWeb, accessed November 28, 2016, <http://www.ghanaweb.com/GhanaHomePage/economy/artikel.php?ID=301006>

¹⁵⁸ Ibid.

¹⁵⁹ The Economic Partnership Agreement (EPA) Between Ghana and The European Union: A Developmental Game Changer?, Ghana Growth and Development Platform, accessed November 28, 2016, http://ghanagdp.org/file/2014/08/GGDP_WP2_Ghana-and-EPA.pdf

Ghanaian-made once the inputs emanated from a state that is also a party to the interim EPA.¹⁶⁰ In other words, products that are produced with inputs originating from other states in the ECOWAS region Like Nigeria or Benin cannot penetrate markets in the EU as goods that came from Ghana. This means Ghana is inhibited in developing its sector for agro-industrial export since it relies heavily on other countries and Asia for raw materials such as heavy metals and plastics.¹⁶¹ Nevertheless Cote d'Ivoire is the only state in the West African region that has fully ratified an IEPA.¹⁶² As per the above stated points on negotiations of the regional EPA which was formally closed by chief negotiators in February 2014, including the signed IEPAs by Ghana and Ivory Coast which entered into provisional application in 2016, the most important question still lingers. What does this mean for regional integration processes in the region?

3.5 Effects on regional Integration

The EPA negotiations have all too well highlighted the gaps that exist between the economic reality in the region's integration route and the political ambitions of the respective states. Although the ECOWAS grouping has made significant strides in deepening its amalgamation process in contrast to the other RECs, there are still a number of hitches in regards to attaining complete integration. There have equally been major setbacks with the effective execution of a

¹⁶⁰ Ibid.

¹⁶¹ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 22
http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

¹⁶² The Economic Impact of the West Africa - EU Economic Partnership Agreement, European Commission, accessed November 28, 2016, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154422.pdf

common market and customs union.¹⁶³ In like manner, the trade liberalization structures that call for the free movement of goods and persons are not adhered to in all ECOWAS countries.¹⁶⁴ Concomitantly, the goal of attaining a common currency in the region has faced momentous impediments owing to the continuous deferral in establishing the second monetary zone of the West African region (ZMOA). With these current challenges although the EPA has been said to help foster integration, there have been views to the contrary that the agreement would obstruct the ongoing process that is already encountering unresolved issues which are discussed in the next text.

i. Intra-Regional Trade Issue

First and foremost it is of great importance to reiterate that; trade plays a fundamental role in the regional integration process in West Africa.¹⁶⁵ Thus any arrangement which obstructs intra and extra-regional trade represents a barrier to trade facilitation and cooperation in the sub-region. In spite of all attempts geared towards the integration of the economies in the region, inter-regional trade in the West Africa remains sub-standard. According to a recent report by the WTO, intra-ECOWAS trade on the average constituted for about 11% of trade with non-ECOWAS states.¹⁶⁶ Likewise in the year 2000, there was only 6% of exports from Nigeria

¹⁶³ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁶⁴ The Challenges of Integration In The Economic Community of West African States (ECOWAS): A Case Study of Ghana, University of Ghana, accessed October 28, 2016, [http://webcache.googleusercontent.com/search?q=cache:wwV7glCvJEJ:ugspace.ug.edu.gh/bitstream/123456789/8745/1/The%2520Challenges%2520of%2520Integration%2520in%2520the%2520Economic%2520Community%2520of%2520West%2520African%2520States%2520\(Ecowas\)%2520A%2520Case%2520Study%2520of%2520Ghana-%25202015.pdf+%cd=2&hl=en&ct=clnk&gl=gh](http://webcache.googleusercontent.com/search?q=cache:wwV7glCvJEJ:ugspace.ug.edu.gh/bitstream/123456789/8745/1/The%2520Challenges%2520of%2520Integration%2520in%2520the%2520Economic%2520Community%2520of%2520West%2520African%2520States%2520(Ecowas)%2520A%2520Case%2520Study%2520of%2520Ghana-%25202015.pdf+%cd=2&hl=en&ct=clnk&gl=gh)

¹⁶⁵ The Impact of the EU-ACP Economic Partnership Agreements on the Economies of West Africa: Analysis of Recent Evidence, Academia, accessed October 28, 2016, http://www.academia.edu/8961099/The_Impact_of_the_EU-ACP_Economic_Partnership_Agreements_on_the_Economies_of_West_Africa_Analysis_of_Recent_Evidence

¹⁶⁶ Ibid.

(particularly oil) traded with members of the ECOWAS region (primarily Cote d' Ivoire and Ghana).¹⁶⁷

Nonetheless, it is evident that West Africa has a market big enough for member states to dominate and eventually launch out to other parts of the globe as a robust competitive force. A fully ratified EPA has therefore been described as germane to advancing this objective. Even so, it is also no secret that many political and economic analysts perceive a significant amount of disjointedness between the stipulated EPA commitments and West Africa's regional integration process.¹⁶⁸

One of the major effects of the EPAs is the destabilization of intra-regional trade.¹⁶⁹ The EPA text lays out a list of obligations with the purpose of liberalizing the West African markets in favour of other states in the region and at the same time for the advantage of the EU.

Nonetheless considering the present condition of the integration of states within the West African region, there is a high likelihood that the EPA would foster better conditions for EU products to the disadvantage of products from the ECOWAS region. In effect further intensifying the substandard level of physical integration and the economic inequality of ECOWAS economies.

The requirement proposed by the EC text which ECOWAS states are obligated to "undertake to harmonize norms and measures at regional level" in Part two, Ch5, art.7. of the agreement, is an example.¹⁷⁰ There is an expansive responsibility solely on the governments in the region to harmonize sanitary and phytosanitary measures, the various national technical regulations and standards; including conformity assessment procedures.¹⁷¹ Besides it appears the text makes the assumption that, the creation of an obligation is concomitant to incentivizing ECOWAS

¹⁶⁷ The Impact of the EU-ACP Economic Partnership Agreements on the Economies of West Africa: Analysis of Recent Evidence

¹⁶⁸ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹⁶⁹ Regional Integration and the EPAs, South Centre, accessed February 10, 2017, <https://www.southcentre.int/analytical-note-march-2007-5/#more-3745>

¹⁷⁰ West Africa EPA Negotiations: Preliminary Comments on the EC, South Centre, accessed 30 October, 2016, https://www.southcentre.int/wp-content/uploads/2013/08/AN_EPA7_West-Africa-EPA-Negotiations_EN.pdf

¹⁷¹ Ibid.

governments with the necessities to achieve its integration goal. With regard to the rest of the text in article 7, the non-implementation of the requirement by ECOWAS governments could be examined in light of a dispute raised within an EPA dispute settlement procedure.¹⁷²

Additionally, in the form of an implied recognition that in the short term, the harmonization of regulations and standards at the regional level would be hard to attain, the EC further demands West African governments to adopt homogeneity of standards between themselves.¹⁷³ Thus when there is a lack of a uniform regional directive, a product from the EU would conform to the requirements or regulations of only one importing state within the ECOWAS region. When this occurs the EU product accepted into one of the states will have entry to the rest of the markets in the region without “any further restriction or administrative requirement.” (Part II, Ch.5, art.7 (2)).¹⁷⁴

The most likely consequence of this is that, products from the EU would have a more favorable position in comparison to goods produced domestically. However in an effort to curtail sabotaging the local industries in the region, the EPA states in Part II Ch.5 art 7.(3) that, “West African States shall ensure that” goods from the European Union are not given more favourable treatment than those from the WA region itself.¹⁷⁵ Hence West African states are obliged to provide smooth market access to products from the EU, harmonize their regulations and in the process guarantee that it doesn’t adversely affect products from the region. The most likely repercussion here is that, instead of regional integration being improved, the EPA has the potential of augmenting the region’s dependence on the European Union. A problem the regional integration process in essence was meant to constrain.¹⁷⁶ The other possibility is a translation of this into trade diversion from ECOWAS to the advantage of the European

¹⁷² EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁷³ Ibid.

¹⁷⁴ Regional Integration and the EPAs, South Centre, accessed February 10, 2017, <https://www.southcentre.int/analytical-note-march-2007-5/#more-3745>

¹⁷⁵ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁷⁶ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

Union.¹⁷⁷ This could further fortify the hubs and spokes effect of trade between the ECOWAS region and the EU.

Moreover, as already highlighted in section 3.5 of this chapter, Cote d'Ivoire and Ghana's interim agreements in relation to their market access differ entirely. Hence an extension of any of them to the region would result to the exemption of a load of goods the coverage of which would exceed the amounts the EC finds acceptable. Contextually, Ghana and Cote d'Ivoire would have to restructure their market access agreement to favor the interest of their regional counterparts such as Nigeria, Togo and Benin, which is likely to prompt dissatisfaction in the private sector.¹⁷⁸ The EC would therefore have to adjust the EPA agreement to accommodate what the West African sub-region has been calling for; which is reducing its "substantially all trade"¹⁷⁹ threshold proposal to considerably lower than 80% of trade liberalization.¹⁸⁰

ii. Issue of LDCs/Nigeria's key Role in the Region

Another concern of the effect of the EPA on integration in West Africa is its impact on least developed countries (LDCs) and Nigeria which as a state plays a significant role constituting up to 60% of trade within the region.¹⁸¹ Foremost, countries within the region have distinctive priorities and interests. This lack of homogeneity in the region can be linked to the few developing countries within ECOWAS and the predominance of LDCs. Nigeria for example which has acted as a 'hegemon' in the region has expressed its unwillingness to ratify the agreement.¹⁸²

¹⁷⁷ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹⁷⁸ Regional Integration and the EPAs, South Centre, accessed February 10, 2017,

<https://www.southcentre.int/analytical-note-march-2007-5/#more-3745>

¹⁷⁹ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁸⁰ Ibid.

¹⁸¹ EU-West Africa Trade, Trade Websites, accessed October 30, 2016, rade.ec.europa.eu/doclib/html/153867.htm

¹⁸² Nigeria clarifies reasons for not endorsing EU-ECOWAS EPA, International Centre for Trade and Sustainable Development, accessed November 2, 2016, <http://www.ictsd.org/bridges-news/bridges-africa/news/nigeria-clarifies-reasons-for-not-endorsing-eu-ecowas-epa>

In 2007 Nigeria sent an official request to the EC to permit the inclusion of non-LDC ACP states including itself to the general system of preference (GSP) plus scheme if the EPA agreement was not finalized that year. The refusal of the EC to grant this led Nigeria to refuse the signing of the interim agreements like Ghana and Cote d'Ivoire. However due to the higher freight charges of the exportation of cocoa to Asian and US markets, almost 90-95% of Nigeria's cocoa products are exported solely to Europe. Consequently its failure to ratify the interim EPA meant it facing higher tariffs by being under the standard GSP. Its cocoa liquor and cocoa butter to the EU currently attract 6.3% and 4.3% of trade respectively. Evaluations by COPAN (Cocoa Processors Association of Nigeria) indicated that it incurred losses of about \$5million getting to the end of March 2008. Thus due to Ghana's signing of the provisional EPA, majority of the Nigerian beverage factories that use cocoa, transferred their plants to Ghana.

Thus the divergent nature of economies within the region became even more evident with Nigeria's refusal to sign the interim EPA. Although this decision was tantamount to it losing its concession from the export of cocoa, it had the ability to take such a stance since its economy does not thrive largely on cocoa products as much as Ghana and Ivory coast.¹⁸³ Moreover, Nigeria has additionally made significant strides in improving its manufacturing sector as compared to other states in the region. Therefore it has concluded that a ratification of the EPA would significantly obstruct any progress it has achieved in this respect. Conflicting interests of such a nature, pose a big threat to the existing cooperation and integration process in the region.

iii. Issue of the Liberalization Approach

Another effect of the EPA on West Africa's regional integration effort is highlighted in the liberalized approach towards the EU. The ECOWAS CET adopted in 2006 was to be instituted after a transition period of two years, with the main intent of improving the existing UEMOA

¹⁸³ Analysis of Socio-economic Development and Policy Options under the Interim EPA Regime with the European Union, ActionAid Ghana, Accessed November 2, 2016, http://www.actionaid.org/sites/files/actionaid/actionaid_ghana_research_-_ghana_under_interim_epa_and_implications_for_socio-economic_development.pdf

common external tariff (CET).¹⁸⁴ Its inauguration would have thus corresponded with the commencement of the institutionalization of the EPA in January 2008. Seminally, despite the accelerated process, the coordination of the ECOWAS CET and that of UEMOA was deferred for a number of significant reasons, one being the contested proposal for the introduction of a fifth band customs duty.¹⁸⁵

This duty was brought to the table by Nigeria with the backing of non-state actors in the region. It proposed a 50% fifth band that was to be included to four already agreed categories for ECOWAS and UEMOA CET rates of 0%, 5%, 10% and 20%. The region even so, finally agreed on the concept of a fifth band of 35%.¹⁸⁶ Thus, in light of this, an important area for consideration was the starting point for opening up the market for the EU. Basically the principal question was whether it would be the 35% fifth band suggested for the ECOWAS CET or the 20% maximum fourth band which has been implemented by UEMOA. This contention is expected to create certain issues for liberalization with the EPA framework at the regional level.¹⁸⁷

Penultimately, certain countries within the region might at the outset have to raise their tariffs to the level of the fifth band towards the EU before undoing them.¹⁸⁸ Under this circumstance, the fifth band predominantly affects goods manufactured in Nigeria. Also it is important to note that the increase in tariffs is further likely to repudiate or complicate the standstill clause in the provisional EPAs of Ghana and Cote d'Ivoire.¹⁸⁹ Likewise the time allocated for the liberalization periods are expected to be cumbersome as Ghana and Cote d'Ivoire under their provisional EPAs have had their markets opened since 2009. They potentially have to re-introduce tariffs on imports from the EU to allow the replacement of the new liberalization schemes for the complete regional EPA. The implications here are that, in the process there is a high likelihood

¹⁸⁴ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁸⁵ Ibid.

¹⁸⁶ EPA negotiations and regional integration in Africa.

¹⁸⁷ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹⁸⁸ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

¹⁸⁹ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

of such states being compelled to exceed their MFN (Most Favored Nation) commitments at the WTO level. Thus, placing them at risk of possible sanctions from their multilateral partners.¹⁹⁰

iv. Issue of conflicting interests

Also, within the West African region there is a sense of ideological and political divide between the anglophone region and francophone region (UEMOA) which is additionally exacerbated by the EPA due to their different levels of integration.¹⁹¹ This ongoing divergence has led to competition for regional hegemony and is clearly mirrored in some of the hindrances to the regional integration process already being experienced in the region. Despite the momentous attempts by UEMOA and ECOWAS to bridge the integration gap through the harmonization of integration programmes, the EPA agreement fails to factor in and recognize these core issues counteracting the integration process in ECOWAS.¹⁹²

Moreover within the region exists anglophone, francophone and lusophone countries including countries experiencing internal tumult and others that are recovering from armed conflict (Cote d'Ivoire, Sierra Leone and Liberia).¹⁹³ Hence these states prioritize maintaining peace and rebuilding their economies rather than matters on a regional level. Some even lack the national institutions that would facilitate substantial observation of the negotiations. As a result of the EPA's failure to factor in these 'minor' yet important issues, the region is experiencing major

¹⁹⁰ Ibid.

¹⁹¹ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

¹⁹² Ibid.

¹⁹³ The Impact of the EU-ACP Economic Partnership Agreements on the Economies of West Africa: Analysis of Recent Evidence, Academia, accessed October 28, 2016, http://www.academia.edu/8961099/The_Impact_of_the_EU-ACP_Economic_Partnership_Agreements_on_the_Economies_of_West_Africa_Analysis_of_Recent_Evidence

challenges in adopting a common stance that emulates its goals and upholds its interest and national sensitivities.¹⁹⁴

v. Issue of Government Revenue

It is undisputed that an ultimate objective of regional integration is the long-term economic development of member states. Given the high dependence of developing states on fiscal revenue, regional integration is not relevant if it cannot champion such a goal. Moreover, there are persisting fears that the EPA will cause notable damage for a large percentage of West African states for which trade revenues make up a relevant fraction of aggregate income.¹⁹⁵ In the West African region as a whole, in 1996, there was an increase of import tariff revenue from an annual average of 2.4 from US\$2.8 billion to US\$3.0 billion in 1999.¹⁹⁶ Moreover, a number of states documented adverse growth in import tariff revenue stemming from an amalgam of issues as well as cumulative import liberalization standards in those states. These states comprise of Cote d'Ivoire, Senegal, Togo, Burkina Faso and Sierra Leone. Figures 4 & 5 depict the patterns in export and import tariff revenues for the states in the ECOWAS region between 1996 and 2000.¹⁹⁷

¹⁹⁴ The Impact of the EU-ACP Economic Partnership Agreements on the Economies of West Africa: Analysis of Recent Evidence, Academia, accessed October 28, 2016, http://www.academia.edu/8961099/The_Impact_of_the_EU-ACP_Economic_Partnership_Agreements_on_the_Economies_of_West_Africa_Analysis_of_Recent_Evidence

¹⁹⁵ EU-ACP Economic Partnership Agreements: Implication for Trade and Development in West Africa, University of Ibadan, accessed November 14, 2016

http://s3.amazonaws.com/zanran_storage/www.hubrural.org/ContentPages/2478835010.pdf

¹⁹⁶ Ibid.

¹⁹⁷ ECOWAS Statistical Bulletin, ECOWAS, accessed November 18, 2016, <http://www.ecostat.org/en/standard.php?file=bulletin>

Figure 4: Pattern In Export Tariffs between 1996-2000 (in millions of dollars)

Countries/ Years	1996	1997	1998	1999	2000	Grw rate 1996-1999 (%)
Benin	0.68	0.45	0.20	0.08	-	-49.79
Burkina Faso	1.17	1.20	1.70	0.97	1.40	0.43
Cote d'Ivoire	402.10	296.98	267.82	287.15	229.50	-9.58
Gambia	-	-	-	-	-	
Ghana	170.97	133.77	176.73	173.52	153.17	2.85
Guinea	0.13	0.13	0.13	0.13	0.65	0.00
Liberia	-	-	-	-	-	
Mali	-	-	-	-	-	
Niger	0.73	2.36	3.34	5.86	-	113.42
Nigeria	-	-	-	-	-	
Senegal	24.04	27.59	27.12	25.99	93.12	2.97
Sierra Leone	0.37	0.63	11.84	5.87	8.78	599.74
Togo	-	-	-	-	-	
Total	600.19	463.11	488.88	499.57	486.62	-5.03

Source: ECOWAS (2003) Statistical Bulletin

Figure 5: Pattern In Export Tariffs between 1996-2000 (in millions of dollars)

Countries/Years	1996	1997	1998	1999	2000	Grw rate 1996- 1999(%)
Benin	125.61	124.12	133.99	150.05		6.25
Burkina Faso	128.04	124.70	118.48	120.84	76.55	-1.87
Cote d'Ivoire	747.70	700.55	705.82	664.12	451.42	-3.82
Gambia	28.78	28.88	36.83	-	-	13.94
Ghana	230.86	240.01	302.46	298.26	215.60	9.53

Guinea	135.73	164.63	163.56	149.33	145.91	3.98
Liberia	48.36	61.90	18.00	19.50	NA	-11.53
Mali	184.67	192.88	207.48	222.19	NA	6.37
Niger	50.70	56.53	69.51	69.13	NA	11.30
Nigeria	675.02	771.60	686.70	952.40	998.27	14.00
Senegal	348.53	310.18	318.67	295.76	245.93	-5.15
Sierra Leon	44.01	52.99	25.06	18.44	33.33	-19.57
Togo	49.26	50.90	49.83	43.04	NA	-4.13
Total	2797.27	2879.87	2836.39	3003.06	2167.01	2.44

Source: ECOWAS (2003) Statistical Bulletin

Export tariffs for most of the states in the region have been considerably rolled back or removed. Nigeria for example has removed export tariffs on all imports. Equally, export tariffs revenues in Benin waned by an annual average of almost 50% between 1996 and 1999 from \$0.68 million to \$0.08 million.¹⁹⁸ Nonetheless, export tariffs for a few states remain a substantial source of revenue, for example, Senegal, Cote d'Ivoire and Ghana.

A likely consequence of EPA provisions in this instance is the duty free entry of imports from the EU to the markets of ECOWAS states. However almost all these states have the EU as the sole principal trading bloc.¹⁹⁹ The share of the EU in the total imports for each state in the region differs from a maximum of 74% for Cape Verde to a minimum of roughly 29% for Niger and for the entire ECOWAS region 49.3% in 2001.²⁰⁰ Thus the liberalization of trade between the EU and ECOWAS, modelled on the EPA will potentially hinder the administration of fiscal functions and affect the capacity of governments in the region to create revenue.

¹⁹⁸ ECOWAS Statistical Bulletin, ECOWAS, accessed November 18, 2016, <http://www.ecostat.org/en/standard.php?file=bulletin>

¹⁹⁹ EU-ACP Economic Partnership Agreements: Implication for Trade and Development in West Africa, University of Ibadan, accessed November 14, 2016

http://s3.amazonaws.com/zanran_storage/www.hubrural.org/ContentPages/2478835010.pdf

²⁰⁰ Ibid.

Moreover it is noteworthy that ECOWAS states are already operating at enormous at fiscal loss and with the exception of Cote d'Ivoire, all states in the region had fiscal losses in 2001.²⁰¹ This therefore illustrates that; the loss of revenue from import liberalization could further aggravate the uncertain fiscal levels of the different states. Such a consequence undermines the core essence of integration in the region, as states would continue to exacerbate the issue of overlapping membership which is mainly fueled by intent to increase government revenue.

3.6 Conclusion

The EPA undisputedly put immense pressure on ECOWAS to facilitate political decisions pertaining to integration strategies that had long been taken but were yet to be implemented.²⁰² For example, the EPA liberalization steps towards the EU helped expedite the regional preference clause in article 103, which compels member states to accord to all regional counterparts any liberalization schemes.²⁰³ Although remarked as a positive effect of the EPA on regional integration, it has been argued that it ultimately does not prevent imports from the EU displacing imports from the West African sub-region.

The configuration of the economies in the ECOWAS region is clearly distinct from that of the EU. Therefore the reciprocal feature embedded in this trade agreement will undoubtedly have

²⁰¹ EU-ACP Economic Partnership Agreements: Implication for Trade and Development in West Africa.

²⁰² The Impact of the EU-ACP Economic Partnership Agreements on the Economies of West Africa: Analysis of Recent Evidence, Academia, accessed October 28, 2016, http://www.academia.edu/8961099/The_Impact_of_the_EU-ACP_Economic_Partnership_Agreements_on_the_Economies_of_West_Africa_Analysis_of_Recent_Evidence

²⁰³ EU-ACP Economic Partnership Agreements: Implication for Trade and Development in West Africa, University of Ibadan, accessed November 14, 2016 http://s3.amazonaws.com/zanran_storage/www.hubrural.org/ContentPages/2478835010.pdf

effects on the regional integration processes in the region.²⁰⁴ Whereas it is rational for the EU to take advantage of power asymmetries in their dealings with ECOWAS states, the indication of the effects of the EPA appear to have a more advantageous slant in favor of the EU than for the ECOWAS region at large. Issues such as, low intra-regional trade, conflicting interests, ineffective liberalization approach, the dominant role of LDCs, Nigeria's reservations and low government revenue, highlight the extent to which the EPA as an effect on ECOWAS' regional integration agenda.²⁰⁵ Members of the ECOWAS community have well established in the ECOWAS preamble, as being convinced that the;

“Promotion of harmonious economic development of states calls for effective economic co-operation and integration largely through a determined and concerted policy of self-reliance.”²⁰⁶

Thus the EPAs' goal to promote regional integration in the region cannot be achieved unless its provisions encompass or place at center state the regional integration agenda of the ECOWAS community.

²⁰⁴ The Impact of the EU-ACP Economic Partnership Agreements on the Economies of West Africa: Analysis of Recent Evidence, Academia, accessed November 14, 2016, http://www.academia.edu/8961099/The_Impact_of_the_EU-ACP_Economic_Partnership_Agreements_on_the_Economies_of_West_Africa_Analysis_of_Recent_Evidence

²⁰⁵ Ibid.

²⁰⁶ ECOWAS Revised Treaty, ECOWAS, accessed November 14, 2016, <http://www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf>

Chapter Four

SADC EPA

Since its inception in 1980 as SADCC (South African Development Coordination Conference), the Southern African region has been steered by the principal aim to create a regional bloc for the enhancement of the sub-region's economic performance, the connection of regional economies, and improvement of the region's political stability.²⁰⁷ Although the SADCC was originally formed to alleviate economic reliance in the then apartheid South Africa, it also aspired to create economic partnerships for the forging of equitable regional integration schemes, by marshalling resources to advance regional and interstate policies.²⁰⁸ Thus, consequent to the emancipation of most states in the region, the establishment of SADC in 1992, was perceived as a furtherance of endeavors to fortify economic independence within Southern Africa.²⁰⁹

SADC as a regional organization consists of 14 African states, which subsequent to the signing of the CPA (Cotonou Partnership Agreement) in June 2000, were authorized to enter into the EPA with the EU.²¹⁰ Just like ECOWAS, the EU is SADC's leading trade partner, while South Africa accounts for the greatest share of EU imports and exports from the region.²¹¹ However it is remarkable that, South Africa was one of the states in the sub-region that expressed the most concern about several provisions in the Interim Economic Partnership Agreement (IEPAs).

²⁰⁷ History and Treaty, South African Development Community, accessed November 16, 2016, <http://www.sadc.int/about-sadc/overview/history-and-treaty/>

²⁰⁸ Ibid

²⁰⁹ History and Treaty, South African Development Community

²¹⁰ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

²¹¹ Ibid.

Nonetheless after frequently articulating its misgivings, SADC eventually signed its Economic Partnership Agreement with the EU on 10 June 2016.

Membership, in the SADC often overlaps with other regional arrangements that have diverse and even sometimes conflicting trade and integration programmes.²¹² Yet such members were also expected to negotiate EPAs with the EU. As a result, the SADC grouping comprised of Mozambique, Lesotho, South Africa, Swaziland, and Botswana, leaving the other six members (Malawi, Congo, Mauritius, Madagascar, Zimbabwe and Zambia) that are negotiating EPAs with the EU under other regional groups i.e. Eastern and Southern Africa/Central Africa.²¹³ Although Angola opted out, it on the other hand has the opportunity become a part of the agreement in the future.

4.1 Negotiations

The official launching of the SADC and EU EPA negotiations was on 8th July 2004, in Windhoek, Namibia. Amongst the 15 members of the South African Development Community, 7 states decided to engage in EPA talks with the EC. This led to the creation of SADC-EC EPA group comprised of, Botswana, Angola, Namibia, Mozambique, Lesotho, Tanzania and Swaziland. South Africa on the other hand began its participation from a supporter and observer status and later joined officially as a negotiator and substantive member in 2007.

The EPA between the SADC and the EC was centered on the regional integration strategies of the SADC states. The talks were arranged in a manner to support and complement the integration process and programmes as well as, the consolidation of the regional market and the harmonization of SADC obligations. The Botswana Minister of Trade and Industry was

²¹² EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

²¹³ Kahaki Judith Jere et al., " Configuration of Economic Partnership Agreements: Complementary Or Counter To Market Integration? –An Analysis Of The SADC Interim Economic Partnership Agreement, University of Cape Town (2013) 18, https://open.uct.ac.za/bitstream/handle/11427/4639/thesis_law_2013_jere_kj.pdf?sequence=1

appointed to direct the talks for the region at the Ministerial level.²¹⁴ A principal negotiator was also designated to lead the negotiations at the Senior Official Level, while the EPA unit of the SADC secretariat was appointed to lead at the technical level.²¹⁵

In respect to the European Union, negotiations were led by the European Commission with the representation of the Commissioner for Trade at the ministerial level. At the senior level, talks were led by a senior official of the Directorate General for Trade, while the technical level was handled by the Directorate General Trade Unit in charge of the SADC-EC EPA coordination.²¹⁶

4.2 Structure of Negotiations

In March 2006, the SADC EPA group presented its recommended agenda for the negotiations to the EU at a meeting of the EC and SADC senior officials. The significant feature of SADC's EPA proposal was the amendment of the already established Trade and Development Cooperation Agreement (TDCA) between South Africa and the EU.²¹⁷ This proposal mandated the EC to request a revised negotiating order from the member states of the EU. The process was quite lengthy and the EC was only able to report back to SADC in a meeting held in March 2007.²¹⁸ It therefore marked the first meeting between the SADC group with the inclusion of South Africa and the EC.

²¹⁴ George C. Lwanda et al., "Can EPAs strengthen regional integration in southern Africa: A qualitative analysis" No.27 (2011):6 <https://www.yumpu.com/en/document/view/10528743/can-epas-strengthen-regional-integration-in-southern-africa-a-5>

²¹⁵ Ibid.

²¹⁶ George C. Lwanda et al., "Can EPAs strengthen regional integration in southern Africa: A qualitative analysis" No.27 (2011):6 <https://www.yumpu.com/en/document/view/10528743/can-epas-strengthen-regional-integration-in-southern-africa-a-5>

²¹⁷ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 42, https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

²¹⁸ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

At this meeting, a roadmap was approved with the purpose of finalizing talks by the end of the year. Similarly, it registered the adjustment of the intent of the negotiations towards development issues, trade in goods, investment and trade in services, further placing emphasis on the institution of common regional policies. The meeting was further used by the SADC group to pressure the EC for the insertion of a chapter on development in the SADC-EPA.

Unfortunately, in the months following the March 2007 meeting, disputes erupted between members in the SADC group. The tensions were over the concerns of Namibia, Botswana, Swaziland and Lesotho (BLNS) over SACU's market access proposal which was predominantly based on the TDCA (The Trade Development and Cooperation Agreement).²¹⁹ It is important to highlight that the TDCA is a trade agreement between the European Community and South Africa. In addition its peculiarity was what provoked tensions between certain members of the SADC-EPA as the agreement did not contain any provisions for the accession of the BLNS states.²²⁰

Issues also arose within the group over the introduction of trade in service obligations in the EPA. A significant number of the SADC-EPA group members were of the view that, it would be more beneficial to partner with the EU on novel generation trade subjects instead of committing to any obligatory agreements outside those pertaining to trade in services. South Africa on the other hand objected to the inclusion of trade in services out rightly.²²¹ With all these tensions, Lesotho, Namibia, Botswana, and Swaziland initialled interim EPAs with the EU. It was signed against the backdrop that unsettled concerns would be re-visited for discussion in 2008. Besides, it happened to be the sole factor that convinced Namibia to agree to an IEPA. An official statement was made outlining the problems to be addressed preceding the signed

²¹⁹ Ibid.

²²⁰ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 42, [https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

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²²¹ Ibid, 42

initialled interim agreement.²²² The IEPA was not initialed by Angola since it abstained from presenting a market access proposal to the EC, while South Africa on the other hand refused to sign the interim agreement on grounds of reservations about key provisions in the IEPA text.²²³

4.3 Interim Agreements

Countries that initialed the IEPA were guaranteed quota free and duty free access to the EU market. At the same time, member states like Angola maintained their reception of EBA (Everything But Arms) preferences, whereas South Africa continued to engage in trade with the EU under the TDCA.²²⁴ The key features of the IEPA were a commitment to pursue negotiations towards a complete EPA in 2008, a single goods market deal between the initialing SADC states, and the EU's inclusion of a chapter on development cooperation.

The SADC IEPA was initialled in 2009 by Lesotho, Botswana, Mozambique, Swaziland and Namibia. The aims of the IEPA consist of the promotion of regional integration amongst the SADC-EPA group, and their ultimate integration into the international market, in accordance with their development priorities and political choices, taking into consideration the eradication of poverty through trade cooperation.²²⁵ The state parties to the agreement are to ensure they execute their activities with the intention of attaining sustainable development in the region. The IEPA text further enhances economic and commercial relations between the contracting

²²² George C. Lwanda et al., "Can EPAs strengthen regional integration in southern Africa: A qualitative analysis" No.27 (2011):6 <https://www.yumpu.com/en/document/view/10528743/can-epas-strengthen-regional-integration-in-southern-africa-a-5>

²²³ Ibid.

²²⁴ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 42, [https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

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²²⁵ Ibid, 43

parties in accordance with WTO requirements while facilitating the enforcement of the SADC Trade Protocol.²²⁶

Concurrently, it promotes the liberalization process between the SADC-EPA countries and the EU. At the core of the IEPA is the recognition of the importance of regional integration, thus its intent is to give support and ensure that the content and pace of regional integration in the region is influenced by the SADC-EPA countries' utilization of their sovereignty.²²⁷ The principle behind this trade partnership is the development of trade in goods between the IEPA contracting parties by proper implementation of rules of origin, by establishing trade liberalization and ultimately enhancing the capacity of the SADC-EPA states to trade on a global platform.²²⁸

According to the IEPA text, article 19 focuses on the establishment of an FTA between the contracting parties.²²⁹ It takes into consideration the standard of asymmetry in the enforcement of trade liberalization requirements by the parties involved. This simply means that the schedules for tariff liberalization would differ based on the development status of the states in question. The standstill clause also highlighted in article 23 deals with import and export tariffs.²³⁰ Here the goods the IEPA parties traded between themselves at the time the agreement came into force is not to be altered at a later stage. This provision was a key area of contention during the negotiations.²³¹

²²⁶ Kahaki Judith Jere et al., " Configuration of Economic Partnership Agreements: Complementary Or Counter To Market Integration? –An Analysis Of The SADC Interim Economic Partnership Agreement, University of Cape Town (2013) 18, https://open.uct.ac.za/bitstream/handle/11427/4639/thesis_law_2013_jere_kj.pdf?sequence=1

²²⁷ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

²²⁸ Ibid.

²²⁹ ECONOMIC PARTNERSHIP AGREEMENT between the European Union and its Member States, of the one part, and the SADC EPA States, Article 19, accessed November 20, 2016 http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf

²³⁰ Ibid., article 23

²³¹ Mwanahawa Aziz Khaulelo Mdee et al., " Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 42, https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

The agreement further provides that products from the EU would be subjected to the respective tariff schedules of the IEPA SADC members. EU imports on entry into SADC shall not be subject to extra taxation. Also in cases where these goods are re-exported from the SADC EPA region, all tax claimed will be reimbursed, since such would have been subject to import duty in the importing state. Likewise, parties are to collaborate in trade and customs facilitation, with the goal of guaranteeing the enforcement of the agreement.

The SADC contracting parties will have a transition time of 5 years to bring the trade and customs facilitation measures in alignment with their commitments under the interim EPA.²³² The customs harmonization measures at the regional level would be supported, however the process involved would be determined unilaterally. The goal of this obligation is to enable SADC-EPA states have the choice of liberalization of their markets at either a national or regional level. Based on the IEPA, the EU would liberalize 100 percent of tariffs on goods from the SADC-EPA states, with transitional time frames for tariffs on rice and sugar.²³³ Botswana, Lesotho, Namibia and Swaziland were to liberalize 86% of tariffs on products, including 44 tariff lines pertaining to sensitive goods by 2015, with three extra tariff lines projected to be liberalized by the end of 2018. These agreed schedules for liberalization are also very similar to the schedules stipulated under the Agreement on Trade, Development and Cooperation between the EU and South Africa.²³⁴

The Rules of Origin clause in the agreement also dealt with products viable for preferential market access depending on whether they originated from the SADCEPA state or the EU.²³⁵ Negotiations surrounding this area had to be discussed at length in order to reach a simplified

²³² Makombe, P. F., 'Economic Partnership Agreement and SADC: the controversy continues', Economic Justice Network, Accessed November 18, 2016 <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partners>

²³³ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 43, [https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

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²³⁴ Ibid., 44

²³⁵ Aileen Kwa, Peter Lunenborg, Wase Musonge, "African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)" (Belgium:Europea Union, 2014)

and workable system. This proved to be quite complex since the SADC EPA group constitutes states that form part of more than one regional grouping with diverse rules of origin clause.

Finally pertaining to goods exempted, tariffs on agricultural products were maintained including those already manufactured. The goods consisted of beef, fish, vegetables, fruits, nuts, coffee, sugar and cut flowers. These measures were taken to ensure the protection of local industries in the region.²³⁶

4.4 Issues raised

It is no secret that over-lapping membership has been a major challenge in the regional integration process in Africa. Hence the issue of multi-membership was highlighted during the SADC-EPA negotiations.²³⁷ During the negotiations, it was observed that all the 7 SADC countries belonged to a minimum of two regional blocs. For example, South Africa, Lesotho, Namibia and Botswana belong to SACU; Tanzania belongs to the EAC but not SACU or COMESA; Angola belongs to COMESA but not SACU; Swaziland to SACU, SADC and COMESA; Mozambique to SADC but not COMESA and SACU.²³⁸ Hence the concern was that the overlapping commitments would likely create tensions that would stultify the negotiations.

Moreover, another concern was the positioning of the TDCA. Although the initiative was met with great optimism, the members of SACU that constituted the SADC-EPA group were also de-facto members of the EU and South Africa TDCA agreement. Naturally, they raised the issue

²³⁶ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 15
[http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi %20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf](http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf)

²³⁷ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

²³⁸ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 43,
https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

that the TDCA would be detrimental to their economies by exposing them to the competitive EU market which significantly subsidizes its producers from the agricultural sector.

Another key issue that arose was with the meaning of the development feature in the EPA agreement.²³⁹ The interpretation of development by the EU throughout the talks was complete liberalization of the market including the incorporation of Singapore Issues (trade facilitation, investment, government, competition and procurement).²⁴⁰ However in a proposal submitted to the EU in 2006, regarding a strategic framework for the SADC-EPA, trade ministers suggested inter alia the elimination of the Singapore issues from the negotiations as they did not constitute WTO obligations.

Furthermore the presence of LDCs within the group was an issue. They raised a concern that states like Mozambique, Tanzania, Lesotho and Angola granted non-reciprocity in the Everything But Arms (EBA) scheme, may encounter issues by ratifying the EPAs as the negotiations would be overly extended to provide for their unique situation.²⁴¹ The key element supporting these reservations stemmed from the reciprocal trade liberalization clause enshrined in the EPA agreement; that canceled out the privileges under the EBA. Another quandary was that even in the attempt to reject the EPA to maintain the EBA; the developmental and other assistance which the EPA package provided for would be lost.²⁴²

Lastly, another major concern was with the interpretation of article XXIV of the GATT. According to WTO law, all ACP states forming FTAs with the EU would have to significantly liberalize all their trade with the EU in an equitable amount of time. The EU interpreted this clause with the EPA negotiations as ACP countries having the obligation to liberalize 80 percent of their markets to goods from the EU within ten years; and likelihood prolongation of 20 to 25 years for products labelled as sensitive.²⁴³ Among the ACP countries it was mainly the SADC-

²³⁹ Ibid.,44

²⁴⁰ Aileen Kwa, Peter Lunenborg, Wase Musonge, "African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)" (Belgium:Europea Union, 2014)

²⁴¹ 'Economic Partnership Agreements: an update', ACTSA briefing paper, Accessed November 18, 2016 <http://www.actsa.org/Pictures/UpImages/pdfs/EPAs%20Update%20-%20May%202010.pdf>

²⁴² Ibid. 44

²⁴³ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 15

EPA group that articulated that this magnitude of liberalization could negatively affect current and future local industries, government revenue and rural livelihoods. These expressed concerns further incited private sector organizations, a number of key stakeholders and civil society to raise a campaign against the signing of the EPAs.²⁴⁴ Nonetheless, it should be noted that the stalemate of the DOHA rounds exacerbated the article XXIV of the GATT issue.²⁴⁵ This is because members of the WTO, primarily African states anticipated the interpretations of article XXIV would have been clarified in the trade negotiations during that round.

4.5 Effects on regional integration

It is essential to restate that unlike ECOWAS, the SADC member states failed to negotiate EPAs as a complete regional bloc.²⁴⁶ Thus during the launch of EPA negotiations, a series of concerns were raised regarding its influence on the regional integration process in the region. Although it was established that the agreement would help foster and strengthen integration, it has appeared to rather disintegrate the regional integration process in SADC. Most members of the SADC region negotiated EPAs under the ESA grouping.²⁴⁷ For example the DRC negotiated under the Central African EPA group while Mauritius joined the Indian Ocean EPA group, and

http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

²⁴⁴ Aileen Kwa, Peter Lunenborg, Wase Musonge, "African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)" (Belgium:Europea Union, 2014)

²⁴⁵ Makombe, P. F., 'Economic Partnership Agreement and SADC: the controversy continues', Economic Justice Network, Accessed November 18, 2016 <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partners>

²⁴⁶ Can SADC-EU Trade Negotiations Unblock Development And Regional Integration?, Institute for Social and Economic Studies, accessed November 10, 2016, http://www.iese.ac.mz/lib/publication/livros/South/IESE_South_6.SADC.pdf

²⁴⁷ Ibid.

Tanzania the EAC configuration. These divisions will be stumbling blocks to SADC's principal goal of establishing a customs union. In addition, SADC would also have to deal with issues such as a weak strategy for deeper integration, problems pertaining to the enforcement of agreed protocols, and dissimilar policies regarding services and trade related matters.²⁴⁸

Furthermore the EPA has had an effect on the credibility of SACU as a customs union.²⁴⁹ Within the SACU region, Swaziland, Botswana and Lesotho initialled the IEPA without any reservation. However Namibia on the other hand initialled with objections, while South Africa avoided initialing the agreement entirely. According to article 31 (3) of the SACU agreement, there must be an approval from all members before a PTA (Preferential Trade Agreement) with third parties before an agreement of this nature is concluded.²⁵⁰

This was however not the case with the initialing of IEPAs in the region. This evidently further highlights the fragmentation of the integration process in the sub-region. It is also in contravention of article 35(2) of the Cotonou Agreement which states that,

“Economic and trade cooperation shall build on regional integration initiatives of ACP states bearing in mind that regional integration is a key instrument for the integration of the ACP countries into the world economy.”²⁵¹

Likewise there are several differences in the IEPA liberalization schedules consented to by SADC states that are part of the SADC-EPA group and the ESA-EPA group.²⁵² Taking into consideration the goods marked for exclusion by the ESA, none of them falls into the category of goods in the exclusion basket of states that concluded the SADC IEPAs. The disparities in liberalization schedules will have an adverse effect on regional integration in the SADC region.

²⁴⁸ Can SADC-EU Trade Negotiations Unblock Development And Regional Integration?

²⁴⁹ Aileen Kwa, Peter Lunenborg, Wase Musonge, “African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)” (Belgium:European Union, 2014)

²⁵⁰ Article 31, SACU 2002 Agreement,

²⁵¹ article 35, Cotonou Agreement,

²⁵² Economic Partnership Agreement and SADC: The controversy continues, Economic Justice Network, accessed November 18 2016, <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partnership-agreement-and-sadc-the-controversy-continues>

Also the rules of origin clause, within the SADC IEPA is different from what is applicable to SADC.²⁵³ The rules of origin pertaining to SADC allows that, goods which originate from the region gain duty free market access to a market of a SADC member state. In contrast, goods under the SADC IEPA that require duty free access are only those that come from the EU and SADC IEPA states. Once the common external tariff is formed, its implementation on imports from the EU by states not party to the SADC EPA, will likely clash with the tariffs applicable under the EPA; the reason being that products from the EU would have already gained duty free access to the markets of the SADC EPA states. Furthermore the EPA is likely to exacerbate the lack of economic diversification in the region; an issue that was raised during the negotiations.²⁵⁴ The following paragraphs look in depth at some of the main effects the EPA will have on regional integration in SADC.

i. Undermining existing regional structures

Right from the inception of discussions on EPAs, the spaghetti bowl phenomenon existing in the SADC region was further aggravated due to the lack of consideration of the already established organizations by member states. It can thus be presumed that majority of member states, tilted towards their national interest at the expense of the key goal to advance the regional plan, during its selection of negotiating partners.²⁵⁵ Since one of the primary pillars of the EPA is to support the advancement of already established regional agendas, the current situation in the SADC shows otherwise.

For example the IEPA text initialled by Mozambique, Botswana, Lesotho and Swaziland refers to these four states as SADC-EPA, a regional organization that is non-existent with a non-

²⁵³ Ibid.

²⁵⁴ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 75, [https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

²⁵⁵ Economic Partnership Agreement and SADC: The controversy continues, Economic Justice Network, accessed November 18 2016, <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partnership-agreement-and-sadc-the-controversy-continues>

legitimate status.²⁵⁶ It is further unclear the extent to which the commitments under the SADC-EPA correlate or correspond with those under SADC and SACU. This highlights the subversion of the key established regional structures in the region.

ii. The disintegration of SADC and SACU

The disintegration of the SADC region was evident from the commencement of EPA negotiations. SACU for example was splintered into two factions with the BLS states on one hand and Namibia and South Africa on the other.²⁵⁷ This was due to the reservations of both states (Namibia and South Africa) with initialling of the IEPAs. Nonetheless although the SADC-EPA was signed by all five states on 10 June 2016, one can envisage the implications of the BLNS being separated from South Africa that contributes roughly 95% of SACU's GDP.²⁵⁸

Furthermore before South Africa decided to sign the SADC-EPA, there was difficulty in attempts made to harmonize a trade relationship between the BLNS, South Africa and the EU. Thus up until June 2016 the relationship between South Africa and BNLS states with the EU were under two different trade arrangements.²⁵⁹ As a result of the prolonged uncertainty between the BLNS states and the EU prior to South Africa's signing of the SADC EPA, two separate agreements were suggested as being pertinent to ensure more stringent implementation of rules of origin and border control.

²⁵⁶ Can SADC-EU Trade Negotiations Unblock Development And Regional Integration?, Institute for Social and Economic Studies, accessed November 10, 2016, http://www.iese.ac.mz/lib/publication/livros/South/IESE_South_6.SADC.pdf

²⁵⁷ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 75, [https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

²⁵⁸ Ibid, 75

²⁵⁹ International Trade Regime: Trading within Southern African Customs Union (SACC), Botswana Trade Portal, accessed November 20, 2016, <http://www.botswanatradeportal.org.bw/?r=site/display&id=15>

This proposed measure informed by the necessity of applying different trade requirements of the TDCA instead of a SADC EPA altogether. This would have been a clear aspersion to the regional integration agenda. Thus one key question would have been whether the TDCA trade relationship is in contravention of article 31 of the SACU agreement. It establishes that member states are permitted to “maintain preferential trade and other related arrangements existing at the time of entry into force of the agreement.”²⁶⁰ The concern with this provision is that it entrusts SACU member states with an absolute right to foster and maintain standing preferential trade agreements. This means that there are unlimited possibilities for the members of the customs union to place zero restrictions to manage, the compatibility of different trade relations entered into such as the TDCA.²⁶¹ Hence there are several avenues that allow member states to be party to trade agreements that are conflicting.

Moreover, not only is the likelihood of having a member of a customs union being unilaterally part of an FTA alarming, but the several commitments to different organizations places an unavoidable effect on the CET.²⁶² It also undermines the credibility of SACU as a customs union entirely. This leaves a consequence of dissimilar Rules of Origin that are highly problematic. Although the SADC-EPA has been signed by all five states it still awaits ratification. In the event of a fragmentation between South Africa and the BLNS, the issue rests on whether SACU would be able to survive any form of disintegration and whether the definition of a customs union in chapter 2 of the SACU agreement, would be upheld by the organization.²⁶³ This is because, the SACU agreement mandates that no tariffs are adopted between member states thus, reinforcing the necessity of a common external tariff.

²⁶⁰ SACU 2002 Agreement, Article 31

²⁶¹ The EC-SADC EPA: The Moment of Truth for Regional Integration, International Centre for Trade and Sustainable Development, accessed November 28, 2016, <http://www.ictsd.org/bridges-news/trade-negotiations-insights/news/the-ec-sadc-epa-the-moment-of-truth-for-regional>

²⁶² Ibid.

²⁶³ Mwanahawa Aziz Khaulelo Mdee et al., “Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community,” University of Cape Town (2014) 75,

https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

It is also evident in article 32 of the SACU agreement that members are required to obtain permission before partaking in trade arrangements with third parties.²⁶⁴ In this circumstance South Africa could have prevented the BLNS states from negotiating towards a complete EPA. This would have led to the entire fragmentation of SACU. It would have further undermined the organization's role as a tool for advancing deeper integration in the SADC region, regarding the enforcement of variable geometry. Moreover if the fragmentation of SACU were to occur, it would be highly detrimental not only to the region but to the continent at large, as it represents one of the only two monetary integration structures in Africa.

Besides, the SADC configuration instituted four different negotiating groups in respect of the European Union i.e. the TDCA, SADC-EPA, EAC-EPA and the EBA. It is also important to note that each group had its unique tariff schedules. What is rather unsettling is, instead of the SADC-EPA incorporating all member states of the organization, it excludes Mauritius, Zambia, Zimbabwe and Malawi which were founders of SADC.²⁶⁵ This has the potential of jeopardizing all SADC's objectives to establish a customs union. However for the union to be effective, all member states must have equal trade obligations.²⁶⁶ This aids effective administration and escapes the incidence of conflicting grouping that causes incompatible trade commitments.²⁶⁷ Hence states attempting to institute a customs union must endeavor to be part of the same EPA group.

iii. Divisions between LDCs and non-LDCs

The SADC region consists of four non-least developed countries and three least developed countries. However this categorization of states into least developed and developed has

²⁶⁴ SACU 2002 Agreement, Article 32

²⁶⁵ The EC-SADC EPA: The Moment of Truth for Regional Integration, International Centre for Trade and Sustainable Development, accessed November 28, 2016, <http://www.ictsd.org/bridges-news/trade-negotiations-insights/news/the-ec-sadc-epa-the-moment-of-truth-for-regional>

²⁶⁶ Ibid.

²⁶⁷ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 43,

https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

somewhat intensified the disintegration of the SADC region.²⁶⁸ It was highlighted that LDC's are limited in relation to the ability to provide incentives for the EPA process from a trade stand point. This is mainly because they will barely attain extra access to the EU market in exchange for opening theirs. Conversely, an agreement like the EBA is perceived as be more beneficial for LDCs especially due to provisions that have far less rigorous rules of origin.

Notwithstanding this, Botswana, Lesotho and Swaziland opted to negotiate under the EPA forgoing the concessions they are entitled to under the EBA (Everything But Arms) scheme.²⁶⁹ This decision was taken since the EPA appears to provide more stability. Moreover, although development finance has not been the condition for initialising the EPA, the concern of enduring certain consequences for failing to be party to the EU-favoured agreement could have also influenced the LDCs.²⁷⁰

With that said, it is likewise clear that Swaziland and Lesotho still have the option to resort to the EBA if they decide to pull out of the EPA. If this were to occur, it would adversely affect SACU by splintering into to three different configurations. Namibia on the other hand, is not considered a least developed state.²⁷¹ There has however been much controversy around this classification as it implies that as a state it does not have access to the EBA and would be relegated to the conditions of a less advantageous standard- namely the GSP.²⁷² Nonetheless, although Namibia initialed the IEPA with misgivings, which caused significant doubt about the

²⁶⁸ The EC-SADC EPA: The Moment of Truth for Regional Integration, International Centre for Trade and Sustainable Development, accessed November 28, 2016, <http://www.ictsd.org/bridges-news/trade-negotiations-insights/news/the-ec-sadc-epa-the-moment-of-truth-for-regional>

²⁶⁹ Makombe, P. F., 'Economic Partnership Agreement and SADC: the controversy continues', Economic Justice Network, Accessed November 18, 2016 <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partners>

²⁷⁰ Ibid., 76

²⁷¹ Economic Partnership Agreement and SADC: The controversy continues, Economic Justice Network, accessed November 18 2016, <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partnership-agreement-and-sadc-the-controversy-continues>

²⁷² Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 43, https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

future of the SADC region, its signing of the full EPA in June 2016 raised hope that the legal ambit of the SADC-EPA would be addressed. Nevertheless, there is no doubt that aspiration for deeper integration in the sub-region is at risk.

iv. Reciprocity

This has been one of the major areas of contention in regards to the effect of the EPA on regional integration in Africa.²⁷³ Development, which has been a core purpose of integration in the various sub-regions, appears to be at the core of the question of reciprocity. In analyzing the impact of reciprocity, it is imperative to first consider the several debates, and litany of theories that have challenged the effectiveness of instituting liberalization schemes as elements of economic strategies. Interestingly, these discussions have seethed since SAP's (Structural Adjustment Programs) calling for the liberalization of economies was popularized in the 1990's.²⁷⁴

In light of this, it can be gathered that, as no state has achieved development by shunning international trade, not a single one has also developed by merely liberalizing trade. Hence it is excessively simplistic to conclude that reciprocity as a component of trade liberalization will organically lead to increased economic growth and trade. This is a concern that has been brought to the attention of the EU by the SADC-EPA members. Reciprocity is likely to have two different implications on the SADC region which can be described as direct and indirect.²⁷⁵ The direct implication consists of a negative effect on government revenue especially for states like Swaziland and Lesotho while exposing the local industries of member states are exposed to highly competitive producers within the European economy.²⁷⁶ On the other hand, the indirect

²⁷³ Aileen Kwa, Peter Lunenborg, Wase Musonge, "African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)" (Belgium:European Union, 2014)

²⁷⁴ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed November 28, 2016 <http://ecdpm.org/wp>

²⁷⁵ Ibid.

²⁷⁶ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014) 43,

implication would be reflected in the possible jeopardy of the region's endeavors to alleviate poverty, unemployment and to facilitate growth.

Concerns about the impacts of the reciprocity clause in the SADC-EPAs have not only been expressed by member states, but also by the United Nations Economic Commission for Africa (UNECA) which has made reference to the fact that, "the benefits that SADC region expects are not guaranteed to be substantial enough to weigh the potential costs."²⁷⁷ Another argument raised is that reciprocity must not be capriciously associated to figures, the interpretation of WTO commitments or even time frames. However its determination should factor in development and financial needs, levels of trade as it is stipulated, in accordance with the norm of distinction in the Cotonou Agreement. Additionally the principle that "African regions should be allowed to pursue their regional integration processes at a pace that is commensurate with their political, economic and social capacities"²⁷⁸ outlined in the Nairobi Declaration reinforces this point. According to many critics, reciprocity must be considered prudently and so must all procedures that call for the prioritization of trade relations with the EU over the advancement of the regional integration agenda.²⁷⁹ More so it is at the point where regional integration has significantly improved that the aim to integrate within the global economy becomes a key agenda.

[https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

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²⁷⁷ Trade and Market Integration, United Nations, Economic Commission for Africa, accessed December 2, 2016

<http://www.uneca.org/oria/pages/trade-and-market-integration>

²⁷⁸ Daniela Sicurelli, *The European Union's Africa Policies: Norms, Interests and Impact* (Ashgate Publishing Limited 2010), 89

https://books.google.com.gh/books?id=sksJSwEDkkMC&pg=PA89&lpg=PA89&dq=African+regions+should+be+allowed+to+pursue+their+regional+integration+processes+at+a+pace+that+is+commensurate+with+their+political,+economic+and+social+capacities%E2%80%9D&source=bl&ots=VcRJNe-1CO&sig=OZp_134lvaAc_y41oReW5i8khtM&hl=en&sa=X&ved=0ahUKEwj054Cv7pzSAhVEthoKHZb2DTUQ6AEIHDA#v=onepage&q=African%20regions%20should%20be%20allowed%20to%20pursue%20their%20regional%20integration%20processes%20at%20a%20pace%20that%20is%20commensurate%20with%20their%20political%20economic%20and%20social%20capacities%E2%80%9D&f=false

²⁷⁹ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

v. The Singaporean Issues

The European Union's plans for the SADC-EPAs also seek to incorporate agreements on competition policy, government procurement and investments.²⁸⁰ This is also termed as the Singaporean issues, 'new generation issues' or 'WTO-plus' since they exceed the terms of the general WTO requirements.²⁸¹ Moreover they are not covered in the Cotonou Agreement but are included in the EPAs as an integral part of the EU's comprehensive plan for the ACP states.²⁸²

The EU has been an ardent supporter of three of the four Singaporean issues, namely- competition, investment and transparency in government procurement.²⁸³ It is interesting to however to note that, these were dropped from the Doha work program due to persistent disapproval from developing nations alongside ACP states. Nevertheless these issues were adopted into the SADC-EPA agreement.²⁸⁴ This means the states in this grouping had to recontest a battle they had already won in the WTO but this time from less advantageous position.

In an assessment of the Singaporean issues, their effects on SADC are detrimental to the regional integration process in a series of aspects. It is clear that the SADC region is yet to reach cohesive degrees of integration. As previously established, entering trade negotiations with third parties before solidifying coherence will produce substandard benefits from the negotiation process in these areas. There might be future dissections between members in the

²⁸⁰Stephen R Hurt et al., "The EU-SADC Economic Partnership Agreement Negotiations: 'locking in' the neoliberal development model in southern Africa?" *Third world Quarterly*, 33 no.3 (2012): 500, <http://www.tandfonline.com/doi/abs/10.1080/01436597.2012.657486?src=recsys&journalCode=ctwq20>

²⁸¹ Makombe, P. F., 'Economic Partnership Agreement and SADC: the controversy continues', Economic Justice Network, Accessed November 18, 2016 <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partners>

²⁸² Ibid. 75

²⁸³ Stephen R Hurt et al., "The EU-SADC Economic Partnership Agreement Negotiations: 'locking in' the neoliberal development model in southern Africa?" *Third world Quarterly*, 33 no.3 (2012): 500

²⁸⁴ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014): 75, https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

SADC region who consent to the adoption of a pre-negotiated set of regulations and those against it. In the field of competition law and policy for example, developing states are warned against the enticement of mimicking competition prototypes from developed nations.²⁸⁵

Usually, the set laws and policies are to be tailored towards the particular needs of a specific area. Therefore, for a state to already have existing obligations in such an area can prove to be very incapacitating.

Moreover, these Singaporean issues have been highlighted as one of the major concerns which stopped Namibia and South Africa from initialing the IEPAs.²⁸⁶ In addition it is uncertain whether Mozambique and the BLS states have the required financial support and capacity to establish the legal and institutional modifications that will be necessary to execute the diverse regulations and rules. In light of this, it can be noted that the main concern and reservations directed towards the insertion of the Singaporean issues into the EPA, is that, it stands to hamper the progress and stride of the regional integration process.²⁸⁷ Despite the fact that these Singaporean issues have been withdrawn from the multilateral negotiating desk, they have found a subtle way to re-emerge in the regional trade agreement; a place where most developing states have weak bargaining power to reject them.²⁸⁸

²⁸⁵ Daniela Sicurelli, *The European Union's Africa Policies: Norms, Interests and Impact* (Ashgate Publishing Limited 2010), 89
https://books.google.com.gh/books?id=sksJSwEDkkMC&pg=PA89&lpg=PA89&dq=African+regions+should+be+allowed+to+pursue+their+regional+integration+processes+at+a+pace+that+is+commensurate+with+their+political,+economic+and+social+capacities%E2%80%9D&source=bl&ots=VcRJNe-1CO&sig=OZp_134lvaAc_y41oReW5i8khtM&hl=en&sa=X&ved=0ahUKEwj054Cv7pzSAhVethoKHZb2DTUQ6AEIHDA#v=onepage&q=African%20regions%20should%20be%20allowed%20to%20pursue%20their%20regional%20integration%20processes%20at%20a%20pace%20that%20is%20commensurate%20with%20their%20political%20economic%20and%20social%20capacities%E2%80%9D&f=false

²⁸⁶ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

²⁸⁷ Economic Partnership Agreement and SADC: The controversy continues, Economic Justice Network, accessed November 18 2016, <http://www.ejn.org.za/index.php/ejn-on-the-move/ejn-on-the-move-views/445-economic-partnership-agreement-and-sadc-the-controversy-continues>

²⁸⁸ Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014): 75,

https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

4.6 Conclusion

Within Sub-Saharan Africa, the Economic Partnership Agreements have been discussed outside the already established regional organizations. SADC especially has been unsuccessful in harmonizing relations between the TDCA and BNLS states. Coupled with this, the EPAs have aggravated ruptures between SACU & SADC, non-LDC countries and LDC countries. It is thus evident that there will be consequences with regard to integration in the region.

Nevertheless, one cannot associate all existing issues with regional integration in the region to the EPAs.²⁸⁹ As mentioned previously the continent has already been dealing with a series of problems in this regard. However the EPAs have to a significant extent, reinforced the prevailing regional integration challenges in the sub region and SADC is a vital example.

²⁸⁹ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

Chapter Five

Comparative Analysis of ECOWAS and SADC EPA

Introduction

ECOWAS was the first region in Africa to endorse a regional EPA on 10th July 2014. The SADC-EPA group after 12 years of deliberations with the EU on trade in goods, also finally initialled the agreement on 15th July 2014. Markedly, although these agreements are ample to establish the entrée of vital products to the EU market; talks are nonetheless still ongoing regarding investments, other trade related issues, and services to secure a complete outline that is anticipated to oversee trade relations between the EU and ACP regions.²⁹⁰ Nevertheless it is also important to note that there is no set deadline for a conclusion on the pivotal areas pertaining to these discussions.

The period in which ECOWAS and SADC concluded their EPAs is very significant. It forestalled the deadline of 1st October after which all non-LDC states in the two groups i.e. Ivory Coast and Ghana for ECOWAS and Namibia, Swaziland and Botswana for the SADC group; would have if not, lost their quota and duty free preferences for their key exports to the EU.²⁹¹ Thereby compelling them to revert back to the GPS (Generalized System of Preference) or incur a loss of all preferences, like in the case of Botswana after 2016 when the provisional time frame assigned to upper middle income states terminates. Thus it underscored the necessity for ACP states to conclude EPAs at the regional level.

²⁹⁰ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

²⁹¹ Ibid., 3

Moreover there is also political relevance to the completion of EPAs at a regional level. African policy makers for example are guaranteed consistency with their individual regional integration process including the most significant assurance of securing the unison of the various regional blocs. Had this not been the case, if certain states like Ivory Coast in ECOWAS and Botswana, Swaziland, etc. in SADC, had no other option but to conclude unilateral EPAs in order to maintain trade benefits with the EU, it would have posed a major risk to the integration process in the two regions.²⁹² Besides if the EPAs were not concluded on a regional level, it would have been arduous to legitimize the EPAs stipulated objective of facilitating regional integration as it would have led to the fragmentation of regional blocs.

Albeit the discussion of EPAs in regional groups, it is relevant to note that ECOWAS and the East African Community were the only regions that covered full membership.²⁹³ Thus they were the only regional economic communities that could negotiate as a bloc and on the basis of the already existing regional integration plan. In regards to the other groups, due to overlapping of membership in the various RECs including the absence of the full commitment of certain members; they were only able to embody sub-groups of their individual arrangements. This highlights the major consequences of the EPAs on the future of the regional integration agenda Africa.

To further understand this implication, it is necessary to assess comparatively the main provisions of the SADC and ECOWAS EPAs. These important provisions will be summarized in the context of coverage, development and policy space which will serve as a buttress in analyzing the impact it will generally have on regional integration in the Africa.

²⁹² Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

²⁹³ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

5.1 Product Coverage

As a region and founded on its common external tariff, ECOWAS is due to liberalize 75% of its tariff lines, over a time frame of 20 years. Liberalization is meant to be steady and products are ordered in four separate categories namely category A, B, C, D. Category A consists of capital goods, basic commodities, essential social goods and specific inputs.²⁹⁴ Category B consists of inputs and intermediate products. Category C is made up of final products and D is sensitive products. The goods under category D are classified as sensitive products are in the list of excluded products found in ECOWAS-EPA agreement.

It covers a wide variety of products that range from industrial goods, agricultural goods and even the areas in ECOWAS states where projects are being developed. These consist of inter alia, fish products, fish, meat products, meat, cocoa, textiles and cement.²⁹⁵ The range of goods in the exclusion list was subject to prolonged and intense deliberation by members of the ECOWAS community particularly in the late stages of discussions due to the several concerns of Nigeria. It was of particular interest to Nigeria, due to the immense growth of industrialization currently taking place in the country. Especially, the private sector, which is investing heavily in agro processing to provide support to the local industries. Moreover equal investments are also taking place in other industrial sectors of the country e.g. textile and cement sector including light manufacturing. Thus the exclusion list attempts to protect local industries from being adversely affected by competition from European duty-free goods.²⁹⁶

²⁹⁴ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 20
http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

²⁹⁵ Ibid, 30

²⁹⁶ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

The SADC-EPA group on the other hand is required to liberalize 80% of its trade with the EU. Its market access timetable comprises of two different lists. The first list pertains to the SACU region, specifically, Lesotho, Botswana, Swaziland, Namibia and South Africa.²⁹⁷ The second deals with Mozambique, which has a market access schedule that was established in 2007. The two market access schedules in question are still yet to be amalgamated and thus remain distinguished. Nonetheless, there is an annex to the EPA text requiring Mozambique to amend its Tariff nomenclature and later provide a modified tariff schedule consisting of the staging classifications proposed by it during the negotiation period of the EPAs.²⁹⁸

Furthermore, South Africa also has a different market access schedule from the rest of the SADC-EPA group. Interestingly although Mozambique and the BLNS have complete duty free and quota free entry to the EU for all goods (excluding arms) South Africa has a much more challenging tariff schedule. It consists of exclusions and tariff staging liberalization covering up to 11 years and more.

Moreover the EPA which pertains to South Africa contains 60% duty free coverage for agricultural products and 98% for industrial products.²⁹⁹ Although on the other hand the BLNS gain from duty free and quota free access to the EU market, they however were compelled to make extra strides to open their market for certain products they constituted as sensitive. This occurred due to the EU's strong interest for these same goods from South Africa.³⁰⁰ Hence to alleviate all possible adverse effects that imports from the EU would have on these goods, the BLNS succeeded in obtaining a transitional safeguard clause for a number of specific goods. According to SADC-EPA agreement, it consists of certain vegetables and fruits, cocoa, frozen chicken, etc. This signified a major political concession to the advantage of the BLNS states especially because they were requested to make considerably greater attempts to liberalize their markets in order to maintain a joint schedule with South Africa.

²⁹⁷ Ibid.

²⁹⁸ SADC EPA, European Commission, accessed December 3, 2016, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/>

²⁹⁹ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³⁰⁰ Ibid., 4

5.2 Policy space

The disproportionate feature of the SADC-EPA and ECOWAS gives room for a particular number of goods to be exempt from liberalization. In respect to ECOWAS states it symbolizes goods regarded as sensitive (subject to a CET of 35%) for a sum of 25% for all tariffs.³⁰¹ Additionally members would remain gaining from tariff protection to permit indigenous value additions and transformation. However in the case of SADC-EPA 20% of trade is exempt which also signifies vital sensitivity.

Furthermore the agreement provides an amount of policy space for states to protect their domestic economies in the situation that imports from the EU pose a threat to their local industries. This is attainable with the utilization of trade defense instruments specifically by using safeguard measures. The ECOWAS-EPA has a particular safeguard clause for emerging local industries whereas the SADC-EPA configuration has a particular safe guard clause including the BLNS international safeguard clause.

Additionally both the SADC-EPAs and ECOWAS-EPA have pliability for states to impose export taxes in exceptional situations.³⁰² Especially when there is a goal to support infant industries, address certain revenue needs or for the protection of the environment. ECOWAS for example may apply this flexibility of increasing duties on exports only provisionally and on a restricted number of goods after notifying the EU.

On the other hand the SADC-EPA text on export taxes permits Mozambique and BLNS states to apply these taxes for the protection of the environment or infant industries, special revenue needs or for the respite of crucial local and general shortages of foodstuff or in simpler terms, to guarantee food security. Nonetheless all SADC-EPA countries, have the capability to possibly

³⁰¹ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed December 3, 2016 <http://ecdpm.org/wp>

³⁰² Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

impose export taxes on a restricted number of goods once they can prove it's for industrial development purposes.³⁰³ Provisional duties can only be imposed on a sum of eight goods for each SADC-EPA country at an allocated time and for no more than 12 years. Nevertheless there are two conditions that apply to the use of this measure i.e. the export duties must not surpass 10% of the ad valorem export value of the product and products excluded from export duties are due to be processed in the EU and must not be re-exported to third party states. Interestingly, this clause is only specific to the SADC-EPA and is not included in the ECOWAS text.

Another, interesting area to highlight pertaining to policy space is the MFN clause. Although the SADC-EPA group and ECOWAS raised several concerns, both agreements eventually comprised of an MFN clause.³⁰⁴ It is however imperative to note that the clause is not unavoidable for SADC and ECOWAS states as the agreement establishes that all future preferences are to be assessed in advance of extending it to the EU.³⁰⁵ Furthermore it exempts agreements among certain major trading partners including ACP states and other developing countries as well as the different African regions and LDCs.

The term "major trading partners"³⁰⁶ within ECOWAS EPA is considered to be one whose portion of global trade is greater than 1.5 and whose level of industrialization/ development determined by value manufacturing in GDP as being more than 10% prior to the establishment of the EPA.

³⁰³ Ibid.

³⁰⁴ Bonapas Onguglo, Taisuke Ito et al., How to make EPAs WTO compatible?: Reforming the rules on regional trade agreements, no.40 (2003)16 <http://ecdpm.org/wp-content/uploads/2013/11/DP-40-Make-EPAs-WTO-Compatible-Reforming-Rules-Regional-Trade-Agreements1.pdf>

³⁰⁵ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³⁰⁶ Economic Partnership Agreement with West Africa : Facts and figures , European Commission, accessed December 4, 2016, http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152694.pdf

In the SADC-EPA a major trading partner is perceived as any state whose global portion of merchandise export is more than 1% before the EPA is enforced.³⁰⁷ Prior to any extension, the SADC-EPA configuration would have to prove that it has given considerably higher favorable treatment to the major trading state.

The MFN clause however is solely associated with fees, customs duties, and other charges. Areas like regulatory measures or rules of origin are not considered. Hence, it makes it problematic on the basis of tariffs alone especially in circumstances where tariffs are already too low to determine preferences.³⁰⁸

Financial Support and Development

The ECOWAs EPA reinforced PAPED (the West African Development Programme) which is the wide-ranging development agenda that will tackle probable issues that may arise with the institution of the EPAs.³⁰⁹ It is meant to be implemented through two key instruments, namely

- I. A competitiveness observatory which is due to be created utilizing performance indicators to track and assess the effect of the EPA,
- II. The establishment of a regional EPA fund to ensure the right channeling of the funds.³¹⁰

Furthermore in regards to financial support the European Investment Bank and EC coupled with its member countries are expected to provide aide to the PAPED in the period of 2015-2019 for

³⁰⁷ Economic Partnership Agreement (EPA) between the European Union and the Southern African Development Community (SADC) EPA Group, European Commission, accessed December, 4 2016, http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152818.pdf

³⁰⁸ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³⁰⁹ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³¹⁰ Economic Partnership Agreement with West Africa : Facts and figures , European Commission, accessed December 4, 2016, http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152694.pdf

a minimum of 6.5 billion Euros.³¹¹ The support will be tailored towards agriculture, infrastructure, capacity building for developing civil society including energy and trade.

Nonetheless although the SADC-EPA has a section and development cooperation, no financial commitment has been made so far and there is no equivalent to ECOWAS PAPED.³¹² It is clear that parties consent to the need for a regional development financial mechanism like an EPA find that there are no commitments or potential additional sources of revenues. There is all the same some acknowledgement of the possible financial effects of tariff phase down on SADC-EPA states especially LDCs like Lesotho but no substantial commitment has been shown regarding financial support.

³¹¹ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³¹² Ibid.

5.4 Effects on regional integration in Africa

Based on the intricacies and gaps between ECOWAS-EPA and SADC EPA, the following are the potential effects it will generally have on regional integration in the continent as a whole.

I. Special and differential treatment compromised

It is stipulated that the EPAs are to propel African states towards speedy trade liberalization. However the EPAs are also likely to challenge the necessity for diverse tariff reduction rates for the various regional member states through their unique negotiated trade arrangements.³¹³ Gradual, differential tariff and variable reductions of this nature are principally designed to provide a degree of protection and security to weaker traders and producers within a region. Furthermore they are essentially formulated to reverse the privileges more economically developed regional member states enjoy for example South Africa in SADC or Nigeria in ECOWAS.³¹⁴ In actual fact the EPA does not necessarily facilitate free trade neither is the professed objective for RECs to establish personal free trade areas ahead of the EPAs suitable for regions that integrate high disproportional developed states.

II. Internal markets penetrated and eroded

Exposing African markets to highly competitive European exporters and producers will impose immense pressure on African traders and producers within their internal markets.³¹⁵ This has been apparent with the present degrees of external trade liberalization by means of the WTO tariff reduction laws, the World Bank's SAPs (Structural Adjustment Programs) and the IMF

³¹³ Implications of EPA/FTAs against developmental regional integration in Africa, Transnational Institute, accessed December 10, 2016, <https://www.tni.org/en/article/implications-epaftas-against-developmental-regional-integration-africa>

³¹⁴ Regional Integration and the EPAs, South Centre, accessed December 10, 2016, https://www.southcentre.int/wp-content/uploads/2013/08/AN_EPA4_Regional-Integration-and-EPAs_EN.pdf

³¹⁵ Boussiratou Gbadamassi et al., "Regional Integration and Trade Liberalization: A comparative analysis of ECOWAS and SADC Trade Liberalization Schemes" University of Ghana (2014): 20 http://ugspace.ug.edu.gh/bitstream/123456789/7195/1/Boussiratou%20Gbadamassi_%20%20Regional%20Integration%20and%20Trade%20Liberalization%20A%20Comparative%20Analysis%20of%20Ecowas%20and%20Sadc%20Trade%20Liberalization%20Schemes.pdf

(International Monetary Fund).³¹⁶ Moreover outside pressures of this kind on national producers and traders, it will also affect their prospects in the internal markets of other states in the same regional community. In the Southern African case, the preferential access that South African traders enjoy to the close-by larger and richer South African market will be eroded.³¹⁷ In this manner, trade liberalization caused by the EPA will destabilize one of the fundamental objectives of regional integration. Which is simple element is to establish enlarged and combined markets to facilitate the expansion of inter-regional trade and support regional, national and local producers.

III. Administrative costs and burdens

Practically the EC's backing of integrated free trade arrangements in the African continent will compel their rapidity and trigger them too early into regional FTAs.³¹⁸ Hence it will be challenging to manage the flow of international imports in the entire region especially from member states that have lower external tariffs. A vast disparity amongst neighboring states has been due to the outcome of inter alia, independent trade liberalization and the World Bank's structural adjustment programs including the IMF.³¹⁹ More so that, these disparities are likely to be exacerbated due to the wide-ranging unilateral state trade liberalization scheme with the EU under the EPAs i.e. the IEPAs. The augmented movement of these international imports into singular member countries of all the different FTA regions in the continent will compound the

³¹⁶ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 10,

<http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³¹⁷ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014): 75

https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1

³¹⁸ Implications of EPA/FTAs against developmental regional integration in Africa, Transnational Institute, accessed December 10, 2016, <https://www.tni.org/en/article/implications-epaftas-against-developmental-regional-integration-africa>

³¹⁹ Implications of EPA/FTAs against developmental regional integration in Africa, Transnational Institute, accessed December 10, 2016, <https://www.tni.org/en/article/implications-epaftas-against-developmental-regional-integration-africa>

burdens of intra-regional border controls and administrative costs.³²⁰ Likewise, it will make complex managing rules of origin of imports from states in the same regional configuration.

IV. Common external tariff challenges

Conversely, the cross border leakage of global imports from one state to another within one region can usually be addressed by assenting to a CET arrangement.³²¹ Nevertheless negotiations surrounding a CET are exceptionally challenging between disproportional economies and economies with diverse international or external trade policies.³²² Hitherto, in principle the expeditious formulation of single CETs are necessary for discussions on joint regional tariff arrangements with the EU, especially if it is the goal the various regions finally aspire towards. The main problem however is whether such common external tariffs are going to be established at a suitable speed through negotiated intra-regional agreements, or by a piece meal process through the formation of a number of bilateral external trade agreements with the EU.³²³

V. Potential EU financial and technical aid manipulated

Besides the numerous practical issues and policy quandaries, the EC guarantees the governments of African states that they can count on EU production, research activities investment and planning; supported by the EU's technical and financial development assistance to address the problems that are likely to occur.³²⁴ These regulations overheads that accompany extensive and rapid liberalization are expected to be catered for by the EU's many

³²⁰ Ibid.

³²¹ Mwanahawa Aziz Khaulelo Mdee et al., "Economic Partnership Agreements and Regional Integration: A Case Study of the Southern Africa Customs Union and The Southern African Development Community," University of Cape Town (2014): 75
[https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=](https://open.uct.ac.za/bitstream/handle/11427/4724/thesis_law_2009_mwanahawa_aziza_mdee.pdf?sequence=1)

[1](#)

³²² Ibid., 24

³²³ EPA negotiations and regional integration in Africa: Building or stumbling blocs, European Centre for Development and Policy Management, accessed October 16, 2016 <http://ecdpm.org/wp>

³²⁴ Implications of EPA/FTAs against developmental regional integration in Africa, Transnational Institute, accessed December 10, 2016, <https://www.tni.org/en/article/implications-epaftas-against-developmental-regional-integration-africa>

financial schemes and it's Aid for Trade. It is however, no secret that African states have been highly dependent on the EU for financial support, a habit that has caused it to be constantly vulnerable to enter into unprofitable trade negotiations. Thus in their perennial petition for more aid they result to "adjustment costs"³²⁵ that are simply intense social and economic disruptions to the regional integration process which is designed to make Africa states less dependent.³²⁶

VI. Regional services cooperation countered

It is important to however note that EU aid of this nature will destabilize attempts to enhance mutual support between member states of the various sub-region and services cooperation. The EC's approach of luring the region to rely and open up their markets to EU companies for the provision of services will reverse internally created services capacities and production.³²⁷ It will further destroy better equipped self-reliant and independent services development. Members of regional configurations engaging in services cooperation programs can lead to more concrete organic development. This however entails policy space and time. Although it does not prevent utilizing services companies from the EU when required, it does necessitate the ability to negotiate and decide definite time-bound contracts with specific EU service companies. Additionally, it entails the capacity to enter and function in accordance with their personal business resolutions. In several ways, trade in services is a camouflaged form of investment and this is hence, coupled with the assurance of a transfer of their financial privileges back to their home bases.³²⁸ A process the EU is facilitating through the establishment of EPAs.

³²⁵ Karingi, Lang S et al., " Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements," United Nations Economic Commission for Africa, Accessed, December 10, 2016 <https://www.gtap.agecon.purdue.edu/resources/download/2152.pdf>.

³²⁶ Ibid.

³²⁷ Implications of EPA/FTAs against developmental regional integration in Africa

³²⁸ Implications of EPA/FTAs against developmental regional integration in Africa, Transnational Institute, accessed December 10, 2016, <https://www.tni.org/en/article/implications-epaftas-against-developmental-regional-integration-africa>

VII. A complex process contracted and redirected

There are several more joint legal, political, economic, environmental and socio-economic elements that are pertinent to establish comprehensive, well-rooted and fully functional development procedures. They constitute the intricate requirements necessary to create development communities separate from ordinary investment and trade markets. Within the control of the present international investment and global trade and growth regime, the governmental policy makers, including the independent academic analysis in the continent are progressively focusing on market building. This is a shift from the usual concentration on community creating phases of their regional programs and plans. Hence the EPA's focus on liberalization centered on trade, investment and services will undeniably intensify the re-direction of African RECs.

VIII. An extended and incremental process curtailed

Lastly, these convoluted intra-regional procedures necessitate complex inter-governmental negotiations, research, frequent amendments and adjustments, planning including discussions with the involvement of all regional and national stakeholders.³²⁹ Despite the EU's personally structured procedures of variable and multi-layered regional integration and coordination, it is imposing immense pre-emptive demands and pressures African regions and governments. A typical example was the enormous pressure to complete negotiation by 2008.³³⁰ Furthermore, there were counter programs and pressures like "open regionalism."³³¹ This cause was supported by the World Bank in the early phases of the SAPs being engineered in the continent

³²⁹ *ibid*

³³⁰ EPA Negotiations: African Countries Continental Review, Economic Commission for Africa, accessed October 16, 2016, www1.uneca.org/Portals/atpc/CrossArticle/1/WorkinProgress/64.pdf

³³¹ Implications of EPA/FTAs against developmental regional integration in Africa, Transnational Institute, accessed December 12, 2016, <https://www.tni.org/en/article/implications-epaftas-against-developmental-regional-integration-africa>

in the 1980s. Additionally the cross-border liberalization schemes set up in Southern and East Africa simultaneously with the EC in the early 1990s are also significant examples.³³²

5.5 Conclusion

The relevance of regional integration in the African continent cannot be over emphasized. Developing and developed nations have both utilized economic integration to improve the standard of living of their people and to further advance their economies. Moreover in order for African states to have a higher bargaining power in the global economy, the success of the regional integration process is crucial.³³³ As it would not only facilitate the continent's integration into the global market but additionally aide in bridging the gap between developed states and least developed states.

The EU traditionally has been one of Africa's most dominant investment, development and trade partner. Trade with the European Union was directed by a number of Lomé Conventions. These conventions granted majority of African states with the exception of South Africa unilateral preferential access to markets in the EU. Due to certain discrepancies with the preferential access, African states and the EU eventually concluded the Contonou agreement. An agreement that shifted from non-reciprocity to reciprocity and paved the way for the negotiation of the EPA in 2000 that was compatible with the WTO. Several arrangements of African states have established negotiating factions; a number of which cut through neighbourhood regional integration configurations that are already in existence. This has added further convolution to the development of regional integration in Africa.

The prolonged and challenging process surrounding the EPAs has not only mirrored to a significant degree, the gap between the EU's prototype of regional trade agreements and the

³³² Regional Integration and the EPAs, South Centre, accessed December 12, 2016, https://www.southcentre.int/wp-content/uploads/2013/08/AN_EPA4_Regional-Integration-and-EPAs_EN.pdf

³³³ Regional Integration and the EPAs, South Centre, accessed December 12, 2016, https://www.southcentre.int/wp-content/uploads/2013/08/AN_EPA4_Regional-Integration-and-EPAs_EN.pdf

African paradigm of regional integration but more importantly the challenges of regional integration in Africa.³³⁴ Furthermore the negotiation for the EPAs highlighted clear disparities between political ambitions and the economic reality in the African regional integration process.

Although to some degree the SADC-EPA especially SACU and ECOWAS succeeded in consenting on a regional agenda that supports cooperation in the region. It is very uncertain the point to which the EPAs will facilitate integration on a broader spectrum i.e. continental integration framework.³³⁵

First of all the number of regional configurations and RECs in the continent has been gradually increasing. Moreover it is recognizable that many states are members of a number of arrangements. Despite certain RECs such as UEMOA, SADC and ECOWAS having taken significant strides to achieve rationalization, this key problem still remains essentially unaddressed. Thus, leading to a spaghetti bowl of regional groups of which just eight have been legitimately acknowledged by the African Union.³³⁶

This causes fragmentation of markets, irrelevant duplication of efforts and functions which eventually undermine the potential of RECs to attain effective and coherent integration schemes.³³⁷ The EPAs have unfortunately contributed to this problem. As previously mentioned, only ECOWAS and the EAC were able to negotiate EPAs as a complete regional bloc. Thus negotiating full regional EPAs became difficult with other regional blocs especially SADC due to the overlapping membership of some states.

The EPAs in this case have the potential of concealing an inadvertent lock-in effect. This means it will hem in states within the region that have negotiated an EPA. In this circumstance it will

³³⁴ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³³⁵ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³³⁶ Mzukisi Qobo et al., "The challenges of regional integration in Africa In the context of globalisation and the prospects for a United States of Africa" no.145 (2007) :3, <https://www.files.ethz.ch/isn/98933/PAPER145H.pdf>

³³⁷ Ibid., 3

be difficult for regions to address the overlapping issue or even form larger economic units. For example, the SADC-EPA provides for accession for any organization or state to the SADC-EPA. Furthermore, the EPAs comprise of a standstill clause that inhibits states from augmenting their tariffs in the future above what has been stipulated in the EPAs.

Thus, hypothetically, if ECOWAS and SADC in future agree to harmonize their trade regimes to create a bigger customs union they will face major impediments. This will be evident in the attempt to align their market access schedule without annulling the EPAs in their present condition.³³⁸ All these challenges surrounding the institution of Free trade areas among African regional economic communities indicate that it is more probable for EPA regions to extend a greater favorable treatment to the EU than they would to their own regional partners. This however has the potential to significantly lower the level of intra-African trade, an undesirable state of affairs, considering that intra-African trade is a key objective to solidifying the regional integration agenda on the continent.³³⁹

³³⁸ Isabelle Ramado et al., "ECOWAS and SADC Economic Partnership Agreements: *A Comparative Analysis*" European Centre for Development Policy Management, no. 165 (2014): 2, <http://ecdpm.org/publications/ecowas-sadc-economic-partnership-agreement-comparative-analysis/>

³³⁹ Mzukisi Qobo et al., "The challenges of regional integration in Africa In the context of globalisation and the prospects for a United States of Africa" no.145 (2007) :3, <https://www.files.ethz.ch/isn/98933/PAPER145H.pdf>

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[9B3FLhjHO4oc08aNb3BrvpEC777KDlfZu~xt7WObGqJ4jPbp86kH6l1JvWxYoTME6P2A &Key-Pair-Id=APKAIUCZBIA4LVPVW3Q](https://academic.oup.com/jiel/article-abstract/10/2/363/808820/The-EU-ACP-Economic-Partnership-Agreements-and-the?redirectedFrom=fulltext)

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