



# TDCA AND SADC EPA: FACILITATION OF MARKET GROWTH AND INTEGRATION OR DECLINE WITHIN SACU? - A CRITICAL ANALYSIS

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## **DEDICATION**

This dissertation is dedicated to my mother, 'Mamabela Qhobela and my younger sister Ts'oarelo Qhobela for all the unwavering support they have shown me, academically, emotionally and in all ways possible. I have the biggest cheerleaders in both of them.

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**LIST OF ACRONYMS**

ACP	African Caribbean and Pacific Countries
AEC	African Economic Community
AU	African Union
BLNS	Botswana, Lesotho, Namibia and Swaziland
BLS	Botswana, Lesotho and Swaziland
BRICS	Brazil, Russia, India, China and South Africa
COMESA	Common Market for East and Southern Africa
CEMAC	Central African Economic Monetary Community
CET	Common External Tariff
CMA	Common Monetary Area
CPA	Cotonou Partnership Agreements
CU	Customs Union
DTI	Department of Trade and Industry
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
EEC	European Economic Community
EPA	Economic Partnership Agreement
ESA	East and Southern Africa
EU	European Union
FAL	Final Act of Lagos
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
GNP	Gross National Profit
GSP	Generalised System of Preferences
IEPA	Interim Economic Partnership Agreement

LDC	Least Developed Country
LPA	Lagos Plan Action
OAU	Organisation of African Unity
MFN	Most Favoured Nation
MGD	Millennium Development Goals
NP	Negotiating Principles
NTB	National Tariff Barrier
REC	Regional economic Community
REPA	Regional Economic Partnership Agreements
RISDP	Regional Indicative Strategic Development Plan
RoO	Rules of Origin
SADCC	Southern African Development Coordination Conference
SADC	Southern African Development Community
SACU	Southern African Custom Union
SDT	Special Differential Treatment
TDCA	Trade, Development and Cooperation Agreement.
TFTA	Tripartite Free Trade Area
UNECA	United Nations Economic Commission for Africa
WCO	World Customs Organisation
WTO	World Trade Organisation.

## TABLE OF CONTENTS

<b>DEDICATION</b>	I
<b>ACKNOWLEDGMENTS</b>	II
<b>LIST OF ACRONYMS</b>	III
<b>TABLE OF CONTENTS</b>	V
<b>CHAPTER 1</b>	1
1.1 INTRODUCTION	1
1.2 BACKGROUD	2
1.2.1 Southern African Customs Union	2
1.2.2 Southern African Development Community	3
1.2.3 Economic Partnership Agreements	3
1.2.4 Trade, Development and Cooperation Agreement	6
1.2.5 The Tripartite Agreement (COMESA, EAC and SADC)	7
1.3 PROBLEM STATEMENT	8
1.3.1 Facilitation of market growth and integration	9
1.4 CHAPTER OUTLINE	10
<b>CHAPTER 2 REGIONAL ECONOMIC (MARKET) INTEGRATION WITHIN SACU AND SADC</b>	11
2.1 INTRODUCTION	11
2.2 REGIONAL (MARKET) INTEGRATION	11
2.2.1 Rational for Economic (market) integration	13
2.2.2 History of economic (market) integration	13
2.2.3 SACU	14
2.2.4 SACU Objectives	16
2.2.5 Trade facilitation	17
2.2.6 New Vision	17

2.2.7 Third Party trade relations	17
2.2.8 Member States' Participation	18
2.2.9 Unfair Trade Practices	19
2.3 SADC	19
2.3.1 Rules of Origin	19
2.3.2 Rationale	21
2.3.3 Problem of SADC ROO	22
2.3.4 Regional Indicative Strategic Development Plan	22
2.3.5 Rationale for RISDP	23
2.4 IMPLEMENTATION WITHIN SACU AND SADC	23
2.4.1 Trade Facilitation	24
2.4.2 Progress	25
2.4.3 Challenges	25
2.5 CONCLUSION	30
<b>CHAPTER 3 TRADE RELATIONSHIP BETWEEN THE EU AND SOUTHERN AFRICA</b>	<b>32</b>
3.1 INTRODUCTION	32
3.2 GATT AND WTO	33
3.2.1 Special and Differential Treatment	33
3.2.2 Origin of SDT	33
3.2.3 SDT in the GATT	34
3.2.4 The Enabling Clause	35
3.2.5 Conditions attached to benefit from trade preferences	35
3.3 THE EU AND AFRICA TRADE DEVELOPMENT	36
3.3.1 European Economic Community	36
3.3.2 The Rome Treaty	36
3.3.3. Yaoundé	37



3.3.4 Lomé	37
3.3.5 Cotonou	37
3.4 REGIONAL ECONOMIC COMMUNITIES	39
3.4.1 AEC	39
(i) The objectives of the AEC	39
3.4.2 EAC	40
3.4.3 COMESA	40
(i) Objectives	41
(ii) COMESA launch	42
(iii) Progress within COMESA	42
(iv) Remedies for revenue losses	43
3.5 COMESA-EAC-SADC TRIPARTITE	43
3.5.1 Overlapping membership in RECs	43
3.5.2 Tripartite Free Trade Area	45
(i) Advantages of the TFTA	46
3.5.3 Rules of Origin	47
3.5.4 Common External Tariff	48
3.6 ECONOMIC PARTNESHIP AGREEMENTS	49
3.6.1 Benefits of the EPAs	50
3.6.2 SADC EPA	50
3.6.3 Regional Configuration	51
3.6.4 MFN	52
3.6.5 (i) SA under SADC EPA (Gains)	52
(ii) SA under SADC EPA (Pitfalls)	52
(iii) SA under the TDCA (Pitfalls)	54
(iv) SACU members under the TDCA (Pitfalls)	54
(v) SACU members under the SADC EPA (Gains)	54

3.6.6 General Drawbacks of EPAs	55
3.7 CONCLUSION	56
<b>CHAPTER 4 ANALYSIS OF THE HARMONISATION OF THE TDCA AND SADC EPA</b>	<b>57</b>
4.1 INTRODUCTION	57
4.2 OVERVIEW OF THE TDCA	58
4.2.1 TDCA objectives	59
4.2.2 The role of South Africa and the TDCA	60
4.3 DO THE TDCA OBJECTIVES FACILITATE OR HINDER MARKET ACCESS AND INTEGRATION?	61
4.4 SADC EPA	63
4.4.1 Position of the negotiations	63
4.4.2 Contentious Issues	64
(i) Liberation of all trade substantially	64
(ii) Restrictions on exports: abolition	64
(iii) The MFN Clause	65
(iv) Rules of Origin	65
(v) The Standstill Clause/Modification of Tariff Schedules	66
4.4.3 Progress	66
4.4.4 EU-SADC EPA's relation to the TDCA	67
4.5 CAN SACU WITHSTAND THE CO-EXISTENCE OF THE TDCA AND SADC EPA?	68
4.5.1 Implications of SACU vis-à-vis SADC EPA	69
4.5.2 Implications of the TDCA and SADC EPA on the SACU CET	69
4.5.3 Repercussions for failure to conclude the SADC EPA	70
4.6 BENEFITS TO BE DERIVED FROM THE TRIPARTITE FREE TRADE AGREEMENT	71
4.6.1 Implementation: Way Forward	72

4.6.2 South Africa as a proxy for SACU	73
4.7 CONCLUSION	73
<b>CHAPTER 5 CONCLUSION</b>	75
5.1 CONCLUSION	75
5.2 RECOMMENDATIONS	77
5.3 WAY FORWARD	77
<b>BIBLIOGRAPHY</b>	79

## CHAPTER 1

### 1.1 INTRODUCTION

Ever since African states gained their respective independences, regional integration has been at the highest realm of their goals. The states have since seen it as a solution to their slow growing economies and as a means of poverty reduction.<sup>1</sup>

It has been a very slow but enormous progression on the part of Southern African countries since the establishment of the Southern African Customs Union (SACU) in 1910. These states developed and are still continuing to develop promising approaches to trade negotiations in both multilateral and regional economic negotiations<sup>2</sup> and agreements they have with the European Union (EU) such as the Southern African Development Community Economic Partnership Agreement (SADC EPA) and South Africa with the Trade, Development and Cooperation Agreement (TDCA) it has with the EU.

SACU took it upon itself to bring into existence a common external tariff but the TDCA has proved to not take into account the concerns of the other SACU members namely Botswana, Lesotho, Namibia and Swaziland (BLNS).<sup>3</sup> The promotion of trade is mainly boosted by developed countries trading with developed and least developed countries extensively than it is by developing and least developed countries trading with their respective counterparts.<sup>4</sup> This means developing and LDCs do not become part of regional integration economic groupings to promote trade.

This is one of the main reasons why the agreements that these states conclude with the EU should be concluded in a way that boosts trade without encroaching on other states for such to be attained.

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<sup>1</sup> Peter Draper, Durrel Halleson and Philip Alves 'SACU, Regional Integration and the Overlap Issue in Southern Africa' From Spaghetti to Cannelloni? Trade Policy Report No. 15 available at [http://www.sarpn.org/documents/d0002411/SACU\\_SAIIA\\_Jan2007.pdf](http://www.sarpn.org/documents/d0002411/SACU_SAIIA_Jan2007.pdf). Accessed on 2<sup>nd</sup> September 2013.

<sup>2</sup> Stephen R. Hurt, Donna Lee and Ulrike Lorenz-Carl 'The Argumentative Dimension to the EU-Africa EPAs' paper prepared for the IPEG Conference, September 2012, University of Birmingham.

<sup>3</sup> Dani Venter and Ernst Neuland *Regional Integration - Economic Partnership Agreements for Eastern and Southern Africa* First Edition 2007.

<sup>4</sup> Ibid.

## 1.2 BACKGROUND

### 1.2.1 Southern African Customs Union (SACU)

This is a customs union<sup>5</sup> that came into existence in 1969 from the signing of the Customs Union Agreement between South Africa, Botswana, Lesotho, Namibia and Swaziland (BLNS) and became effective in 1970. It had emerged from and replaced its predecessor which had been established in 1910 by the Customs Union Agreement.<sup>6</sup> Members of the five states that comprise SACU were in accord that in order to democratise SACU and thereby allow for the current needs of the SACU member states to be addressed more effectively, the 1969 agreement had to be renegotiated.<sup>7</sup> SACU as it stands today, is the product of yet another agreement that was signed in 2002 and which was a subsequent replacement of the 1969 agreement.<sup>8</sup>

This initiative has been regarded as having discrepancies in policies, levels of development, political systems and administrative capacity.<sup>9</sup> Many political and economic circumstances influenced the features of SACU, and South Africa accounting for the great majority of the economic factors that hold SACU together, assumed absolute discretion over external trade policy.

South Africa having that much discretion brought no problems and for as long as the possible costs<sup>10</sup> of the customs union were recognised and acknowledged, the increasing magnitude of the revenue transfers ensured that there was no need for reform.

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<sup>5</sup> A customs union is a union which allows regulations of commerce and separate tariffs to apply to a substantial part of the union member states' trade with each other within their territories. GATT Article XXIV (2).

<sup>6</sup> Southern African Customs Union (SACU) History and Present Status, Department of International Relations & Cooperation Republic of South Africa, available at [www.dfa.gov.za](http://www.dfa.gov.za). Accessed on 16<sup>th</sup> September 2013.

<sup>7</sup> Ibid.

<sup>8</sup> Peter Draper et al op cit.

<sup>9</sup> Robert Kirk and Matthew Stern, 'The New Southern African Customs Union Agreement' Volume 28, Issue 2.

<sup>10</sup> Ibid.

### 1.2.2 Southern African Development Community (SADC)

SADC is one of Africa's several regional trade initiatives and it evolved from the Southern African Development Coordination Conference (SADCC) which was formed in 1980 and mainly focused on barricading the Apartheid system that was prevailing in South Africa and therefore paid less to no mind in fostering regional trade agreements.<sup>11</sup> In 1992, this initiative then became SADC post the signing of the SADC Treaty and that was when it started gearing towards expediting regional economic integration.<sup>12</sup> It can also be safely concluded that when South Africa participated in 1994<sup>13</sup> the feasibility of SADC as an economic community was likewise enhanced.

The SADC protocol sought to liberalize tariffs on products immediately and gradually but there were disagreements.<sup>14</sup>

The SADC region was to establish a SADC Customs Union by 2010 pursuant to the SADC Regional Indicative Strategic Development Plan (RISDP)<sup>15</sup> but the region failed to meet that date and up to this day it has not been established. It is viewed that the CU will unlikely be formed in the near future.<sup>16</sup> This CU was going to deal with negotiations of a common external tariff (CET) and its implementation thereof.

### 1.2.3 Economic Partnership Agreements (EPAs)

The EU and the African, Caribbean and Pacific (ACP) countries have replaced the Lomé trade regime which entailed non-reciprocal trade preferences with the EPAs. The EPAs are in direct relation with the Cotonou Partnership Agreement (CPA) and regional integration is as such a gateway to both agreements. The European Commission (EC) has for a long time regarded regional integration as the

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<sup>11</sup> Sophie Chauvin and Guillaume Gaulier 'Prospects for Increasing Trade among SADC Countries' Centre d'Etudes Prospectives et d'Informations Internationales (CEPII) 2002 Annual Forum at Glenburn Lodge, Muldersdrift (Trade and Industrial Policy Strategies). Available at <http://www.tipsa.org.za/files.pdf> Accessed on 16 September 2013.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Fact Sheet on the interim Economic Partnership Agreements SADC GROUP 2009. Available at [www.ec.europa.eu/development/icenter/repository/fact\\_sheet\\_epa\\_sadc.pdf](http://www.ec.europa.eu/development/icenter/repository/fact_sheet_epa_sadc.pdf).

<sup>15</sup> Kalenga, P. 2012. "Regional integration in SADC: retreating or forging ahead?" Stellenbosch: tralac.

<sup>16</sup> Ibid.

main component for the development of ACP countries.<sup>17</sup> Negotiations involving all the ACP countries began in 2002 and two years down the line they had grown to regional level.<sup>18</sup>

The EC strove for trade deals with the ACP countries that were comprehensive and compatible with the World Trade Organisation (WTO) rules but because the ACP states had different interpretations of the development component, different degrees of lack of improved market access among other things, it was not easy for the EC to come up with ways it would align the objectives it had with the different circumstances of the ACP states.<sup>19</sup> These differences had to be resolved and because the Cotonou Agreement is a preferential agreement, members of the WTO criticised it for not coinciding with Article XXIV of the General Agreement on Tariffs and Trade (GATT).<sup>20</sup> The EU subsequently found hope for a more WTO compatible agreement in the EPAs.

These agreements seek to promote regional integration but the fact that the negotiations configurations do not correspond with the regional economic integration groupings, economic and trade ties that have been established over long periods of time are being shattered.

There are also strong views that the regional integration process achievements that have been developed and nurtured with such potency can be destroyed by EPAs.<sup>21</sup> Each of the ACP regions has negotiated and is still negotiating their individual EPAs with the EU.

Due to the new regime of EPAs, the African region was along the way divided into four configurations concerning the negotiations on EPAs<sup>22</sup> from the six individual

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<sup>17</sup> San Bilal, EPAs: fostering regional integration? PES Conference on Economic Partnership Agreements: Fostering Regional Integration and Development? Available at [www.ecdpm.org](http://www.ecdpm.org) accessed on 23<sup>rd</sup> September 2013.

<sup>18</sup> Mareike Meyn, Economic Partnership Agreements: A 'historic step' towards a 'partnership of equals'? Working Paper 288 available at [www.odi.org.uk](http://www.odi.org.uk) accessed on 23<sup>rd</sup> September 2013.

<sup>19</sup> Ibid.

<sup>20</sup> Catherine Grant 'Southern Africa and the European Union: the TDCA and SADC EPA' Tralac Trade Brief 2006.

<sup>21</sup> Chiwandamira D P, A Review of Economic Partnership Agreements (EPAs) Between The European Union & SADC And The Implication for Small Scale Farmers, 2006.

<sup>22</sup> Richard Kamidza, Can SADC-EU Trade Negotiations Unblock Development and Regional Integration?

negotiation groupings the entire ACP members were divided into.<sup>23</sup> SADC countries were further divided in that the Northern SADC members decided to be part of the Eastern and Southern African (ESA) EPA group because many of the countries belonged to multiple regional organisations and this left the other countries under the SADC EPA configuration.<sup>24</sup> Those being Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and Tanzania, however the study will focus on the SADC EPA as it comprises of Botswana, Lesotho, Namibia and Swaziland. South Africa unlike the others entered into a bilateral agreement with the EU which is known as the TDCA.

It can be mentioned in passing that products that come from the SADC EPA region receive duty-free and quota-free access into the EU market and have no obligation under that agreement to reciprocate to the EU whereas under the TDCA South Africa is bound to reciprocate and therefore grant EU products the same treatment granted to its products by the EU.

SADC EPA is the agreement between the EU and the SADC countries Botswana, Lesotho, Namibia and Swaziland (BLNS) and excludes South Africa which has a bilateral agreement with the EU as mentioned earlier.<sup>25</sup>

As members of SADC have observed SACU provisions it is crucial for that initiative that tariffs towards the EC emanating from the SACU members remain coherent.<sup>26</sup> The EPA was initially anticipated to result in only one trade regime between SACU and the EC and this had emanated from the fact that the Cotonou Agreement was already in existence and in force for the BLNS countries and for South Africa there was the TDCA.<sup>27</sup> The council of the EU made a decision to revise the TDCA so that a fairly substantial amount of tariffs would be aligned in the TDCA so as to be on par with the tariffs that were agreed and set out in the EU SADC interim EPA (IEPA) between the EU and Botswana, Lesotho and Swaziland.<sup>28</sup>

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<sup>23</sup> Ulrike Lorenz Transformations on Whose Terms? Understanding the New EU-ACP Trade Relations from the Outside In No 40 2012.

<sup>24</sup> Ulrike Lorenz op cit 10.

<sup>25</sup> South Africa was however integrated in the agreement at a later stage.

<sup>26</sup> EPA Negotiations: Where do we stand? - SADC – available at [www.acp-eu-trade.org](http://www.acp-eu-trade.org) accessed on the 15<sup>th</sup> September 2013.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.



### 1.2.4 Trade, Development and Cooperation Agreement (TDCA)

This agreement was signed between the EU and South Africa in 1999 as an agreement providing comprehensive cooperation between South Africa and the EU.<sup>29</sup> The Southern Africa region has long been participating in regional integration and the 2002 SACU agreement brought about changes in that measures were taken to ensure that when dealing with third parties, SACU members negotiated a more efficient trade policy approach.<sup>30</sup> South Africa having an agreement with the EU to the exclusion of the other SACU members defeats the purpose of the efficient trade policy in that the other SACU members end up having to conform to provisions they did not agree to and agreements to which they are not signatories.

The TDCA binds its signatories to broaden their cooperation and is as such, inspired by the Cotonou agreement between the EU and the ACP countries.<sup>31</sup> It established preferential trade arrangements between the two continents (Europe and Africa) and it gradually introduced a Free Trade Area (FTA)<sup>32</sup> among its members. As was the vision of the EU to create WTO compliant agreements, the FTAs are created under Article XXIV<sup>33</sup> and they are territories in which member states have signed a Free Trade Agreement in which they eliminate tariffs on imports originating from the member states yet subjecting such tariffs on goods imported from non-members of that particular FTA.

Although a common external tariff existed even before the 2002 SACU agreement, SACU members were during that time focused on negotiations on bilateral free trade arrangements with other countries and had little regard for the individual concerns of each other.

The EU-SADC EPA is a single negotiated agreement and South Africa had only been an observer but joined later in 2007.<sup>34</sup> South Africa is of the opinion that

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<sup>29</sup> Cooperation Between The European Union and South Africa, Joint Country Strategy Paper 2007-2013 available at [www.ec.europa.eu/development/icenter/repository](http://www.ec.europa.eu/development/icenter/repository) accessed on the 27<sup>th</sup> September 2013.

<sup>30</sup> Catherine Grant op cit.

<sup>31</sup> Ibid.

<sup>32</sup> Trade, Development and Cooperation Agreement available at [http://europa.eu/legislation\\_summaries/development/south\\_africa](http://europa.eu/legislation_summaries/development/south_africa). Accessed on 15<sup>th</sup> September 2013.

<sup>33</sup> General Agreement on Tariffs and Trade (GATT).

<sup>34</sup> Sandrey, R. and Gill, T. 2013. 'An assessment of the Trade and Development Cooperation Agreement' Stellenbosch: tralac.

rules of origin negotiations, tariff negotiations and other outstanding contentious issues are fundamental and must be addressed.<sup>35</sup> An improved market access within the EU is what South Africa above what has already been agreed under the TDCA is looking for. The EU in taking account of South Africa's request indicated that it requires reciprocal action from South Africa regarding products that are currently not included in the TDCA offer.<sup>36</sup> It is important to mention that Rules of Origin (RoO) on other products and regional cumulation are still not resolved.<sup>37</sup>

### **1.2.5 The Tripartite Agreement (COMESA, EAC and SADC)**

The Common Market for East and Southern Africa (COMESA), East African Community (EAC) and Southern African Development Community (SADC) all agreed on establishing an FTA under the Tripartite Agreement in which they seek to enhance cooperation with their multilateral and or bilateral partners as well as to enhance inter-Regional Economic Community (REC) economic cooperation.<sup>38</sup>

The same way as has been revealed through numerous studies that at the heart of regional integration in Africa the main problem is the overlapping membership in RECs which is resultant from members joining multiple regional trade agreements, this agreement brings about that same issue and it is appropriate to state that this continued intertwined membership has undermined regional integration as an important tool for Africa.

Aside from multiplicity of obligations, the TFTA also shows high possibilities of bringing up substantial losses on the economic status of countries which will result from a wide-ranging trade liberalisation.<sup>39</sup> Although this TFTA is not short of hurdles, it does promise economic gains too and a better solution to the multiplicity of obligations phenomenon that exists in RECs. However in order for it to indeed be the solution, the issues pertaining to rules of origin and different tariff liberalisation schedules must be addressed and resolved.

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Memorandum of Understanding On Inter Regional Cooperation and Integration Amongst Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern African Development Community (SADC) Article 2.

<sup>39</sup> Jensen, H.G and Sandrey, R. 2013. 'A new approach to a regional Free Trade Agreement in east Africa: "willing participants".' Stellenbosch: tralac. Available at [www.tralac.org](http://www.tralac.org).

### 1.3 PROBLEM STATEMENT

It is said that the EU sought to implement the EPAs as a means of strengthening regionalism among the ACP countries.<sup>40</sup> The creation of the EPAs may however have a different effect on the Southern Africa states than was envisaged.<sup>41</sup> It is believed that there is a potential rift that may occur and therefore halt trade integration as opposed to accelerating it.<sup>42</sup> After all, facilitation of trade is contingent upon the rate of success of movement of goods in cross-border trade.

It is a fact that when it comes to implementing rules-based dispensations such as the trade agreements up for discussion in this dissertation, developing countries and least developed countries (LDCs) undergo severe capacity constraints due to these agreements being embodied in legal instruments which involve sovereign states and international organisations.

Because of these legal obligations and the internal incorporation required from the member states challenges are likely to be faced by these members.<sup>43</sup> Both SACU and the TDCA are rules-based and the limited consideration given to their legal and influential aspects is the one that converts them into stumbling blocks when it comes to how they affect other members.<sup>44</sup>

SACU being a CU which has a CET and providing free movement of goods among its members on one hand and the TDCA being a bilateral agreement which is also considered to be an FTA on the other are somewhat different in their extent of integration.<sup>45</sup> With these two already at odds with each other and the BLNS countries being *de facto* members of the TDCA due to the fact that the SACU protocol prohibits members from entering into agreements with third parties without the consent of other members<sup>46</sup> and also because as members of SACU sharing a

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<sup>40</sup> Economic Partnerships Agreement in a nutshell, European Commission. Available at <http://ec.europa.eu> accessed on 15<sup>th</sup> January 2014.

<sup>41</sup> Christopher Stevens, 'The TDCA, EPAs and Southern African Regionalism' in Talitha Bertelsmann-Scott and Peter Draper 'TDCA: Impacts, Lessons and Perspectives for EU-South and Southern African Relations', SAIIA Trade Policy Report.

<sup>42</sup> *Ibid.*

<sup>43</sup> Gerhard Erasmus, TDCA: Impacts, Lessons and Perspectives for EU-South and Southern African Relations, *Legal conundrum: SACU, the TDCA and EPAs* SAIIA Trade Policy Report.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Erik Grunke op cit 19.

CET<sup>47</sup> and thereby having TDCA provisions applicable to them for instance BLNS being forced to place tariff reductions on EU imports in accordance with the rate agreed in the TDCA by South Africa,<sup>48</sup> hinders the integrity of the member states as partners in the SACU agreement.

Claims have been made that simultaneous membership of an FTA and a CU is possible, however this can remain viable only for so long especially if the original CU members are involved in countless diverse configurations to the extent that the primary CU exists only so far as reference can only be made to it and not because it is still in operation.<sup>49</sup>

### **1.3.1 Facilitation of market growth and integration**

This dissertation seeks to answer whether the TDCA and the SADC EPA contribute towards a growing market and integration within SACU.

It examines-

- i. whether the objectives of the TDCA facilitate or hinder market growth and integration within SACU;
- ii. whether SACU can withstand the TDCA's existence with SADC EPA in operation simultaneously;
- iii. Some of the benefits to be derived from the tripartite FTA; and
- iv. whether the TDCA and the SADC EPA can be harmonised still allowing SADC to be part of the TFTA.

## **1.4 CHAPTER OUTLINE**

This dissertation is divided into five chapters.

Chapter 1 comprises of the introduction and background to the study. It also gives out the research question and lays down the chapter outline.

Chapter 2 examines the development and progression of market integration within the SACU/SADC region and looks at the objectives of the two. It goes further

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<sup>47</sup> Paul Kruger 'The impact of new generation trade issues on EPAs. Available at [www.tralac.org](http://www.tralac.org).

<sup>48</sup> Catherine Grant op cit.

<sup>49</sup> Gerhard Erasmus op cit.

to examine the implementation and challenges encountered prior and post the TDCA by SACU/SADC members.

Chapter 3 looks at the EU and Southern Africa region trade relationship. It focuses on the benefits and the pitfalls that are or may have been experienced by both SA and other SADC members as a result of the trade relationship between the two regions under both the TDCA and SADC EPA. It also delves into the proposed COMESA, EAC and SADC tripartite agreement focusing on how common external tariffs and the multiplicity of obligations by members have come to hinder upon the member states' commitments and how these problems can be solved.

Chapter 4 gives an analysis of whether and how the TDCA and SADC EPA can be harmonised as the ultimate solution to the potential disintegration of SACU.

Chapter 5 concludes and gives recommendations on how the issues pertaining to the existence and enforcement of these Agreements may be addressed based on the examination, analysis and conclusions reached in all the preceding chapters.

## CHAPTER 2

### REGIONAL ECONOMIC (MARKET) INTEGRATION WITHIN SACU AND SADC

#### 2.1 INTRODUCTION

This chapter examines regional economic (market) integration taking place within SACU and SADC by outlining its rationale and examining how important it is for the region to pursue this mechanism considering the developments that will be achieved to help grow the member states' economies. It discusses the history of the mechanism and analyses the objectives the CU has to boost integration. It outlines trade facilitation within the region and addresses the CU's vision taking into account the relations it has with third parties and member states' participation when striving for development.

It looks at how the RoO affect the trade integration agenda and further examines the RISDP, discusses the progress that has been made and challenges that have to be overcome if the implementation of the CU and SADC objectives are to be achieved.

The chapter argues that member states need to work towards developing the region and not prioritising their states individually. There is also need for reform in the way that the SACU Agreement provisions are complied with. There should be strict provisions that will ensure that there are consequences to be faced if states fail to comply with the provisions. Trade integration ought to be accompanied by highly determined efforts in order to assist in diversifying the capacity of the production that goes on in the region.

#### 2.2 REGIONAL (MARKET) INTEGRATION

The reduction of tariffs and quotas together with the removal of other barriers which Schiff and Winters<sup>50</sup> say are known as deep integration and the introduction of trade blocks in which first world countries enter into agreements with developing countries and become equals for example the trade agreements the EU has with SADC countries: agreements known as North-South agreements.

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<sup>50</sup> Maurice W Schiff and L.Alan Winters *Regional Integration and Development* World Bank; Oxford University Press, 2003

Southern Africa has a goal as an entire region to advance its economic integration by creating a fully integrated and internationally competitive region with the principal objective of reducing poverty. It seeks to achieve this through its SADC Agenda.<sup>51</sup>

In most studies a distinction is not made between regional economic (market) integration and regional integration. A brief distinction will be highlighted between the two.

Regional economic (market) integration is on one hand explained as when different forms of perception between national economies are suppressed. Under this implication the member states' aim is to merge their distinct markets into one large market.<sup>52</sup> In order for the markets to be merged into one, a linear progression of integration<sup>53</sup> acts as a pathway, this is to say that an FTA, CU, Common Market, complete economic integration and complete political integration all have to be undergone.

Regional integration on the other hand is said to have taken place when a group of states belonging to the same region volunteer to have access to each other's markets and therein establish mechanisms that minimise conflicts and maximise internal and external economic, political, social and cultural benefits of their interaction.<sup>54</sup>

The Southern Africa region has for many years attempted regional market integration with no success due to the extremely slow growing economies of the Southern African countries so it decided to focus on regional integration as a whole without the highlighted distinction and therefore as a tool for fostering its development.<sup>55</sup>

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<sup>51</sup> Southern African Development Community, Towards A Common Future available at [www.sadc.int/about-sadc/overview/history-and-treaty/](http://www.sadc.int/about-sadc/overview/history-and-treaty/)

<sup>52</sup> M.C. Lee Development, Cooperation and Integration in the SADC Region, Research Journal Vol 2 (1999). University of Mauritius, Reduit, Mauritius.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Maurice W Schiff and L.Alan op cit.

### 2.2.1 Rationale for Economic (market) Integration

SACU and SADC member states have strived for the implementation of regional economic integration because majority of these countries having very small domestic markets that are said to restrict economic growth<sup>56</sup>, regional integration will foster an increase in their economic growth. The economies of scale in the production and distribution of goods<sup>57</sup> end up insufficient due to the member countries' small domestic markets.

It is therefore important for this region to practice this mechanism because developments such as agricultural production and economic diversification will be achieved and trade will spearhead economic growth when regional and international markets are easily within reach.<sup>58</sup>

When tariffs are reduced and a country's economy has imposed fewer barriers to market entry with lower transaction costs<sup>59</sup> prospects of investment and investment itself will grow, thereby creating jobs and eradicating poverty which will in turn allow these states to be internationally competitive.<sup>60</sup>

### 2.2.2 History of economic (market) integration

It has been mentioned that SADCC was not established for market integration and that the situation changed when it became SADC and the member states then implemented a broad development mandate. The SADC Treaty does not lay out a detailed plan for integration but the plan was laid out in the RISDP.

The plan was set to run as thus; an FTA was to be established by 2008 then come 2010 a CU and the CU has not been achieved yet while the FTA was completed in 2012. It also aims to have a common market in 2015, a monetary union in 2016 and a single currency in 2018.<sup>61</sup> Considering that in 2013 only one entity in the plan has been achieved, SADC was overly ambitious. It is comprised of developing countries and mostly LDCs and South Africa being the only power house

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<sup>56</sup> S Sharma 'A perspective on economic integration in Africa, Consultancy Africa Intelligence' February 2013.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.



with Mauritius and Botswana joining it as the three among the top five most competitive countries in the Sub-Saharan region<sup>62</sup> was obviously a sign that there was no possibility for the community to achieve its goals within such a short period of time.

### 2.2.3 SACU

The present day SACU dates back to 1910 when Britain and South Africa decided to incorporate the High Commission Territories into South Africa.<sup>63</sup> This first agreement entailed a refined regional integration. It is said to have lasted for almost 60 years however experiencing contentious operating procedures that strained it.<sup>64</sup>

South Africa adopted an import substitution programme which led to SACU experiencing high protective barriers in 1925 and then from 1930 there was intensified pressure for the renegotiation of the CU's revenue-sharing formula<sup>65</sup> as it was seeking to promote its industrial growth. The 1969 SACU agreement was then formed and was believed to be satisfactory as the markets of the BLS countries (Namibia having not acceded to it yet) were open for South African consumer products and through this the BLS countries would come to realise that there was need for a new agreement.<sup>66</sup>

The South African Board of Tariffs and Industry was the body that was making recommendations on external trade policies and the BLS countries had no problems with that.<sup>67</sup> The years progressed and the other SACU members began to see the flaws in the agreement in granting sole decision making regarding tariffs to South Africa.<sup>68</sup>

Considering that this is the oldest functioning CU in the world, SACU's integration has evolved immensely having a Common External Tariff (CET) and having some of its members cooperating in the Common Monetary Area (CMA) and

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<sup>62</sup> Ibid.

<sup>63</sup> Bertelsmann - Scott. T, 'SACU – One Hundred Not Out: What future for the Customs Union?' Occasional Paper No 68, Development Through Trade Programme September 2010 SAIIA.

<sup>64</sup> R Gibb 'Regional integration in post-apartheid Southern Africa: the case of renegotiating the Southern African customs union' (2007) Journal of Southern African Studies 75.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

taking steps to advance the economy integrations of its member states.<sup>69</sup> The SACU Tariff Board and national bodies were to manage this as provided for under the 2002 SACU Agreement but it is said that the bodies have not been established yet.<sup>70</sup>

SACU had not been functioning in a manner that was appealing to its member states in the 1980s but the situation took a turn when the members set forth negotiations to reconstitute it.<sup>71</sup> There was an agreement made in which South Africa attained captive markets which were suitable for its goods that were no threat to the international market as they were internationally uncompetitive and the BLNS states would in return receive a disproportionate share of the revenue pool.<sup>72</sup>

The 1969 SACU agreement was renegotiated because South Africa felt that it could no longer afford to compensate the BLNS countries the revenue sharing payments since its residual share of the common revenue pool had been declining significantly and therefore placing burden on the country.<sup>73</sup>

Gibb states that it may appear as though the BLNS countries were collecting fairly enough revenue pool compared to how little they were contributing to the CU's Gross National Profit (GNP) when in actuality South Africa's goods were benefiting substantially from the CU.<sup>74</sup>

The revenue-sharing formula that was used by the CU amongst its member states did not satisfy the BLNS countries as compensation for the adverse consequences that were brought about by being part of the CU.<sup>75</sup>

There is also the issue of the EPAs and these negotiations are said to have caused a split between the BLS countries and South Africa and Namibia as a result of the members not being able to reach consensus on the negotiations.<sup>76</sup> This is in

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<sup>69</sup> Regional Integration, Policy Development and Research. Available at [www.sacu.int](http://www.sacu.int) accessed on 5<sup>th</sup> October 2013.

<sup>70</sup> Ibid.

<sup>71</sup> Richard Gibb (1998). *Southern Africa in transition: prospects and problems facing regional integration*. The Journal of Modern African Studies, 36, pp 300.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Bertelsmann-Scott. T op cit.

addition to the global financial crisis faced by BLNS and how much the countries depend on the CU's revenue pool for the good amount of each of their income.<sup>77</sup>

There are numerous problems facing SACU, the Department of Trade and Industry (DTI) favours production-led regional economic integration as opposed to market-led regional economic integration and under the production-led regional economic integration, the CU and tariff arrangements are not of much importance and the CU is broken down to an FTA.<sup>78</sup> This is done so as to construct a network infrastructure which is an aspect of integration. Production-led regional economic integration is integration in which the focus is on the development of regional public goods while market-led economic regional integration occurs through tariff liberalisation.<sup>79</sup>

#### 2.2.4 SACU objectives

The member states met on the 12 April 2013 where they gave out a strategic direction which has been planned to increase SACU's potential as a CU which will yield a deeper economic integration within Southern Africa. SACU is spearheading towards promoting the industrialisation of each of its member states.<sup>80</sup> A comprehensive programme emphasising the development of a regional industrial development policy<sup>81</sup> was initiated to see the promotion of industrialisation through. SACU will be working on projects such as joined cross border projects which are targeted at increasing industrial development cooperation as well as the creation and strengthening of cross-border value chains.<sup>82</sup>

The 2002 SACU agreement provides for the development of common industrial policy, a policy of unfair trade practices among other things. Importantly

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<sup>77</sup> Ibid at page 8.

<sup>78</sup> Ibid.

<sup>79</sup> Hichert Tanja et al 'What Does the Future Hold for SACU? From Own goal to *Laduma* of the Southern African Customs Union' Occasional Paper no 63 Development Through Trade Programme July 2010, SAIIA.

<sup>80</sup> Summit of the SACU Heads of State & Government Gaborone International Convention Centre 12 April 2013 available at [www.sacu.int](http://www.sacu.int). Accessed on 12 October 2013.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

also is that it provides for a Common Negotiating Mechanism in relation to trade negotiations with third parties.<sup>83</sup>

### 2.2.5 Trade facilitation

SACU has been gearing towards a development of trade partnerships strategies to facilitate trade and to help achieve this it made a proposal to introduce the Preferred Trade Programme as part of the first phase in developing those strategies.<sup>84</sup> It developed this programme so that it could boost legitimate trade by forwarding benefits to traders as a form of encouragement for them to engage in mutual trade with SACU.<sup>85</sup>

As another means to help implement and facilitate trade the SACU council approved a proposal made by the World Bank to assist the CU by conducting a Trade and Transport Facilitation Assessment on behalf of and for SACU.<sup>86</sup> The assessment is mainly aimed at discovering the key barriers to trade within the region. The council is also looking to propose the use of rail transport for facilitation of trade and that this should be included in the CU's transport programme.<sup>87</sup>

### 2.2.6 New Vision

SACU is on a mission, and its new vision is to be an economic community with an unbiased and sustainable development and it endeavours to commit its existence to the welfare of its people for a common future.<sup>88</sup>

### 2.2.7 Third Party trade relations

Article 31<sup>89</sup> allows member states to engage in trade with other parties who are not members of the CU even if it is under a preferential agreement<sup>90</sup> however the members are neither permitted to form preferential trade agreements with third

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<sup>83</sup> Regional Integration, Policy Development and Research. Available at [www.sacu.int](http://www.sacu.int) accessed on 5<sup>th</sup> October 2013.

<sup>84</sup> The SACU Council of Ministers meeting for the 3<sup>rd</sup> Quarter of 2012/2013 financial year 2012. Available at [www.sacu.int/newsletters/2013/sept-dec.pdf](http://www.sacu.int/newsletters/2013/sept-dec.pdf). Accessed on 12<sup>th</sup> October 2013.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Trudi Hartzenberg *A New Vision? SACU Workshop Parliamentary Portfolio Committees 2011* available at [www.thedti.gov.za](http://www.thedti.gov.za). Accessed on 22<sup>nd</sup> October 2013.

<sup>89</sup> 2002 Southern African Customs Union (SACU) Agreement.

<sup>90</sup> Ibid Article 31 (1).

parties nor revise in any way the agreements that are already in existence without the rest of the member states' approval.<sup>91</sup>

### 2.2.8 Member States' Participation

Member states have the authority to have their own competition policies and the Agreement urges for cooperation between the members when they enforce competition laws and regulations.<sup>92</sup>

Conflict should rightfully arise if South Africa is to be the only major benefactor from SACU, more especially when in respect of the industrial policy that SACU began discussing in 2012 which discussions focused on making sure that the value made in the CU turned into a practical industrial development of the member states<sup>93</sup> ends up being an industrial development of South Africa. Indeed the BLNS member states are benefiting from the CU but South Africa is doing so at the expense of the other members' industrial development.<sup>94</sup>

Then Trade Industry Minister, Dorcas Makgato-Malesu of Botswana:

*'A plant which was exporting vehicles to the SACU region closed after South Africa challenged a RoO provision that entitled the plant to the duty and quota free export.'*<sup>95</sup>

Article 2<sup>96</sup> states that the Agreement aims to create transparent and democratic institutions for the member states' trade benefits to be guaranteed<sup>97</sup> and to promote both fair competition<sup>98</sup> and open up opportunities that will increase investment in the Common Customs Area.<sup>99</sup> SACU also pushes for the enhancement of its member states' competitiveness and economic development<sup>100</sup>

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<sup>91</sup> Ibid Article 31 (3).

<sup>92</sup> Ibid. Article 40.

<sup>93</sup> Mmegi Online Gaborone in News, 'Botswana braces for another SACU tussle' available at [www.tralac.org](http://www.tralac.org). Accessed on 19<sup>th</sup> October 2013.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid SACU Agreement.

<sup>97</sup> Ibid Article 2 (b).

<sup>98</sup> Ibid (c).

<sup>99</sup> Ibid (d).

<sup>100</sup> Ibid (e).

bearing in mind to boost not only the regional economies of its member states but their global ones as well through the development of their trade and investment.<sup>101</sup>

South Africa is using its economic stance wrongfully against Botswana which is also a small economy but unlike the other member states depends on South Africa less since it has its own purchasing power.<sup>102</sup>

It is therefore crucial that when it comes to policies in which other member states have the adequate capacity to produce, they should receive benefits which amount to the contribution they bring to the industrialisation policy.<sup>103</sup> SACU seems to be working more towards a South Africa agenda instead of a SACU common industrialisation policy in this respect and it violates the provisions of the Agreement in the process.<sup>104</sup> It should benefit deserving member states under this sector as it is benefiting them under revenue and large market access.

### 2.2.9 Unfair Trade Practices

The Agreement authorises the council of ministers to advance policies and instruments in which they address any unfair trade practices that occur between member states and they ought to do this on the appropriate advice of the CU's Commission.<sup>105</sup>

### 2.3 SADC

Regional cooperation and integration comprises of four theories which are the economic or market integration theory, regional cooperation, development integration (which is said to include market integration) and regional integration.<sup>106</sup> Of these theories SADC has adopted the market integration theory via SACU, a CU which Tom Ostergaard says '*applies to only one of the stages in the envisaged evolution from a free trade area to an economic union*' hence '*it is more appropriate to speak of market integration*' as a whole since it captures the other theories.<sup>107</sup>

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<sup>101</sup> Ibid (f).

<sup>102</sup> Mmegi Online Gaborone in News op cit.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> SACU Agreement Article 41.

<sup>106</sup> Ostergaard Tom 'Classicam Models of Regional Integration-What Relevance for Southern Africa?'

<sup>107</sup> Ostergaard Tom op cit at 33.

SADC is governed by the SADC Treaty which came up with the Trade Protocol that was signed in 1996 and became enforceable in 2000. This Protocol was established for trade liberalisation.<sup>108</sup> However the fact that it took a number of years after signing before it was enforceable indicates that the region still had a long way to go before it was ready to engage in trade liberalisation.

SADC has a set of key principles and values that guide the regional integration agenda and it refers to them as the Common Agenda. These principles are outlined in Article 5<sup>109</sup> and consist of the policies and strategies of SADC.

Among many, the SADC common agenda seeks to achieve development and equitable economic growth and socio-economic development aimed at alleviating poverty through regional integration<sup>110</sup> as well as ensuring that the extermination of poverty is addressed in all SADC activities and programmes.<sup>111</sup> It also seeks to assist member states to be interdependent and self-reliant so as to promote self-sustaining development.<sup>112</sup>

### 2.3.1 Rules of origin

The SADC Trade Protocol has laid down common rules which ought to be used when member states determine where goods originate in order to discover if they are entitled to receive preferential tariff treatment.<sup>113</sup> Annex 1 of this protocol realises that in order for goods to be accepted as eligible for preferential treatment when they are traded among SADC member states, they will have to originate from member states.<sup>114</sup>

The justification of RoO is said to be their preventative ability of trade deflection, which is not achieved easily due to globalisation and the fact that goods go through many production stages before the final product can be completed.<sup>115</sup>

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<sup>108</sup> Treaty on the Southern African Development Community (SADC) 1992.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Study to Develop a SACU Position on the SADC Rules of Origin for Trade in Textile and Clothing Products 2013

<sup>114</sup> Southern African Development Community, Annex I Rules of Origin.

<sup>115</sup> Paul Kalenga, 'Rules of Origin and Regional Integration in Southern Africa in Monitoring Regional Integration In Southern Africa' Vol. 5, (2005).

These rules are defined as a set of criteria used to distinguish goods produced within the SADC member states which should therefore be given preferential tariff treatment and those that have been produced outside the SADC region and therefore are subject to full import duties.<sup>116</sup> Since it is not as clear as one would expect to determine whether a product indeed originates from the particular country from which it was imported yet this is what one would assume, the rules have been made to entail comprehensive and very precise criteria which will be used in establishing the exact origin of that particular product.<sup>117</sup>

The precise criterion that is used to determine the origin of the goods is laid out in Annex I<sup>118</sup> and it states a product as originating from the SADC region if it has been wholly produced in the region or if it is produced in its entirety from components that originate from the region<sup>119</sup> as per the origin criterion. Goods can also be produced in a member state but with utilisation of components from a non SADC member state and still be regarded as originating from the region only if such components were to a certain degree subjected to some kind of process in at least one of the member states.<sup>120</sup> When the production of an object is only confined to a single stage, the origin of that particular product can be easily established.

However if any work was conducted in relation to a product and that work does not affect the nature of a product or it only alters it in a way that it still maintains its natural state and purpose, the specific work done on it will not render it as not originating from the region.<sup>121</sup>

### **2.3.2 Rationale**

The SADC RoO used to be unrestrictive by international standard and followed after the COMESA RoO. It is mentioned that this ensured that since some of the SADC member states were part of COMESA and therefore taking part in the

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<sup>116</sup> Ibid SADC Rules of Origin.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid Rule 2 (1).

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid Rule 3.



COMESA trade integration agenda, the rules of the two regimes were consistent with each other.<sup>122</sup>

### **2.3.3 Problem of SADC RoO**

SADC's adoption of the strict RoO has also been problematic because they have a relatively huge impact not only on the level of SADC intra-regional trade but on its trade with other states globally.<sup>123</sup> SADC states benefit from the RoO only in so far as the conditions of the production of goods which are to be regarded as originating from the involved member states go. Critics argue that the existing RoO should be simplified while their counters maintain that RoO should be allowed to serve their purpose in protecting import-competing domestic industries since they are instruments of industrial policy.<sup>124</sup>

The majority of SADC countries possess fragile customs administrations and this notion makes it even more challenging for the states to have the capacity to maintain the levels of trade high, through enforcing the RoO.<sup>125</sup>

South African producers were encouraging and arguing for the RoO to be stricter so that they could boost industrialisation and the capacity of the other members with more fragile customs administration made the states' capacity questionable as to whether those states would be able to prevent non-originating goods from claiming preferential treatment eligibility.<sup>126</sup>

### **2.3.4 Regional Indicative Strategic Development Plan (RISDP)**

This is an approach which SADC procured for direction in integration and it became formal in 2003. It is through it that SADC member states have developed instruments to push toward deeper economic cooperation and integration.<sup>127</sup> It also provides SADC entities with a comprehensive long term implementation agenda.<sup>128</sup> SADC has the ability to make amendments on its objectives by including new ones

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<sup>122</sup> Paul Kalenga op cit.

<sup>123</sup> Eckart Naumann, 'Preferential Rules of Origin in SADC: a general overview, and the state of play in recent negotiations.'

<sup>124</sup> Paul Kalenga op cit.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid

<sup>127</sup> Southern African Development Community RISDP.

<sup>128</sup> Ibid Article 3.

or removing the existing ones since the RISDP has no legally binding effect.<sup>129</sup> It serves the purpose of making it possible to conduct an assessment of what challenges the region is facing as it progresses as well as its achievements.

### 2.3.5 Rationale for RISDP

As it is a bearer of goals and challenges, implementations and mechanism that are to be dealt with and taken in moving forward, it is intended to address those aspects as they face the SADC cooperation and integration. It ought to achieve this by aligning SADC's priorities and strategies which will assist in achieving deeper regional integration.<sup>130</sup>

## 2.4 IMPLEMENTATION WITHIN SACU AND SADC

The SADC region as a whole is said to have become more open despite the fact that trade flow is not high among the SADC members.<sup>131</sup> In advancing integration in both SACU and SADC, trade integration ought to be accompanied by highly determined efforts meant to diversify the capacity of the production that goes on in the region.<sup>132</sup> The member states can do this if other open regional markets present more opportunities and if the members ensure that they share those fairly.<sup>133</sup> SACU would have to move from an organisation that is kept intact by a CET and a revenue sharing formula to an institution that will assist in pushing towards deeper integration<sup>134</sup> if it was to achieve this.

SACU aims to support customs cooperation and trade facilitation initiatives by ensuring that the monitoring and implementation capacity for trade facilitation programmes is enhanced and that the initiatives influence best practices as well as current bilateral and national initiatives.<sup>135</sup> The CU has also made it its mission to

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<sup>129</sup> Priorities for SADC's regional economic integration agenda – tralac Policy Brief 2012 available at [www.tralac.org](http://www.tralac.org). Accessed on 11<sup>th</sup> October 2013.

<sup>130</sup> SADC RISDP op cit.

<sup>131</sup> Overview of the regional EPA negotiations: SADC-EU Economic Partnership Agreement, ECDPM. 2006 available at [www.ecdpm.org/inbrief14f](http://www.ecdpm.org/inbrief14f). Accessed on 9<sup>th</sup> October 2013.

<sup>132</sup> Market Access, African Regional Integration available at [www.dti.gov.za/trade\\_investment/ited\\_ari.jsp](http://www.dti.gov.za/trade_investment/ited_ari.jsp) Accessed on 13th October 2013.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Southern African Customs Union, Implementing a common agenda towards regional integration in Southern Africa, Annual report 2011. Available at [www.sacu.int/publications/reports/annual/2011/annual2011.pdf](http://www.sacu.int/publications/reports/annual/2011/annual2011.pdf) accessed on 20th October 2013.

improve border efficiencies, trade partnerships and legislation under the Customs Development Programme.

The DTI stated that it seeks to ensure that SACU is an engine that makes it possible for deeper integration in SADC and that along the process it involves the world as a unified trading bloc.<sup>136</sup> The COMESA-EAC-SADC Tripartite FTA negotiations will help extend integration and this will be achieved through SADC consolidation of the FTA.

#### **2.4.1 Trade Facilitation**

SACU has adopted five customs initiatives to help spearhead trade competitiveness and among these is the Single Administrative Document form which is said to be introduced as a common customs declaration.<sup>137</sup> The CU's Common Revenue Pool that SACU has in place allows member states to pay their extra duties to it so that it can be shared according to the formula.<sup>138</sup>

As another way of improving the trade environment within its members and the CU, SACU has trade facilitation as a vital element on its mandate. This notion aims to optimise proficient levels of government control in the different member states and it seeks to develop a consistent and transparent environment under which international trade transactions will be conducted in a manner that makes the movement of goods across borders easier.<sup>139</sup>

All the members of SACU are also members of the World Customs Organisation (WCO) and the WCO Capacity Building Directorate signed an agreement with SACU to provide technical and strategic support with the design and implementation of new initiatives.<sup>140</sup> The region's Heads of Customs approved that all the projects that are underway the SACU-WCO Customs Development

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<sup>136</sup> 'Market Access, African Regional Integration' op cit.

<sup>137</sup> Namibian African Ambassadors and High Commissioners Monthly Meeting – Address by the Executive Secretary Ms Tswelopele Moremi, 2007 available at [www.sacu.int](http://www.sacu.int). Accessed on 21<sup>st</sup> October 2013.

<sup>138</sup> Ibid.

<sup>139</sup> SACU, Implementing a common agenda towards regional integration in Southern Africa op.cit.

<sup>140</sup> Ibid.

Programme should continue and that the programme would help promote trade facilitation in the region.<sup>141</sup>

### 2.4.2 Progress

Within its mandate and following the SADC FTA, SADC is striving for a SADC CU and this may well be very beneficial as even more states within one region would have the opportunity to progress their trade plans as movement of goods would be easier within an enlarged area.<sup>142</sup>

The formation of this SADC CU does however pose challenges because in order for that to be achieved the states are going to have to agree to maintain a single CET and this will be a very complicated and demanding process because SADC has 11 different tariff policies within it and these would all have to be joined into a uniform tariff regime.<sup>143</sup>

### 2.4.3 Challenges

SACU views its primary mandate as to push forward the implementation of the 2002 agreement<sup>144</sup> in efforts to deepen regional integration and in relation to the SADC CU, SACU has a vision to position itself on the proposed SADC CU.<sup>145</sup> It is worth noting that the challenges that SACU is facing stem from how the CU implements the SACU agreement.

It faces one of its rooted challenges in the fact that SACU members are also members of SADC and since the two regimes are different they have different policies which have to be harmonised. There is a range of challenges that are facing SACU and each is fundamental to a certain degree and in its own right for SACU to overcome it to help maintain the existence of the CU.<sup>146</sup> However at the core there

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<sup>141</sup> Ibid.

<sup>142</sup> Southern African Development Community, Towards a Common Future available at [www.sadc.int/about-sadc/integration-milestones/customs-union/](http://www.sadc.int/about-sadc/integration-milestones/customs-union/). Accessed on 15<sup>th</sup> October 2013.

<sup>143</sup> Ibid.

<sup>144</sup> Tswelopele Moremi op.cit.

<sup>145</sup> Ibid.

<sup>146</sup> Peter Draper and Memory Dube, Scoping the Future of SACU-a hundred years on, South African Institute of International Affairs(SAIIA), 2010. Available at [www.saiia.org.za](http://www.saiia.org.za). Accessed on 20<sup>th</sup> October 2013

are two issues, the reform of the highly contested revenue sharing formula<sup>147</sup> and the EPA negotiations with the EU.<sup>148</sup>

SADC set its ambitious goals for economic integration but uneven progress has been made towards the achievements of its goals with its FTA completing its final tariff phase down in 2012,<sup>149</sup> this has automatically moved the efforts to establish and complete a customs union, its common market, a monetary union and a single currency with no feasibility at least not in the very near future. This region has many obstacles to overcome. It is facing constraints of an economic nature, those that are political and some being of a legal nature.

The economic constraints are brought about by the fact that its member states have economies that differ remarkably. These states have various trading capabilities and because of member states' dependency on natural resources and with the majority depending on aid, the different states' trading phases end up not aligning with each other.<sup>150</sup>

Furthermore, having a huge gap between the different states' financial regimes and more so having the majority of the states being LDCs, just a few being developing states and only one qualifying under the developed category, the few dominant states in the region are not encouraged to support integration.<sup>151</sup> The overall result of the states having weaker legal environments makes the more financial-dominant states unwilling to push hard for the region's integration.

There is a different level of political commitment among the members and this has taken the members in the direction of an inauspicious ratification of protocols which leads to inconsistencies in areas such as trade.<sup>152</sup> SADC lacks legal mechanisms which would strengthen its enforcement capacities in order to assist it in alleviating associated risks that link the member states' economic fates.<sup>153</sup>

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<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Andre du Pisani et al (Eds) *Monitoring Regional Integration in Southern Africa Yearbook 2012*.

<sup>150</sup> Malhotra. D 'Regional Integration In Southern Africa, Binding Obstacles and a Practical Way Forward' Princeton University's Woodrow Wilson School of Public & International Affairs, 2012.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

Another issue is the trade-related problem under which SADC's integration strategy that seeks to create an FTA and eventually establish a monetary union seems to be a long way due to member states' uneven and slow progression in their tariff reduction targets.<sup>154</sup> With South Africa having the magnitude of dominance that it has over the other member states, its counterparts hesitate in furthering integration into a regional body with such prominent economic and political unevenness.

Market integration has not been a successful game for developing countries and Africa has been no exception to that fact, to the exclusion of South Africa of course. Southern African countries' economies are small and the majority of these countries export primary goods to the developed world turning back to import manufactured goods from those developed countries, this is counter to competition between these developing countries and renders it almost impossible for comparative advantage.

Ricardo's comparative advantage theory suggests that a country does not have to be best at producing something in order for it to gain from trade,<sup>155</sup> for example countries A and B will still stand to benefit from trading with each other even if A is better than B at producing every product. If A is very good at producing wine and only slightly good at producing cheese and B is not as good as A in producing either, B should still invest resources as well even if it is not as efficient as A.

Comparative advantage must therefore exist if gains are to be acquired from market integration.<sup>156</sup> It is important to note that market integration is likely to divert trade rather than create it and even under such circumstances,<sup>157</sup> South Africa will be the chief beneficiary since it is the main player in the SADC region.

The production capacities of both SADC and SACU are relatively weak and it has been established that they also add little value in the production chain. Because many countries in the SADC region have cumbersome regulatory framework, trade and integration increase at a slow rate.<sup>158</sup> Lowering or removing tariff barriers

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<sup>154</sup> Ibid.

<sup>155</sup> Murray N. 'Rothbard, The Ricardian Law of Comparative Advantage' Ludwig von Mises Institute. Available at [www.mises.org/daily](http://www.mises.org/daily). Accessed on 14<sup>th</sup> January 2014.

<sup>156</sup> Ibid.

<sup>157</sup> M.C. Lee op cit at 41.

<sup>158</sup> Southern African Regional Integration Strategy Paper 2011-2015. Available at <http://www.afdb.org>. Accessed on 9<sup>th</sup> October 2013.

completely is no doubt beneficial however it does not inevitably increase trade and these countries need to have strong productive capacities if they are to have competitive production in their territories.<sup>159</sup>

The institutional capacity of the member states is inadequate and weak and has limited the implementation of projects such as the Bank Group portfolio. This has suppressed the efforts of regional integration.<sup>160</sup>

Regional integration as a form of development for the SACU and SADC experiences further problems because of states being members in multiple organisations yet they have underdeveloped economies, institutional weaknesses to mention a few.<sup>161</sup> The fact that the region lacks strong institutions has made it prone to low speed of the region's economic cooperation.<sup>162</sup>

When institutions are weak, the region does not attain any powers that would be used to enforce collective decisions and easily implementable treaty provisions.<sup>163</sup> All the states involved in the SADC region have to consent in decision making and this may be one of the best methods but it inevitably brings about problems in that the rate at which the region's economic cooperation progresses is dictated by the states in the region that move at the slowest pace since all member states have to agree to the final decision.<sup>164</sup>

Regional integration has also been limited by the existence of supra-nationality which renders it not easy to enforce policies and principles that different states mutually agree on as a result of lacking centrally co-ordinated institutional mechanisms.<sup>165</sup>

Undermining national sovereignty is one of the causes of the slow progression and challenges that face integration within SACU and the SADC region. It can be seen from earlier years that when SADC first came into existence, it was focused on

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<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> Mohabe Nyirabu (2004) 'Appraising Regional Integration in Southern Africa' Africa Security Review.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Southern African Regional Integration Strategy Paper, op cit.

integration through project co-ordination<sup>166</sup> and it was fixed on maintaining main barriers to intra-regional trade and neither tariffs nor non-tariff barriers but it instead hoped for underdeveloped production structures.<sup>167</sup> Successful regional integration has thus been hindered by states' fear of losing their respective national sovereignties.

It is important to state that on the issue of sovereignty, it is not easy to speak on how the BLS states are sovereign when 90% of the region's GDP is generated by South Africa and Lesotho and Swaziland's national budgets being comprehensively subsidised by South Africa through the revenue pool.<sup>168</sup>

Scholars have been very sceptical about the incorporation of regional agreements in various protocols and this has been because when states have to decide on them, the decisions and agreements ought to be recognised at the national level.<sup>169</sup>

To the significantly broad list of problems that face regional integration and therefore market integration in SADC and within SACU is the trade relationship between SADC and the EU. South Africa already has a trade relationship with the EU which is recognised through the TDCA and the rest of the SADC members are still in negotiations with the EU under the EPAs. Member states which are not part of the SADC EPA have joined trade relationships with the EU under other EPAs. The different agreements will be dealt with in the next chapter.

SADC has not been any different from the rest of Africa in experiencing hardships when it comes to progressive regional integration. The SACU states just like their fellow African non SACU states have joined multiple institutions which are not part of SADC and this has proved to be a stumbling block for market integration to progress.

Moreover the proliferation of trading arrangements has cluttered up trade with biased attention being placed on the said nationality of the goods. Under FTAs RoO multiply regardless of how extensive their codifications are and this multiplicity is

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<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> SAIIA op cit.

<sup>169</sup> Mohabe Nyirabu op cit.



triggered by the fact that member states have their own external tariffs which differ from each other's.<sup>170</sup>

The absence of penalty policies or mechanisms in the governing instruments which should be imposed on member states following their failure to fulfil their undertakings is another aspect that holds back progression.<sup>171</sup>

In order for the member states to comply with the SADC Protocol and the SACU Agreement, the legal and institutional infrastructure ought to be realised both at the national and regional level.<sup>172</sup> This would be a major step in assuring that member states remain accountable for their conduct or none thereof.

A detailed situational analysis of the industrial and economic landscape of SACU member states is to be conducted and a proposal is said to follow which will pitch different policy options and strategic interventions.<sup>173</sup>

## **2.5 CONCLUSION**

SADC is gearing for increased trade liberalisation as a tool for it to achieve deeper regional integration which will subsequently open a wider gate for global integration when the region has grown. It has the RISDP as its engine to assist it by providing the region's integration approach and strategy as it progresses towards its goal of deeper integration. Its achievement of one of its major goals to introduce its own FTA may have been achieved four to five years post the target date but it is nevertheless comforting that there has been progress however slow it has been.

SACU as the longest existing CU has indeed progressed positively for its member states. It continues to be a moving force of the economies of its member states though it is reasonably arguable that both SACU and SADC have a long way to go in terms of how their mechanisms and policies are implemented if at all. Both entities have provisions that cater for implementation of policies but they fall short of monitoring and ensuring that their member states indeed implement their obligations.

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<sup>170</sup> Bhagwati. Jagdish 'Preferential Trade Agreements: Free Trade Areas: The Challenge and Promise of the Fair vs. Free Trade' at 895.

<sup>171</sup> Priorities for SADC's regional economic integration agenda – tralac Policy Brief 2012 available at [www.tralac.org](http://www.tralac.org).

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

There is a flaw in SACU regarding the competition policy which has been provided for in Article 40 of the Agreement, the Botswana and South Africa industrial policy related situation mentioned earlier in particular as reference. The said provision has been included but has neither been adopted nor implemented. The lack of availability of sanctions on member states for their violation of the provisions contributes in halting the growth and deepening of integration within the regions and globally as well since member states are aware that no negative results will befall them if they do not comply with some of the provisions. Steps have to be taken to ensure that there is harmony between the member states' customs policies and those of third parties to allow for trade diversification.

## CHAPTER 3

### TRADE RELATIONSHIP BETWEEN THE EU AND SOUTHERN AFRICA

#### 3.1 INTRODUCTION

The EU's trade and development vision for the African continent dates as far back as the 1957 European Economic Community (EEC) Treaty in the hopes of economic and social development of those countries.<sup>174</sup> This relationship was initially mostly comprised of Europe's French African dependencies but grew to open up for other countries due to the WTO rules which are enforced more strictly.<sup>175</sup> The rules do not support discriminatory policies unless the situation under which discriminatory treatment occurs is recognised under the exceptions.<sup>176</sup>

This chapter looks at the genesis of the EU and Africa trade relationship and its progression over the years through the Rome Treaty, Yaoundé and Lomé Conventions and the Cotonou Agreement.

It also lays down the rules in relation to trade in respect of developing countries and LDCs under GATT. It shows the treatment the EU has decided to grant to developing countries and LDCs and the conditions that have to be fulfilled under GATT/WTO to qualify for such preferential treatment.

It goes on to discuss the African RECs, their objectives and also highlights the problems that are faced by African countries in regional integration. It examines the EAC in brief, details COMESA's progress and looks at how the merging of the three RECs is the solution to the problems faced by the concerned countries.

It also examines the benefits of the SADC EPA and details how South Africa individually and other SACU members collectively stand to gain and lose under the TDCA and the SADC EPA.

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<sup>174</sup> Lorand Bartels, 'The Trade and Development Policy of the European Union', *The European Journal of International Law* Vol.18 no.4 p715-716.

<sup>175</sup> *Ibid.*

<sup>176</sup> GATT 1994 Article XXIV and the Enabling Clause.

## 3.2 GATT and WTO

The 1947 GATT had no provisions that allowed developed countries to afford developing countries special treatment and in an effort to recognise the need for these countries' participation in global trade, considering as well that the countries were in much need of development in their economic spheres, Part IV which is a section that focuses on the trade and development aspect of these countries hence special treatment, was incorporated in the 1965 text.<sup>177</sup> The WTO also sought to increase the significance of the development of the trading system by having the special treatment reflected through the Enabling Clause in 1979.<sup>178</sup>

### 3.2.1 Special and Differential Treatment (SDT)

This is a set of measures under which developed countries consider and pay attention to the vulnerabilities that developing and LDCs are exposed to in international trade.<sup>179</sup> The parties to the Marrakesh agreement realised that their trade relations and economic undertakings being governed under a single regime, ought to be carried out in a manner that geared towards sustainable development that would expand production and trade of goods ensuring improved standard of living and that the achievement of the views would remain consistent with each of their needs and concerns.<sup>180</sup> The members recognised that developing countries and LDCs also had to share in the growth of international trade with the needs of their developing economies and that positive efforts were needed for this.<sup>181</sup>

The WTO Agreement was then adopted as an engine that would guide international trade relationships.

### 3.2.2 Origin of SDT

Global trade exposed that in view of trade and development, it was questionable whether developing countries had the desirability of liberalising border measures at the same pace as developed countries and it was evident that during

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<sup>177</sup> Patricia Michelle Lenhagan 'Trade Negotiations on African Capitulations: An African Experience' 17 Berkeley La Raza Law Journal 117 at 118.

<sup>178</sup> Bernard Hoekman et al, 'Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancun', 2004.

<sup>179</sup> Frank J Garcia, 'Beyond Special and Differential Treatment' Boston College International & Comparative Law Review 291 – 292 Vol. 27:291.

<sup>180</sup> Agreement Establishing the World Trade Organisation para 1.

<sup>181</sup> Ibid para 2.

the Uruguay Round Agreement negotiations, there was a decline in the stance of this approach in the majority of the developing countries' governments.<sup>182</sup> Then a number of SDT provisions on border measures and subsidies foresaw developing countries taking after the developed ones although at a much slower pace and finally other SDT provisions that support developing and LDCs were agreed on.<sup>183</sup>

### 3.2.3 SDT in the GATT

Whenever developing countries required for things such as the application of non-tariff barriers they had to justify why that was sought and it had to be in terms of the standard GATT principles.<sup>184</sup> Decolonisation and the growth of development economics made it possible for development oriented GATT provisions to be included and among the other forms of SDT, Part IV was adopted<sup>185</sup> and added as the Enabling Clause.<sup>186</sup>

The WTO Agreement has within it three types of SDT and those are concerned with technical assistance,<sup>187</sup> market access and market protection (trade preferences).<sup>188</sup>

SDT is the description of the preferential provisions that are contained in GATT and are applicable to groups of the WTO members, namely developing countries and LDCs.<sup>189</sup>

The Most Favoured Nation (MFN) principle is the core principle of the WTO which obliges members to grant any advantage regarding tariffs and any charges in relation to goods to all members and non WTO members as long as there is trade exchange.<sup>190</sup>

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<sup>182</sup> Trade and Development Brief, 'Special and Differential Treatment International' Institute for Sustainable Development available at [www.iisd.org](http://www.iisd.org). Accessed on 13<sup>th</sup> October 2013.

<sup>183</sup> Ibid.

<sup>184</sup> Frank J Garcia op cit at 294.

<sup>185</sup> Ibid.

<sup>186</sup> Jeanne J Grimmett Trade Preferences for Developing Countries and the World Trade Organization (WTO) Congressional Research Service 2011.

<sup>187</sup> Ibid.

<sup>188</sup> Frank J Garcia op cit at 292.

<sup>189</sup> Trade and Development Brief op cit.

<sup>190</sup> Peter van den Bossche *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, Cambridge University Press, 2005.

### 3.2.4 The Enabling Clause

The disregard of the MFN principle is justified by this clause. It allows developed countries to grant differential and more favourable treatment to developing countries and it also caters for aspects that deal with reciprocity and fuller participation of developing countries.<sup>191</sup> The amendments that were made through Part IV in GATT take into consideration the special economic needs of developing countries and assert the principle of non-reciprocity which allows developed countries to overlook reciprocal conduct from developing and LDCs when they have reduced or eliminated tariffs and restrictions for the developing countries.<sup>192</sup>

It was because of the MFN issue that parties to GATT decided on the adoption of Article I waiver for the GSP which allowed developed countries members to afford more favourable tariff treatment to the products that originated from developing countries without granting same to their respective developed countries members for a period of ten years.<sup>193</sup> When the Enabling Clause was adopted in 1979, it became the passage through which preferential treatment could be accorded to developing countries as a means of facilitating their developmental, financial and trade needs while not expecting them to make concessions that are inconsistent with such needs.<sup>194</sup>

### 3.2.5 Conditions attached to benefit from trade preferences

In order for WTO members to benefit under the preferential treatment scheme, there are requirements that each member ought to satisfy and these are *inter alia* purely technical requirements and administrative issues and mainly RoO.<sup>195</sup>

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<sup>191</sup> GATT 1994 Article XXXVI.

<sup>192</sup> Jeanne J Grimmett op cit at 1.

<sup>193</sup> GATT Generalised System of Preferences; Decision of 25 June 1971 (BISD 18S/24).

<sup>194</sup> Enabling Clause (Article XXXVI) para 3 and 5 Principles and Objectives available at [www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/art36\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art36_e.pdf). Accessed on 27 October 2013.

<sup>195</sup> Fabien Candau and Sebastien Jean, 'What Are EU Trade Preferences Worth for Sub-Saharan Africa and Other Developing Countries?' 2006.

### 3.3 THE EU AND AFRICA TRADE DEVELOPMENT

The EU has seen Africa's trade evolve from when the territories were just colonies to when they gained their independence and were no longer states that could be in trade relationships only when they were at the receiving end but that they would evolve and their participation would gradually increase.

#### 3.3.1 European Economic Community (EEC)

The now EC and then EEC has taken steps to help the ACP countries expand their trade developments by granting the countries preferential treatment under a sequence of treaties with each treaty bringing new developments since the Community's creation.<sup>196</sup> It was formed when the Berlin Conference divided Africa into different colonies and Great Britain and France gained control over the majority of African territories. When France realised how important to its domestic market its colonies were, it put in place policies that would be gateways to the Yaoundé and Lomé treaties.<sup>197</sup>

#### 3.3.2 The Rome Treaty

It was under this treaty that the EC granted the African territories that were colonies of France, Italy and Belgium the Associated State status. The Treaty was signed so that the EC would form a common market<sup>198</sup> mainly concerned with expanding trade and establishing a free trade zone between its founders and the Associates states and it achieved this by allowing for the removal of all tariffs<sup>199</sup> on goods that were traded among its members. Favourable treatment was extended to the colonies that had been granted the Associated State status in which goods

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<sup>196</sup> The Treaty of Rome 25 March 1957 Article 1. Available at <http://eur-lex.europa.eu>.

<sup>197</sup> Macki M. Sissoko, Louis O. Osuji and William I. Cheng, 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade' *The African Economic & Business Review*, Vol. 1 No.1, Spring 1998. The Yaoundé created a free trade zone between the EC and ACP regions and the EC as the first group of developed states established a GSP for developing states with no requirements of their reciprocation. The Lomé provided an Export Earning Stabilisation system in order to help the ACP states achieve the profitability, stability and sustained growth of their economies. This it did by adopting the non-reciprocity system, redefining the RoO. It also granted the AAS increased access to the EC markets and it was through this treaty that a special protocol regulating sugar was granted in addition to a vast percentage of exports originating from the ACP regions being allowed duty-free and quota-free entrance.

<sup>198</sup> The Treaty of Rome op cit Article 2.

<sup>199</sup> Ibid Article 3.

imported and originating from them would subsequently not be subjected to customs duties and such existing customs duties were to be abolished progressively.<sup>200</sup>

### 3.3.3 Yaoundé

The Yaoundé convention (Yaoundé I) came into existence when the European African colonies gained their independence and asked for the trade relationship to continue on a level that was now consistent with their new status of independence.<sup>201</sup> The EC and a number of former French colonies signed the convention which remained effective for five years until its expiration.

The Yaoundé II then replaced Yaoundé I with a few amendments to the provisions regarding trade.<sup>202</sup> The Associated States wanted to maintain a CET that would protect their exports from non-Associated States but some EC members fostered the removal of the CET provision as they found it discriminating against other developing countries and the EC decided to establish the GSP with no expectations of reciprocity from developing countries.<sup>203</sup>

### 3.3.4 Lomé

The Lomé conventions were a generation of four conventions from the first one, Lomé I to the last one, Lomé IV.<sup>204</sup> The evolution of these conventions increased trade as a passage of development and unlike the Yaoundé II it was through the Lomé that the non-reciprocity system was adopted, greater EC market access by the largely increased ACP members was given and special treatment and protocol regulating some products were granted to them.<sup>205</sup> The EC also decided to redefine the RoO.<sup>206</sup>

### 3.3.5 Cotonou

It has been learnt that the ACP states enjoyed non-reciprocal tariff preferences for goods they exported to the EU market under the Lomé conventions

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<sup>200</sup> Ibid Article 133.

<sup>201</sup> European Community Information Service, Partnership in Africa : the Yaoundé Association available at [www.aei.pitt.edu/34505/1/A674.pdf](http://www.aei.pitt.edu/34505/1/A674.pdf).

<sup>202</sup> Macki M. Sissoko et al, op cit.

<sup>203</sup> Ibid.

<sup>204</sup> European Commission, Development and Cooperation – Europeaid ‘From Lomé I to IV’ available at [http://ec.europa.eu/europeaid/where/acp/overview/lomé-convention/loméitoiv\\_en.htm](http://ec.europa.eu/europeaid/where/acp/overview/lomé-convention/loméitoiv_en.htm)

<sup>205</sup> Macki M. Sissoko et al, op cit.

<sup>206</sup> Ibid.



that preceded the CPA.<sup>207</sup> The negotiations of this Agreement replaced the preferential trade regime with FTAs between the EU and the ACP states.<sup>208</sup> The CPA introduced the EPAs which would treat all members equally by progressively liberalising trade in a reciprocal manner and thereby being consistent with the WTO rules<sup>209</sup> with exceptions that are recognised with regard to the different countries' development stance.<sup>210</sup>

It is said to be the most comprehensive partnership agreement that the EU has formed with developing countries.<sup>211</sup> This agreement brought other changes to the trade relationship between the EU and ACP countries.

The Agreement is comprised of a trade component and a non-trade component, and under the non-trade component it recognises development aid and political sector as other mechanisms necessary in fostering economic growth and integration.<sup>212</sup> The trade component entails arrangements that were current during the Agreement's establishment together with future regional agreements that were on the members' agenda.<sup>213</sup>

This Agreement aims at the reduction and eradication of poverty, which once achieved will lead to the gradual integration of the ACP countries into the world economy.<sup>214</sup> The CPA places emphasis on regional cooperation and integration with part of its main objectives as liberalising trade between the EU and ACP region via Regional Economic Partnership Agreements (REPA).<sup>215</sup>

It is through this Agreement that the reciprocity concept in respect of goods being granted preferential market access was finally introduced in the trade

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<sup>207</sup> 'From Lomé I to IV' op cit.

<sup>208</sup> Lingston Cumberbatch 'Can Cotonou stand the test of time?' in Geert Laporte, The Cotonou Partnership Agreement: What role a changing world? Reflections on the future of ACP-EU relations ECDPM Policy Management Report 13, 2007.

<sup>209</sup> Alexander Keck and Roberta Piermartini 'The Economic Impact of EPAs in SADC Countries' available at [www.wto.org](http://www.wto.org) accessed on 14 January 2014.

<sup>210</sup> Partnership Agreement between the African, Caribbean, Pacific Group of States on the one part and the EU and its member States on the other part (CPA) Article 35.

<sup>211</sup> The European Commission Development and Cooperation – Europeaid 'The Cotonou Agreement' available at [http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index\\_en.htm](http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm)

<sup>212</sup> Christian Bjornskov and Ekaterina Krivonos 'From Lomé to Cotonou, The new EU-ACP Agreement' SJFI Working Paper no.14/2001.

<sup>213</sup> Ibid at 15.

<sup>214</sup> CPA Article 1 op cit.

<sup>215</sup> Christian Bjornskov op cit at 15.

relationship between the EU and the ACP countries following its adoption in the Lomé convention.<sup>216</sup>

### 3.4 REGIONAL ECONOMIC COMMUNITIES

#### 3.4.1 AEC

African countries as one under the African Union (AU) decided to have an African Economic Community (AEC) by 2027. It has a number of objectives it seeks to attain enlisted in the treaty.<sup>217</sup>

##### (i) The objectives of the AEC

The AEC's mission is to promote among other things the economic development and the integration of African economies in order to increase economic self-reliance<sup>218</sup> as well as fostering the coordination and harmonisation of policies among existing and future economic communities.<sup>219</sup> As a way of attaining its objectives, the members have undertaken to ensure that they strengthen the RECs that already exist and that new ones which are not in existence yet are established.<sup>220</sup>

The members' aim when the agreement was concluded was to harmonise and co-ordinate policies among RECs<sup>221</sup> and as members with different trade regimes, they seek to liberalise African intra-regional trade through abolition of customs duties and non-tariff barriers among members states as a way of establishing a FTA on every level of all RECs.<sup>222</sup> In order to liberalise trade the adoption of a common trade policy vis-à-vis third parties<sup>223</sup> is sought after and the establishment and maintenance of both a CET<sup>224</sup> and a common market.<sup>225</sup>

<sup>216</sup> [http://ec.europa.eu/europeaid/where/acp/overview/documents/devco-cotonou-consol-europe-aid-2012\\_en.pdf](http://ec.europa.eu/europeaid/where/acp/overview/documents/devco-cotonou-consol-europe-aid-2012_en.pdf). Accessed 5<sup>th</sup> November 2013.

<sup>217</sup> Treaty establishing the African Economic Community (AEC).

<sup>218</sup> Ibid Chapter II Article 4 para 1 (a).

<sup>219</sup> Ibid (d).

<sup>220</sup> Ibid para 2 (a).

<sup>221</sup> Ibid (b).

<sup>222</sup> Ibid (d).

<sup>223</sup> Ibid (f).

<sup>224</sup> Ibid (g).

<sup>225</sup> Ibid (h).

The RECs that this work will focus on are the Common Market for East and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC).

### 3.4.2 EAC

The EAC was formed in 1917 between Kenya and Uganda.<sup>226</sup> Then Tanganyika and now Tanzania joined later in 1927 and the CU went through numerous stages to an EA Co-operation.<sup>227</sup> Integration of this community began when the Agreement for the Establishment of the Permanent Tripartite for East African Co-operation was signed in 1993 post failure of a regional bloc in 1977.<sup>228</sup> This REC has had a rapid progressive integration agenda. It has a CU treaty that was signed in 2004 and implemented gradually since 2005.<sup>229</sup> It has since had other countries join in.

A treaty was signed in 1999 which would establish the EAC and it came into force in 2000.<sup>230</sup> In its evolving forms the EAC is said to be the oldest regional economic organisation in the world.<sup>231</sup> It is the first one in Africa to establish a common market which became effective in 2010.<sup>232</sup>

### 3.4.3 COMESA

The genesis of COMESA can be traced from the mid-1960s when the economic co-operation received motivation from the positive mood of pan-African solidarity and collective self-reliance which emerged from a shared destiny.<sup>233</sup> Proposals that were made to establish a mechanism to promote sub-regional economic integration were taken into consideration by the Eastern and Southern Africa states under the United Nations Economic Commission for Africa (UNECA).<sup>234</sup>

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<sup>226</sup> History of the East African Community available at [www.eac.int/index.php?option=com\\_content&id=44&Itemid=54](http://www.eac.int/index.php?option=com_content&id=44&Itemid=54). Accessed on 19<sup>th</sup> October 2013.

<sup>227</sup> Ibid.

<sup>228</sup> Steven Buigut 'An Assessment of the Trade Effects of the East African Community Customs Union on Member Countries', *International Journal of Economics and Finance* Vol.4, No 10; 2012.

<sup>229</sup> Ibid.

<sup>230</sup> History of the EAC op cit.

<sup>231</sup> Juma V. Mwapachu EAC: past, present and future.

<sup>232</sup> Ibid.

<sup>233</sup> Evolution of PTA/COMESA, ABOUT COMESA available at [http://www.about.comesa.int/index.php?option=com\\_content&view](http://www.about.comesa.int/index.php?option=com_content&view) accessed on 2<sup>nd</sup> November 2013.

<sup>234</sup> Ibid.

During the 1978 period, then Trade, Finance and Planning Ministers recommended for a sub-regional economic community to be created and within this there was to be a sub-regional preferential trade area which would gradually develop into a common market over ten years.<sup>235</sup> It was to this end that the Treaty establishing the PTA was adopted. Heads of State and Governments then went on to sign the Treaty in 1981 and it became enforceable the following year.<sup>236</sup>

**(i) Objectives**

The ESA PTA was established so that it would allow for greater social and economic co-operation and ultimately form an EC. The 1981 PTA Treaty foresaw its evolution into a common market and the Treaty that established COMESA was then signed in 1993 and further ratified in 1994.<sup>237</sup>

It is important to highlight that when the PTA was established and further transformed into COMESA, the processes took place in conformity with the objectives of the Lagos Plan Action (LPA) and the Final Act of Lagos (FAL) of the Organisation of African Unity (OAU). As economic integration evolved, it was through this process that the continent's RECs would constitute building blocks from which the AEC would ultimately be created.<sup>238</sup>

COMESA aims to promote a more balanced and harmonious development of its production structures in order to sustain the growth and development of its members.<sup>239</sup> The common market also seeks to ensure that it attains co-operation in promoting stability among its member states for the enhancement of economic development and the strengthening of relations between the common market and the rest of the world.<sup>240</sup> Furthermore it strives to push towards establishing and ensuring that there is progress and realisation of the AEC's objectives.<sup>241</sup>

COMESA is also aiming to eventually establish a Common Monetary Area as a step in the direction of deepening regional integration and this is of particular

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<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> The Common Market for Eastern and Southern Africa Article 3 (a).

<sup>240</sup> Ibid Article 3 (d) and (e).

<sup>241</sup> Ibid (f).

importance to the EU in respect of the EPA negotiations it has going with the African countries.

SADC and COMESA collectively face obstacles that will make it difficult for them to deepen economic integration and these include the restrictive RoO, NTBs, missing complementarities in intra-regional trade and overlapping membership to mention a few.<sup>242</sup>

## **(ii) COMESA launch**

In 2009 the CU was launched and key principles and rules were endorsed to establish it. These included the internal free trade area, the region's relations with third countries and the application of the CET, the conclusion of the CU among other things.<sup>243</sup>

The CU catered for the different needs of its member states and it is said that it has policy space, flexibility and periodic reviews of its CET, market access and also that it has these principles to enable states to be members of the CU and still be able to take into account their key national issues.<sup>244</sup>

## **(iii) Progress within COMESA**

COMESA has been successful as a community in enhancing regional integration through trade facilitation. It performed strongly within itself as a region and this has shown that bringing it together with the EAC and SADC the members would be able to tackle global challenges.<sup>245</sup> The community has had a profitable and sustainable trade which has allowed for good planning as it is based on a regime of rules under the integration program.<sup>246</sup> The infrastructure and trade facilitation programs within the region have helped reduce things such as transaction costs in relation to trade by consolidating the region's internal market.<sup>247</sup>

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<sup>242</sup> Mareike Meyn 'The Progress of Economic Regionalisation in Southern Africa – Challenges for SADC and COMESA.' NEPRU Yearbook Vol.5-2005.

<sup>243</sup> Brief on the COMESA CUSTOMS UNION, COMESA CUSTOMS UNION, COMESA ACTIVITIES. Available at [www.programmes.comesa.int/index.php?option=com\\_content&view=article&id=90&Itemid=142](http://www.programmes.comesa.int/index.php?option=com_content&view=article&id=90&Itemid=142).

<sup>244</sup> Ibid at 3.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

#### (iv) Remedies for revenue losses

The community realised the possibility of its short term revenue losses by its members due to the application of the CET and set up a COMESA Fund which will cater for the losses.<sup>248</sup> The said losses are expected to arise from the community's trade liberalisation programmes, however in the long term the application of the CET is said to increase revenues from import structures.<sup>249</sup>

### 3.5 COMESA-EAC-SADC TRIPARTITE

The Tripartite was formed in 2006 to help the involved RECs harmonise programmes and policies between them and to strengthen their ability in advancing their establishment of the AEC<sup>250</sup> so the Heads of State and government of COMESA, EAC and SADC agreed that the Tripartite initiative was a decisive step in order to achieve the African vision of indeed establishing the AEC.<sup>251</sup>

#### 3.5.1 Overlapping membership in RECs

There are numerous regional arrangements that exist in the Eastern and Southern Africa region of which most countries are members and as such have joined more than one arrangement.<sup>252</sup> This issue of overlapping memberships between different regional arrangements has proved and still continues to exert costs on the member states.

States tend to have their negotiating capacity and resources hard-pressed as they try to fulfil their obligations under the different arrangements.<sup>253</sup> The arrangements come with their differing RoO and each arrangement has its own administrative rules and mechanisms and the states suffer these costs due to the complex RoO that one administration may have or even more than one to which a

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<sup>248</sup> Ibid at 4.

<sup>249</sup> Ibid.

<sup>250</sup> Mark Pearson, 'Trade facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area' in *The Tripartite Free Trade Area: Towards a new African Integration Paradigm?* 2012.

<sup>251</sup> Deepening COMESA-EAC-SADC Integration, Towards a Single Market, Communique of the Second COMESA-EAC-SADC Tripartite Summit 2011.

<sup>252</sup> Padamja Khandelwal 'COMESA and SADC : Prospects and Challenges for Regional Trade Integration', International Monetary Fund Working Paper (2004).

<sup>253</sup> Ibid at 14.

state as a member may have.<sup>254</sup> The states also have to pay as well as maintain membership fees which are said to be expensive.<sup>255</sup>

When these states are members of numerous regional arrangements, their objectives end up conflicting against each other and this has contributed to both the slow or lack of progress that is experienced in many areas of the region.<sup>256</sup>

The issue of overlapping membership was very high on the list of priorities that the community set to address and resolve<sup>257</sup> and the community was expected to adopt a roadmap within three years that would guide them in forming the Tripartite CU and Common Market.<sup>258</sup> Negotiating Principles (NP) and a Declaration that Launched the FTA Negotiations and all other FTA draft documents were prepared and formally submitted but the priorities appeared to have changed when the Declaration and the NPs were adopted to guide the process.<sup>259</sup>

Among the numerous priority changes is the fact that member states are going to be allowed to conduct negotiations as individual states or as blocks. It is also stated that the Agreement is going to allow different trading arrangements applied within the three configurations to co-exist.<sup>260</sup>

The community is now going to deal with tariff liberalisation, RoO, customs procedures, NTBs<sup>261</sup> *inter alia* first and the NPs highlight that the exchange of tariff concessions will take place between member states that do not have any preferential arrangements between them.<sup>262</sup> It should be remembered that the only states that can have the exchange of tariff concessions are member states that belong to the three RECs that make up the TFTA and to say this denotes that only a few countries

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<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> TFTA Agreement op cit Article 3 (3).

<sup>258</sup> Ibid Article 34.

<sup>259</sup> Gerhard Erasmus Redirecting the Tripartite Free Trade Agreement negotiations? Available at [www.tralac.org/files/2013/06/S13TB022013-Erasmus-Redirecting-the-Tripartite-FTA-negotiations-20130626-fin.pdf](http://www.tralac.org/files/2013/06/S13TB022013-Erasmus-Redirecting-the-Tripartite-FTA-negotiations-20130626-fin.pdf).

<sup>260</sup> Tripartite FTA Negotiating Principles, Processes and Institutional Framework, *Guidelines for Negotiating the Tripartite Free Trade Area among the Member/Partner States of COMESA, EAC and SADC* 2011 number 3 i).

<sup>261</sup> Ibid number 2 i).

<sup>262</sup> Gerhard Erasmus op cit at 8.

in the entire region and with membership to the Agreement will extend tariff offers to each other<sup>263</sup> for instance Kenya and Namibia or Egypt and South Africa.<sup>264</sup>

### 3.5.2 TRIPARTITE FREE TRADE AREA (TFTA)

The Member States of the three RECs established a FTA.<sup>265</sup> Under the TFTA Agreement the objectives are *inter alia* the promotion of social economic development within the region and the alleviation of poverty, hunger and disease. The community undertook to improve the location factors for sustainable generation of local, regional and foreign investment and of trade opportunities in order to achieve such promotion.<sup>266</sup> In addition, it is to ensure the consolidation of the three RECs' internal markets and to facilitate duty and quota-free trade within the common market taking into account the RoO.<sup>267</sup>

Among its general objectives, the TFTA seeks to establish a CU and a common market which will be so established through the creation of a bigger single internal market and therefore allow free movement of goods and services among other things.<sup>268</sup> The community aims to expedite the regional and continental integration process by alleviating the multiple membership issue that exists in the region.<sup>269</sup>

The Agreement has also made for other objectives which have been provided for specifically.

It is said to eliminate tariffs and all trade barriers to trade in goods, liberalise trade in services and facilitate the movement of those goods and services across the borders<sup>270</sup> while harmonising measures<sup>271</sup> that facilitate trade and customs procedures.<sup>271</sup> It is also going to create and maintain a framework that will be a guide

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<sup>263</sup> Draft Agreement Establishing the COMESA, EAC and SADC Tripartite Free Trade Area 2010 Article 50.

<sup>264</sup> Gerhard Erasmus op cit at 8.

<sup>265</sup> Agreement Establishing the Tripartite Free Trade Area Article 2 (1).

<sup>266</sup> Ibid Article 3 (1).

<sup>267</sup> Ibid Mark Pearson.

<sup>268</sup> Ibid (2).

<sup>269</sup> Ibid (3).

<sup>270</sup> Ibid Article 4 (1).

<sup>271</sup> Ibid (2).



in implementing and administering the TFTA, CU and the common market<sup>272</sup> together with cooperation in other trade-related areas.<sup>273</sup>

The WTO's core principle of non-discrimination, the MFN is also observed under this Agreement<sup>274</sup> and it applies to all kinds of charges imposed on or in connection with any commodities that are transferred internationally as well as their payments.<sup>275</sup>

A Tripartite Committee on Trade and Customs which will review the FTA status, makes appropriate recommendations on a regular basis<sup>276</sup> and foresees that matters relating to the initiation of policy analysis on issues that affect the FTA has been established.<sup>277</sup> The TFTA has incorporated within its text the elimination of NTBs as they have proved to be a huge impediment to intra-regional trade expanding and the members have put a Web-based NTB Monitoring Mechanism in place in order to succeed.<sup>278</sup>

#### **(i) Advantages of the TFTA**

It is seen as an opportunity that will simplify the requirements of the RoO which are often hidden protection measures creating measures that take the identity of tariffs and thereby affect prices of domestic inputs.<sup>279</sup> As would be expected, African states are no different from other states in that they also have different regulations, procedures and policies from each other which usually support domestic goods and services over imported ones. Implementation of this FTA helps in eliminating NTBs.<sup>280</sup>

There are also drawbacks envisaged under the TFTA.

Firstly, for a vast majority of the SADC countries, the revenue they get from customs is a representation of much of their governments' source of revenue, having

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<sup>272</sup> Ibid (4).

<sup>273</sup> Ibid (5).

<sup>274</sup> Ibid Article 6 (1).

<sup>275</sup> Ibid (2).

<sup>276</sup> Ibid Article 13 (1).

<sup>277</sup> Ibid (b).

<sup>278</sup> Tripartite Free Trade Area Agreement op cit Article 10.

<sup>279</sup> Taku Fundira, 'Regional integration: a discussion on the proposed tripartite FTA' 2010.

<sup>280</sup> Sandrey R, Smit L, Fundira T and Edinger H. 'Non-Tariff Measures Inhibiting South African Exports to China and India' Tralac Working Paper 6/2008. Available at [www.tralac.co.za](http://www.tralac.co.za).

a FTA will bring financial costs due to their reliance on import duties. To rectify this, revenue policies that will compensate for the loss will have to be implemented.<sup>281</sup> In addition, there is political tension among numerous SADC countries and this fact slows down the process of integration.<sup>282</sup> Furthermore, there are countries which have larger and more diversified economies and there might be need for compensatory payments to those that are still on their long way to having larger and diversified economies like their counterparts<sup>283</sup> as is the case within SACU.

In light of Zambia being an actively participating member of the COMESA and SADC, and having the vision to continue, the country is in a good position when it comes to its regional trade policy.<sup>284</sup> This means that when it exports goods, they are not subjected to any duties when the exports are destined to either or both FTAs.<sup>285</sup> The implementation of the CUs of COMESA and SADC, the TFTA as well as the COMESA monetary union that is being discussed will pose negative results towards its membership in both FTAs.<sup>286</sup>

SADC is gearing towards forming a CU, and in considering the RoO, logic does not favour even the possibility of imposing a CET on all non-COMESA states.<sup>287</sup> The three RECs reached consensus on the harmonisation of their different CETs and this will resolve the problem of overlapping memberships thereby strengthening the development of the AEC.<sup>288</sup>

### 3.5.3 Rules of Origin

There are already RoO in existence and according to the *acquis*<sup>289</sup> based tariff offers, new RoO will have to be created. This is going to bring about more complications with regard to the overlapping membership issue.<sup>290</sup> The SADC RoO are already viewed as a stumbling block and therefore one of the major courses of

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<sup>281</sup> Sophie Chauvin and Guillaume Gaulier op cit.

<sup>282</sup> Ibid.

<sup>283</sup> Ibid.

<sup>284</sup> Lawrence Edwards and Robert Lawrence 'Zambian Regional Integration Policy Challenges', School of Economics University of Cape Town and Harvard Kennedy School, Peterson Institute for International Economics and NBER 2012.

<sup>285</sup> Ibid.

<sup>286</sup> Ibid.

<sup>287</sup> Betina Dimaranan and Simon Mevel op cit.

<sup>288</sup> Ibid.

<sup>289</sup> French term meaning 'that which has been agreed' available at

<http://www.europa.eu/abc/eurojargon/>

<sup>290</sup> Gerhard Erasmus op cit at 8.

the low trade levels within the region<sup>291</sup> and so the RoO should be discussed as these concerns will undermine the RECs instead of consolidating them.

### 3.5.4 Common External Tariff

COMESA and EAC already have a harmonised CET and this eliminates the option of member states in these CUs having to choose to remain with one over the other as the single CET moves the two RECs into a single CU.<sup>292</sup> If the FTA between these two regions and SADC is to succeed, all the RECs are going to have to rationalise their tariff structures and develop common criteria in respect of products that are considered sensitive.<sup>293</sup> COMESA and EAC have already agreed that they will form CET duty rates with similar applied duties on the goods that will be agreed upon.<sup>294</sup>

SADC being a FTA and having its members as participants in multiple regional trade Agreements, had not rationalised its CET in 2011<sup>295</sup> when the Tripartite FTA negotiations were first launched<sup>296</sup> and to overcome that problem it needed to.<sup>297</sup> It is important to mention that because of SACU, which is a CU within SADC the fact that it has a complex tariff structure is going to make the process more complicated.

In relation to developing common criteria for those products that are considered to be sensitive, deeper integration is likely to be undermined because the process of describing what goods are regarded as sensitive products will not be easy seeing that the majority of SADC and COMESA countries lack clarity on what goods qualify under that category.<sup>298</sup>

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<sup>291</sup> Ibid.

<sup>292</sup> Brief on the COMESA CUSTOMS UNION op cit.

<sup>293</sup> Taku Fundira, The need for tariff rationalisation and common criteria for determining sensitive products within the proposed tripartite COMESA-EAC\_SADC FTA 2011. Available at [www.tralac.org](http://www.tralac.org).

<sup>294</sup> Betina Dimaranan and Simon Mevel, 'The COMESA Customs Union: A Quantitative Assessment' 2008.

<sup>295</sup> Taku Fundira op cit.

<sup>296</sup> Declaration Launching the Negotiations for the Establishment of the Tripartite Free Trade Area 12 June 2011.

<sup>297</sup> Taku Fundira op cit.

<sup>298</sup> Ibid.

### 3.6 Economic Partnership Agreements (EPAs)

The EPAs came about from negotiations that took place between the EU and the ACP countries. They were launched in September 2002 in Belgium and the agreement came into force in 2008.<sup>299</sup>

The negotiations of these Agreements were structured in two phases and the EC negotiated with all the ACP states in the first phase and with each of the groups in which the regions were later divided in the second phase.<sup>300</sup>

The economic and trade cooperation undertook to eliminate poverty and promote sustainable development by fostering gradual integration of its member states into the world economy<sup>301</sup> and to enable the ACP countries full participation in international trade as its ultimate objective.<sup>302</sup> As a way of taking cognisance to the needs of developing and LDCs,<sup>303</sup> the cooperation shall conform to WTO rules as well as address the effects of preference erosion in compliance with multilateral commitments.<sup>304</sup>

This cooperation is to build on ACP states' regional integration initiatives and it must be emphasised that both cooperation that supports regional cooperation and integration and that which supports economic and trade cooperation will be reinforced.<sup>305</sup>

Efforts to build a single trade regime within the SADC region and between the region and the EU are complicated. There is going to be a lock in on trade relations with the EU which will have negative effects on the diversification of the trade relations the region has with other major economies globally due to the MFN

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<sup>299</sup> African Trade Policy Centre 'EPA Negotiations: African Countries' Continental Review No 64, United Nations Economic Commission for Africa. Available at [www.uneca.org/publications/no-64-epa-negotiations-african-countries-continental-review](http://www.uneca.org/publications/no-64-epa-negotiations-african-countries-continental-review).

<sup>300</sup> Institute of Development Studies, Centre for the Analysis of Regional Integration at Sussex 'EPA Review.'

<sup>301</sup> CPA op cit Article 34 (1). Available at [http://ec.europa.eu/europaid/where/acp/overview/documents/devco-cotonou-cosol-europe-aid-2012\\_en.pdf](http://ec.europa.eu/europaid/where/acp/overview/documents/devco-cotonou-cosol-europe-aid-2012_en.pdf).

<sup>302</sup> Ibid Article 34 (2).

<sup>303</sup> Ibid (4).

<sup>304</sup> Ibid.

<sup>305</sup> Ibid Article 35 (2).

clause.<sup>306</sup> Furthermore, the capacity for development and structural change within the region appears to be limited.<sup>307</sup>

In addition the reduction of import duty revenue that will result from tariffs being reduced is going to impair the ability of numerous governments to supply public goods to their citizens and this will in turn limit their ability to achieve the Millennium Development Goals (MGD) within the region.<sup>308</sup>

### 3.6.1 Benefits of the EPAs

In general terms these Agreements are going to increase the competitiveness of the SADC economies and improve the way regional exporters perform in trade. When the EU removes its remaining tariffs, the RECs in the region will have broader opportunities in exporting their products.<sup>309</sup> Among the benefits that the EPAs will bring is the emergence of economies of scale when the regional markets extend beyond their different national borders.<sup>310</sup> It is also expected that when the African states have formed their EPAs with the EU, there is going to be trade liberalisation that will foster sustainable policy making and encourage investors, especially foreign investors into the SADC region.<sup>311</sup>

### 3.6.2 SADC EPA

There was a problem within the region to bring together all SADC member states to form one group under which all states would negotiate the EPAs.<sup>312</sup> SADC was then divided into four groups to make it easier for the states to enforce their national interests.<sup>313</sup>

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<sup>306</sup> Status on the disadvantages for South Africa regarding Member Countries of SACU and the EU with Agreements within the Framework of the Economic Partnership Agreement. International Relations & Cooperation. Available at [www.dfa.gov.za](http://www.dfa.gov.za).

<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

<sup>309</sup> Stefan Szepesi and Sanoussi Bilal, 'EPA Impact Studies : SADC and the regional coherence' 2003.

<sup>310</sup> Ibid.

<sup>311</sup> African Trade Policy Centre *EPA Negotiations: African Countries Continental Review* op cit.

<sup>312</sup> Erik Grunke *The Economic Partnership Agreements between SADC and EC Regional Integration of SADC and Namibian interests within EPA negotiations* (2011).

<sup>313</sup> Ibid.

### 3.6.3 Regional Configuration

South Africa joined the EPA negotiations though it concluded a free trade agreement with the EU in 2000 which came into force in 2004.<sup>314</sup> SADC members acknowledged that their memberships overlapped with other regional arrangements which more often than not differ in integration and trade programmes to those of their counterparts who would be negotiating the EPAs as well<sup>315</sup> and SADC had itself taken a stance that there would be implications on the negotiations which would likely be brought about by the TDCA.<sup>316</sup>

The EC decided it was best if each country became a member of only one trading arrangement with it.<sup>317</sup> It was in this regard that members had to choose which grouping they would negotiate under. Angola, Botswana, Mozambique, Lesotho, Namibia and Swaziland decided to fall under the SADC EPA group while the other SADC member states chose to participate under the ESA, EAC and CEMAC groupings.<sup>318</sup>

Because member states could not agree on trade related matters in respect of both goods and services<sup>319</sup> and the EU taking almost nine months to answer the negotiation framework proposal made by SADC, there was slow progress in the negotiations.<sup>320</sup> Botswana, Lesotho, Swaziland and Mozambique ended up agreeing to an Interim EPA with the EU in November 2007 and Namibia followed suit in December the same year.<sup>321</sup> Despite the backlash they received from other SACU members, the states went on to sign the IEPA in 2009 to the exclusion of Namibia and the first round of EPA negotiations between SADC and the EC was held in 2010.<sup>322</sup>

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<sup>314</sup> South Africa Department of International Relations and Affairs 'The Trade Development and Cooperation Agreement' Available at <http://www.dfa.gov.za/foreign/saeubilateral/tdca.html>.

<sup>315</sup> European Centre for Development Policy Management (ECDPM) 2006. *Overview of the regional EPA negotiations: SADC-EU Economic Partnership Agreement*.

<sup>316</sup> Institute of Development Studies (IDS) Centre for the Analysis of Regional Integration at Sussex EPA Review.

<sup>317</sup> Ibid.

<sup>318</sup> ECDPM 2006 op cit.

<sup>319</sup> South Africa Department of International Relations and Affairs op cit.

<sup>320</sup> Institute of Development Studies op cit..

<sup>321</sup> Economic Partnership Agreements EU – ACP : Facts and Key Issues 2012. Available at [www.europarl.europa.eu/pdf/oppd/Page\\_8/EPAsSpring2012final.pdf](http://www.europarl.europa.eu/pdf/oppd/Page_8/EPAsSpring2012final.pdf).

<sup>322</sup> Ibid.

### 3.6.4 MFN

The EU is to be granted the same preference that will be granted to other parties should they establish a trade Agreement with the SADC EPA states and this causes a reduction in the policy space of the members but the EU holds firm that it serves to guard against discrimination.<sup>323</sup>

### 3.6.5 (i) SA under SADC EPA (Gains)

By joining the SADC EPA South Africa would be broadening its agenda on regional trade. South Africa has also back loaded its tariff reduction commitments in the TDCA in order to prepare for their phasing in.<sup>324</sup> Since the transition period ended in 2012 for South Africa in respect of the TDCA, and that of the other SACU members under the SADC EPAs will end in 2020 to 2023 for the members, if South Africa was to switch to the SADC EPA it would bargain from the Agreement for a much longer transition period.<sup>325</sup>

The EU is building growing economic relationships by signing free-trade agreements with many countries including Japan, the United States and others while at the same time its economic ties with Russia, China and Central Asia are diversifying.<sup>326</sup> These emerging economic ties make it possible for the EU to have opportunities in South Africa's regional context and this ensures that the SA-EU relationship remains relevant and will therefore enhance benefits to both SA and the EU.<sup>327</sup>

### (ii) SA under SADC EPA (Pitfalls)

South Africa faces many challenges within the regional context under this Agreement.

The TDCA would have to be aligned with the SADC EPA and if this happened it would result in it no longer being of any relevance, therefore squashing out the

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<sup>323</sup> Erik Grunke op cit.

<sup>324</sup> M Pant 'The Costs and Benefits to South Africa of joining the SADC EPA' Centre for International Trade and Development School of International Studies (New Delhi India) (2009).

<sup>325</sup> Mare J 'Much is at stake in talks on EU-SA economic partnership' July 2013 Available at [www.bdlive.co.za/opinion/2013/07/22](http://www.bdlive.co.za/opinion/2013/07/22). Accessed on 28<sup>th</sup> October 2013.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

bilateral trade between it and the EU.<sup>328</sup> The EU is a world class market which no country with developing prospects would pass an opportunity no matter how small to have access with advantages to its markets and choose instead to go with the SADC EPA under which it would have to compete with other members for the EU market. Indeed the competition would not be stiff but the fact that the EU would still be able to accommodate all the member states' markets under the same agreement with the same treatment is what would discourage South Africa.<sup>329</sup>

Another disadvantage that would befall South Africa if it was to drop out of the TDCA and go with the SADC EPA is that there would definitely be need for the defining of the RoO in a manner that would make the implementation of FTAs ultimately difficult.<sup>330</sup> This would mean the other members' economies would be destroyed since the majority if not all of them, depend on South Africa for trade and development and since they are not at a level where they can have internationally competitive markets.

South Africa is restricted from concluding other FTAs with chief trading countries that are not part of the EU and those would be the ones who are said to have a share of world merchandise trade that exceeds one per cent.<sup>331</sup> The country's ability to conclude agreements with countries such as Brazil, Russia, India and China would have been constrained<sup>332</sup> and it would not have been possible for the formation of BRICS on South Africa's part. These are emerging markets with which trade is guaranteed to develop the country's economy.<sup>333</sup>

Furthermore, South Africa is not going to be granted the same preferential access that the EU has granted to the other members to its markets and this is due to South Africa's growing trade deficit.<sup>334</sup>

When it comes to agricultural products that are exported to the EU, especially beneficiated products such as wine and sugar, the EU claims to have given South Africa a lopsided advantage in recent times and this is said to have become a

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<sup>328</sup> M Pant op cit.

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

<sup>331</sup> Article 28(7) SADC EPA.

<sup>332</sup> M Pant op cit.

<sup>333</sup> Ibid.

<sup>334</sup> J Mare op cit.



sticking point in the on-going SADC EPA negotiations in the context of the EU-South Africa bilateral trade provisions that are already in existence.<sup>335</sup>

**(iii) SA under the TDCA (Pitfalls)**

It is important to mention that the South African minister of Trade and Industry Mr Davies said in terms of the TDCA, access of South African agricultural products was not receiving satisfactory treatment and that the EPA negotiations would improve such access.<sup>336</sup> The EU remains South Africa's largest trading partner and investor, conversely this dropped considerably due to the EU still struggling following the 2008 to 2009 global financial crisis and this resulted in the demand for South Africa's products by the EU falling while South Africa's need for EU imports grew rapidly.<sup>337</sup>

**(iv) SACU members under the TDCA (Pitfalls)**

Because the members are in a CU, the implication is that all trade between them is duty free and therefore these countries have a CET with the rest of the countries globally.<sup>338</sup> The TDCA therefore technically binds the other SACU members to the same import duty rates that South Africa agreed to in the Agreement. This undermines their sovereignties as independent states as they are bound by provisions they did not agree to.

**(v) SACU members under the SADC EPA (Gains)**

The EU is going to grant SACU members, to the exclusion of South Africa, duty-free and quota-free access in the European market.<sup>339</sup> The implementation of the SADC EPA is of relative importance to Botswana, Namibia and Swaziland as failure of such implementation would expose them and thereby cause their trade with the EU to revert to the much stricter GSP.<sup>340</sup>

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<sup>335</sup> Mark Allix 'Zuma opens EU-SA Summit with message of unity' July 2013 available at [www.bdlive.co.za/business/trade/2013/07/18](http://www.bdlive.co.za/business/trade/2013/07/18). Accessed on 29<sup>th</sup> October 2013.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.

<sup>338</sup> M Pant op cit.

<sup>339</sup> Mathabo Le Roux 'Neighbours accuse SA of acting like 'Big Brother'' 2012 Business Day Live available at [www.bdlive.co.za/articles/2008/12/01](http://www.bdlive.co.za/articles/2008/12/01). Accessed on 29<sup>th</sup> October 2013.

<sup>340</sup> Ibid.

If this was to happen, Botswana and Namibia would lose their preferential access to the EU market for tactical export products such as fruit while Swaziland which is big on the production of sugar<sup>341</sup> would find itself out of the European sugar arrangement and thereby pass on striking sugar prices in the EU market.<sup>342</sup> This situation would hit the economies of these countries in a very unfortunate way.

For Lesotho, the SADC EPA is of utmost importance because as a LDC if this Agreement's implementation failed, the country would qualify for trade with the EU under the EBA Agreement and there is more for it to benefit under the SADC EPA in comparison to EBA.

As a country that majors in clothes manufacturing, it is highly dependent on the favourable RoO for its export on clothing and it is going to benefit more under the SADC EPA in comparison to the EBA since the RoO under the latter would be stricter than they would be under the former.<sup>343</sup>

### **3.6.6 General drawbacks of EPAs**

South Africa pushed for contentious provisions to be addressed in a satisfactory manner in the Interim EPA (IEPA) and for SACU to carry on pushing for a common tariff offer to the EC so that SACU's CET could be preserved as this is the essential foundation for a CU. States are going to have too many different obligations to the EU under the TDCA and SADC EPA and this will cause foreclosure on the harmonisation of policies within SACU.<sup>344</sup> Moreover there is a possibility for the CET to be hit badly by the MFN provision and this has the potential to impede long term economic development in the region.<sup>345</sup>

Some of the positives that the EPAs will have on SADC economies and their integration as well as on the other African groups in general have been stated. It is also notable that there will be effects on some parts of the economies that will be severely negative.

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<sup>341</sup> Ibid.

<sup>342</sup> Ibid.

<sup>343</sup> Ibid.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid.

There are high chances that the producers who compete on imports at the local level will be unfavourably affected by the increased competition that EU companies have because of the potential they have to exploit economies of scale and therefore end up dumping their exports in SADC markets.<sup>346</sup> Furthermore, a short term set back could occur where there is significant job loss and de-industrialisation from small and medium sized firms being vulnerable due to them not being able to access advanced technologies and exploit the economies of scale.<sup>347</sup>

### **3.7 CONCLUSION**

The EC has assisted the ACP countries expand their trade developments by granting them preferential treatment through the treaties from the genesis of the two continents' trade relationship to the present day.

The COMESA and EAC regions have been more successful in their growth. COMESA in particular has done well by catering for its member states' short term revenue losses by ensuring that there are remedies such as the long term application of its CET increasing such revenue.

These SADC countries will benefit best from regional economic integration but they have conducted the negotiations process in a manner that is counter to this being their priority. The states seem to be more focused on pursuing their national interests more than improving on their integration as a region.

The tripartite agreement between the three regions is indeed what will help the SADC region improve its market integration. Regional and continental integration processes will also be improved by alleviating the multiple membership issue that exists in the region, which is the core problem that renders member states incapable of committing themselves to objectives they undertake to pursue.

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<sup>346</sup> Stefan Szepesi and Sanoussi Bilal op cit.

<sup>347</sup> Ibid.

## CHAPTER 4

### ANALYSIS OF THE HARMONISATION OF THE TDCA AND SADC EPA

#### 4.1 INTRODUCTION

When the ACP countries became signatories to the Lomé Convention under which they were not compelled to reciprocate trade concessions to the EU, South Africa was initially denied membership on the basis of its economy being at a stage where the EU regarded it as a non-qualifier for non-reciprocal treatment.<sup>348</sup> It was however allowed to join at a later stage following renewed negotiations although the terms offered gave the country minimal benefits.<sup>349</sup>

The Lomé Convention expired in 2000,<sup>350</sup> the TDCA was signed prior to that in 1999. It partially came into force in 2000 and was fully implemented in 2004<sup>351</sup> and the Agreement is said to be supplemented by the Cotonou Agreement; the Science and Technology Agreement; the Fisheries Agreement and the Wine and Spirits Agreement.<sup>352</sup> The economic partnership was fully implemented and developed into a FTA in 2012.<sup>353</sup>

This chapter will be dealing with the trade chapter of the TDCA. It will discuss the impacts the TDCA has on SACU members and how its objectives have hindered market access for SACU members. It looks at the contentious issues within the EPAs and how the EU and SADC EPA region have tried to solve them. The chapter also examines the SADC EPA and its progress.

Furthermore it reveals the relations between the TDCA and the SADC EPA and analyses whether SACU can withstand the co-existence of the two Agreements. It also details the implications of SACU vis-à-vis SADC EPA and those of the two Agreements on the SACU CET.

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<sup>348</sup> Carine Zamay Kiala, 'The Politics of Trade in the Southern African Customs Union (SACU): Prospect of SACU-China Free Trade Agreement' (Magister Artium) UP.

<sup>349</sup> Ibid.

<sup>350</sup> ECDPM 1999. 'The Future of Lomé's Commodity Protocols: Fiddling while Rum Burns?' (Lomé Negotiating Brief No.6) Maastricht: ECDPM.

<sup>351</sup> Montseng Tsolo et al 'The Impact of European Union – South Africa Trade Development and Cooperation Agreement on Botswana, Lesotho, Namibia and Swaziland' Vol 3 issue 1 page130 2010.

<sup>352</sup> Carine Zamay Kiala op cit.

<sup>353</sup> Fifth European-South Africa Summit Joint Communiqué, EU-South Africa: a partnership for our people, prosperity and peace, Council of the European Union, 13899/12 Brussels 2012.

Then following the discussion on repercussions that are faced by the SACU/SADC states if they fail to conclude the SADC EPA, it displays the way forward and concludes that the harmonisation of the two Agreements is somewhat on the blurry end as harmonising the two would place South Africa on the losing end.

## 4.2 OVERVIEW OF THE TDCA

This bilateral agreement covers trade relations, economic cooperation, development cooperation and numerous other fields such as socio-cultural cooperation and political dialogue.<sup>354</sup>

The two parties to the Agreement each had different liberalisation periods. The EU had ten years while South Africa had 12 years to fully implement this Agreement and the EU was to liberalise a slightly higher percentage of goods it imports from South Africa than South Africa had to on the ones it imports from the EU.<sup>355</sup> There is an asymmetrical trade liberalisation relationship between the EU and the BLNS states and it is said that the EU-SA TDCA grants the EU effective free access to the markets of the other SACU members but those members do not receive reciprocal access to the markets of the EU<sup>356</sup> and this illustrates how effective the RoO are.

Since these rules are used as a form of establishing the economic nationality of goods to determine if such goods qualify for trade preferences,<sup>357</sup> SA being the driving force within SACU is somewhat of a disadvantage to the other members. It would seem as though when it comes to EU goods into SACU via the TDCA, RoO depend solely on the geographic location from which they are being shipped, as in this instance they would be EU exports coming from SA into SACU countries thereby enjoying the CU privileges and this results in trade deflection<sup>358</sup> whereas goods from these member countries do not enjoy same via the TDCA, as the EU ensures that it

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<sup>354</sup> Montseng Tsolo et al op cit.

<sup>355</sup> Ibid.

<sup>356</sup> Ibid.

<sup>357</sup> Naumann E. Comparing EU free trade agreements – Rules of Origin 2006. Available at <http://www.ecdpm.org/inbrief6i> Accessed on 9th January 2014.

<sup>358</sup> Ibid.

gives concessionary access to its market to the intended recipient country<sup>359</sup> which is SA under this agreement.

#### 4.2.1 TDCA objectives

The Agreement aims to *inter alia* support the efforts that South Africa takes and with them consolidate the economic and social foundations of its transition process.<sup>360</sup> It furthermore seeks to promote regional cooperation and economic integration in the Southern Africa region<sup>361</sup> while also contributing to the harmonious and sustainable economic and social development of the region.<sup>362</sup> In addition the Agreement wishes to increase the expansion and reciprocal liberalisation of mutual trade in goods, services and capital.<sup>363</sup>

South Africa's economy was closed during the apartheid and this Agreement is among the numerous factors that eventually opened up the economy.<sup>364</sup> The country's assets and investments have the potential to be of improved quality if there are various goods imported and if they are of a good quality as opposed to the domestically produced goods.<sup>365</sup> South African firms may experience an increased competition when trading with different members of the EU and that may help stimulate more efficient domestic production.<sup>366</sup>

Moreover, because the EU nations are developed, South Africa will benefit from processes that accompany increased trade with more developed nations as well as obtain new ideas from those partners which may be of significant help within SACU on how to make implementation of policies successful.<sup>367</sup> The parties involved are looking to encourage the smooth and gradual integration of South Africa into the world economy<sup>368</sup> and this has been successful thus far.

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<sup>359</sup> Ibid.

<sup>360</sup> TDCA op cit Article 1 (b).

<sup>361</sup> Ibid (c).

<sup>362</sup> Ibid (d).

<sup>363</sup> Ibid (e).

<sup>364</sup> Soamiely Andriamananjara and Russell Hillberry 'Regionalism, Trade and Growth: The Case of the EU-South Africa Free Trade Agreement' U.S. International Trade Commission.

<sup>365</sup> Soamiely Andriamananjara op cit 3.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid.

<sup>368</sup> TDCA op cit Article 1 (f).

The two parties are at extensively different phases of development and South Africa having the capacity to trade with the EU and have the EU as its largest trading partner although there had been a growing trade deficit with the EU in the recent years<sup>369</sup>, makes it of interest to other international market economies and therefore the country has high chances of being a place of interest in terms of things such as foreign investments.<sup>370</sup> This is also encouraged by the Agreement in stating that the EU will support and promote investment in both South Africa and the Southern Africa region through appropriate instruments.<sup>371</sup>

The EU has also undertaken to develop and diversify trade between the parties and to improve the competitiveness of the country's production on domestic, regional and international markets.<sup>372</sup> If the EU and South Africa succeed in carrying out the Agreement's initiative, South Africa will make huge gains in investment and this may well seal the possibility of the country engaging in integration through the SADC course.<sup>373</sup> As South Africa will be dealing with power countries, being recognised as one of them post all the investment gains may encourage loss of interest on its part in assisting its neighbours develop as can be inferred from South Africa having previously used its economic stance wrongfully against the smaller economies.<sup>374</sup>

#### **4.2.2 The role of South Africa and the TDCA**

It was previously mentioned that South Africa was included in the EPA negotiations by the EU but unlike the ACP states its exports were subjected to a different set of rules.<sup>375</sup> The EU was concerned that if South Africa was treated similarly to the BLNS countries, such treatment had the potential to inhibit market access and tariff liberalisation achieved under the TDCA.<sup>376</sup>

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<sup>369</sup> Rob Davis' statement in 'European commissioner for trade Karel De Gucht criticises SA over unilateral decision to cut bilateral investment treaties with some EU member states' 2013 available at [www.sundaystandard.info/article.php?NewsID=17354&GroupID=3](http://www.sundaystandard.info/article.php?NewsID=17354&GroupID=3).

<sup>370</sup> M Pant op cit.

<sup>371</sup> TDCA op cit Article 52.

<sup>372</sup> Ibid Article 53.

<sup>373</sup> Albert Makochekanwa 'SACU (RUN-AWAY) Trade Agenda: Challenges and Threats to the SADC Regional Integration Project' Trades & Development Studies Centre-Trust [Trades Centre].

<sup>374</sup> Mmegi Online Gaborone in News op cit.

<sup>375</sup> Erik Grunke op cit at 19.

<sup>376</sup> Ibid.

When the 2008 time frame to conclude the EPA negotiations failed, it led to confusion within the seven members of SADC. There were already controversial issues on which the members could not agree on within the IEPAs and South Africa objected when the EU proposed the inclusion of the Singapore Issues.<sup>377</sup> These are the issues that were introduced to the WTO agenda at a Ministerial Conference in Singapore and they are competition policy, investment, transparency in government procurement and trade facilitation, with the first three being excluded from the Doha agenda.<sup>378</sup> The objection was based on that the concessions on agriculture which would help developing countries had not been discussed and yet the developed countries sought to discuss issues that were of more importance to them.<sup>379</sup>

South Africa is the main trading partner for all SADC members and it therefore plays a very dominant role. The EU's pressure following the failure to conclude the negotiations rendered it more difficult to reconcile the TDCA and the EPAs.<sup>380</sup>

#### **4.3 DO THE TDCA OBJECTIVES FACILITATE OR HINDER MARKET ACCESS AND INTEGRATION?**

The Agreement has had a forceful impact in terms of increasing competition for both imports and exports.<sup>381</sup> Furthermore, it has the potential to reduce SACU's revenue accrual directly from tariff reductions and when tariffs are reduced, the BLNS states lose revenue as a result of the CET that applied to the EU and was removed by the agreement.<sup>382</sup> This emanates from the fact that the BLNS countries are *de-facto* part of the TDCA since under SACU a member is not allowed to enter into an agreement with any other third country without the consent of the other members<sup>383</sup> and the BLNS are themselves members of SACU. The common revenue pool funds are distributed in a way that the smaller countries within SACU

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<sup>377</sup> Understanding the WTO: Cross-Cutting and New Issues, Trade and Investment, Trade and Competition, Public Procurement and Trade Facilitation. Available at <http://www.wto.org> Accessed on 9<sup>th</sup> November 2013.

<sup>378</sup> Ibid.

<sup>379</sup> Ron Sandrey, WTO and the Singapore Issues Tralac Working Paper 2006. Available at [www.tralac.org](http://www.tralac.org). Accessed on 19 January 2014.

<sup>380</sup> Erik Grunke op cit at 19.

<sup>381</sup> Montseng Tsolo et al op cit at 132.

<sup>382</sup> Ibid.

<sup>383</sup> 2002 Southern African Customs Union (SACU) Article 31 (3).



receive a larger share, therefore when tariffs fall these states are the ones that will be affected more negatively.<sup>384</sup>

It is also worth mentioning that the BLNS countries are obligated to liberalise a high percentage of their products and this results in the countries losing huge revenue.<sup>385</sup> The TDCA has the potential to divert both imports and exports of South Africa further away from the BLNS states into the EU and this would result in the countries having to compete on both sides with the EU.

There is a relatively fair percentage of goods that South Africa imports from the EU and because of the free movement of goods within SACU, these imports have a high chance of landing in the BLNS states.<sup>386</sup> This is disadvantageous on these states because it may be extremely difficult for them to come up with trade policies independently considering how dominant South Africa is and how limited their power is in tariff policies.<sup>387</sup> This will lead to the domestic industries of these countries having to compete with the lower import prices from the EU and another possibility is that the enlarged market of goods from the industrialised European nations has the potential to de-industrialise the BLNS states.<sup>388</sup>

The TDCA was signed between the EU and South Africa, however it is applicable on imported goods that come from the EU into the BLNS territories due to them being in a CU with South Africa which is also a result of the *de facto* application.<sup>389</sup> The South African economy has transformed and South Africa has become a state that attracts foreign investment due to its internal market developing and thereby allowing players from outside to bring in a different standard of development prospects<sup>390</sup> and in this manner the agreement is helping develop the economy of South Africa.

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<sup>384</sup> Montseng Tsolo et al op cit at 132.

<sup>385</sup> Erik Grunke, The Economic Partnership Agreements between SADC and EC, 'Regional Integration of SADC and Namibian interest within negotiations', 2011.

<sup>386</sup> Montseng Tsolo et al op cit 132.

<sup>387</sup> Ibid.

<sup>388</sup> GR Motlaleng, 'Using exchange rate policy as a tool for inflation in Botswana', Vol 1 New Delhi 2004.

<sup>389</sup> Montseng Tsolo et al op cit 130.

<sup>390</sup> Talitha Bertelsman-Scott and Peter Draper, The TDCA: Impacts, Lessons and Perspectives for EU-South and Southern African Relations, The South African Institute of International Affairs.

The TDCA and SACU are based on rules and were regarded as building blocks to the generation of new arrangements that will be introduced by the EPAs until insufficient attention was given to institutional and legal aspects and they somewhat transformed into stumbling blocks.<sup>391</sup>

#### 4.4 SADC EPA

South Africa is engaged in negotiations on the regional EPA with the EU as part of the SADC EPA group.<sup>392</sup>

##### 4.4.1 Position of the negotiations

The EU requested SACU to come up with a new offer on agricultural market access by the 18 and latest 21 June at the negotiating round that was held in Brussels.<sup>393</sup> It is important to highlight that SACU's participation in the EU EPA negotiations through the SADC configuration stems from the fact that all SACU members belong to SADC.<sup>394</sup> The CU came up with that new offer but the EU considered it insufficient when matched with the market access that the EU has opened for its Southern African trading partners.<sup>395</sup> As agricultural products are of a crucial and sensitive nature to the SACU countries, this has brought major concern in relation to the impact of further commitments.<sup>396</sup>

Furthermore, the SADC region was also asked to review its non-agricultural market access as well before participating in new negotiations. In addition an agreement was reached that since only an agreement about goods could be reached before a chapter on services was drafted, the latter should be postponed.<sup>397</sup> It also appears that on the subject of RoO, there has been major progress with the EU

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<sup>391</sup> Ibid.

<sup>392</sup> EU Trade Commissioner promotes on free trade deals and on trade facilitation on visits to South Africa, Cameroon and Ivory Coast, 2013 available [http://www.europa.eu/rapid/press-release\\_IP-13-1057\\_en.htm](http://www.europa.eu/rapid/press-release_IP-13-1057_en.htm). Accessed on 13<sup>th</sup> November 2013.

<sup>393</sup> Roquefeuil Q.de, EPA Update, Great Insights, Vol 2 Issue 6 September 2013 available at [www.ecdpm.org](http://www.ecdpm.org). Accessed on 9<sup>th</sup> November 2013.

<sup>394</sup> SACU's Participation in the SADC EPA Negotiations. Available at [www.sacu.int/newsletters/2008/jan\\_mar08.pdf](http://www.sacu.int/newsletters/2008/jan_mar08.pdf).

<sup>395</sup> Ibid.

<sup>396</sup> Ibid.

<sup>397</sup> Ibid.

reviewing a new proposal that was made by SADC regarding the cumulation and administrative cooperation in connection with the GSP beneficiary.<sup>398</sup>

#### 4.4.2 Contentious Issues

##### (i) Liberalisation of all trade substantially

Numerous contentious issues have been identified since the operation of the IEPAs and their variation is scattered across different regions. The EU set a policy which requires the states to grant it duty-free access on at least 80 per cent of their products within a period of 15 years.<sup>399</sup> It is said that many RECs demand an interpretation and implementation that is flexible enough to accommodate for weaker economies as they consider the EU's interpretation of the requirement unreasonable.<sup>400</sup>

##### (ii) Restrictions on exports: abolition

The implementation of the full EPAs is going to result in restrictions on exported taxes being abolished.<sup>401</sup> The exports have so far brought down the prices of important commodities (agricultural commodities). The EU has requested that they be eliminated and prohibited from being used in the future.<sup>402</sup> African countries have argued that they be maintained since they assist in gains of revenue and allow countries to protect their infant industries from competition through export duties.<sup>403</sup>

The EU prohibited the increase of export restrictions and the decision to abolish them will also deprive the states from having the value creation of many of their products promoted effectively.<sup>404</sup> The SADC states opposed this prohibition and consulted with the EU and in doing so they had to provide justification for the maintenance of the export restriction.<sup>405</sup>

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<sup>398</sup> Ibid.

<sup>399</sup> Sanoussi Bilal and Isabelle Ramdoo, 'Which way forward in EPA negotiations?' Seeking political leadership to address bottlenecks, 2010.

<sup>400</sup> Erik Grunke op cit at 21.

<sup>401</sup> Sanoussi Bilal and Isabelle Ramdoo op cit at 21.

<sup>402</sup> Ibid.

<sup>403</sup> Ibid.

<sup>404</sup> Erik Grunke op cit at 22.

<sup>405</sup> Sanoussi Bilal and Isabelle Ramdoo op cit at 18.

### (iii) The MFN Clause

The inclusion of the MFN clause that was incorporated in the IEPAs requires the signatory states that grant preferences to third countries in agreements they have with those parties separate from the IEPAs to grant same to the EU.<sup>406</sup> This is in essence provided for as thus; SADC states ought to grant the EC the same favourable treatment that is applied as a result of the state or states forming a free trade agreement with other major trading partners post signing the Agreement.<sup>407</sup>

With emerging players such as the BRICs, the EU is taking precautions to guard against replacement as Africa's most important trading partner. This clause also ensures that the IEPA African states' scope of action to protect their markets is inhibited.<sup>408</sup> Some members of SADC have voiced that this clause would limit their policy space and that it is not WTO compliant in relation to WTO rules that govern FTAs.<sup>409</sup> It should be noted that the MFN clause as it stands would only apply to FTAs that are concluded with third parties.<sup>410</sup>

### (iv) Rules of Origin

The RoO had to be extended due to the fact that only a few products in this current era are manufactured entirely in one country. They exist as a deterrent on third countries moving their products to countries that enjoy duty free access in the EU market.<sup>411</sup> The accumulation method which is a segment of the extension that allows the ACP states' attribution to the origin of the product and subsequent benefit by that state from improved market access although the countries may have contributed only a very small portion in production was developed.<sup>412</sup> The EPA negotiations have however weakened this possibility.

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<sup>406</sup> Ibid.

<sup>407</sup> Interim Southern African Development Cooperation Economic Partnership Agreement Article 28.

<sup>408</sup> Ibid.

<sup>409</sup> Dominic Chanda, *Regional integration in Southern Africa focusing on the future of SADC and SACU* 2010 Stellenbosch: tralac.

<sup>410</sup> Sean Woolfrey, State of play in the SADC-EU EPA negotiations available at [www.kas.de/upload/auslandshomepages/namibia/MRI2009\\_06\\_Woolfrey.pdf](http://www.kas.de/upload/auslandshomepages/namibia/MRI2009_06_Woolfrey.pdf). Accessed on 16<sup>th</sup> November 2013.

<sup>411</sup> Erik Grunke op cit at 23.

<sup>412</sup> Ibid.

### (v) The Standstill Clause/Modification of Tariff Schedules

Since the majority of the states have set low tariffs and there is need to freeze all products at the level that is currently applied, the states' re-scope is restricted.<sup>413</sup> It is said that upon the implementation of the standstill clause, the SADC states requested for its application to be only on products that are liberalised.<sup>414</sup> It is important to mention that this clause prohibits tariffs increase to a level that is higher than the one that the SADC IEPA members and the EU have agreed on.<sup>415</sup> From this an inference can be made that the CU will have to consider the tariff lines that the EPA states have agreed upon.

It is possible that the SADC members will be inhibited when they choose which CET to form still ensuring that it remains compatible with GATT obligations because of the standstill clause. However, because GATT has no prohibitions on parties raising their tariffs when they form a CU, the clause cannot prevent the application of a CET that is above the SADC EPA agreed tariffs.<sup>416</sup>

#### 4.4.3 Progress

Ever since it was implemented, the TDCA has brought progressive trade trends and contributed massively towards restructuring the economy of South Africa as well as securing preferential market access for its products.<sup>417</sup> In addition it has consolidated the strategic links with the economies of the EU membership.<sup>418</sup> There is a review clause that has been entrenched in the TDCA and which South Africa found appropriate as it coincided with the EPA negotiations launch to be used in order to review the TDCA trade chapter.<sup>419</sup> These negotiations are considered to be an opportunity to consolidate SACU vis-à-vis the EU.

South Africa gave in to the EU's invitation to negotiate a deal on geographical indications (GIs) and this deal is aimed at establishing an internationally binding

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<sup>413</sup> Dominic Chanda op cit at 19.

<sup>414</sup> Sanoussi Bilal and Isabelle Ramdoo op cit at 28.

<sup>415</sup> EU – SADC IEPA Article 23.

<sup>416</sup> GATT Article XXIV (6).

<sup>417</sup> South Africa's Trade Agreements Prepared by International Trade and Economic Development (ITED) 2013. Available at [www.thedti.gov.za/parliament/ITED.pdf](http://www.thedti.gov.za/parliament/ITED.pdf). Accessed on 17<sup>th</sup> November 2013.

<sup>418</sup> Ibid.

<sup>419</sup> Ibid.

agreement which will not protect only EU wines and spirits names but also names of agricultural products.<sup>420</sup>

#### 4.4.4 EU-SADC EPA's relation to the TDCA

It was mentioned in the preceding chapters that the CPA introduced a new trade regime that would be compatible with WTO rules and that was in the form of the EU-ACP EPAs.<sup>421</sup> These agreements have their main principles as differentiation, reciprocity, deeper regional integration and coordination of trade and aid.<sup>422</sup> South Africa, Namibia and Zambia are the only countries in the SADC-EPA group that have not signed the IEPA.

South Africa has not signed because it is of the view that the areas dealing with RoO, tariff negotiations and other outstanding contentious issues still have to be addressed before it can sign the agreement. The country already has market access under the TDCA but it is obstinate in its quest for more improved market access under the SADC EPA.<sup>423</sup> The EU pointed out that if it is to grant South Africa its request, South Africa will have to reciprocate on those products that are currently not included in the TDCA offer.<sup>424</sup> South Africa is reluctant as such and it does not seem likely that it will end up signing the agreement as again it will be subjected to different and less favourable rules compared to the other SADC members.

On the issue of RoO, South Africa is concerned because the issues dealing with cumulation and RoO in relation to fish have not been solved yet. Intellectual property issues (and emphasis ought to be made on GI in this respect), cooperation on matters relating to tax and sustainable development are also things that need to be discussed further.<sup>425</sup>

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<sup>420</sup> Ibid.

<sup>421</sup> Alexander Keck and Roberta Piermartini op cit.

<sup>422</sup> Catherine Grant op cit.

<sup>423</sup> Ron Sandrey and Tania Gill, 'An assessment of the TDCA' in *Monitoring Regional Integration in Southern Africa* 2012.

<sup>424</sup> Ibid at 26.

<sup>425</sup> Ibid at 27.

#### 4.5 CAN SACU WITHSTAND THE CO-EXISTENCE OF THE TDCA AND THE SADC EPA?

Many issues have been addressed but SACU members still have to agree on a number of things such as market access for South Africa. The EU and South Africa's market access directly impacts the economies of Botswana and Namibia and the two countries are particularly worried about this situation<sup>426</sup> in addition to the issue of agricultural safeguard measures. South Africa has also made concessions under the TDCA regarding these measures and the members are concerned that there is a possibility for a conflict of interests to ensue.<sup>427</sup>

The Namibian Chamber of Commerce and Industry questioned how the member states were supposed to be guaranteed that the EU would compete in a fair manner with Namibian products that had no subsidy.<sup>428</sup> They are of the view that if the TDCA is not properly managed, local industries of both Botswana and Namibia are going to be adversely affected when imported agricultural goods to South Africa from the EU are in competition with indigenous agricultural goods in those two countries.<sup>429</sup>

The members are worried that the full implementation of the TDCA wherein the EU market opens up 80-something per cent of South African goods and South Africa opens its market to about 90-something per cent of goods from the EU is going to affect them.<sup>430</sup>

Regardless of what the outcome will be, the two members have to take note of the 2014 deadline because should they fail to meet it the EU is going to remove them from the list of states which will be granted market access from 2014<sup>431</sup> and this would be even more disadvantageous to the two states as they would then only conduct their trade with the EU under the GSP which does not have a comprehensive coverage like the EPAs and more importantly Namibia's important exports are not included in the GSP.

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<sup>426</sup> Heita Desie, 'EPA talks at crossroads' 2012 available at [www.tralac.org/2012/05/16/epa-talks-at-crossroads/](http://www.tralac.org/2012/05/16/epa-talks-at-crossroads/)

<sup>427</sup> Ibid.

<sup>428</sup> Ibid.

<sup>429</sup> Ibid.

<sup>430</sup> Ibid.

<sup>431</sup> Ibid.

#### 4.5.1 Implications of SACU vis-à-vis SADC EPA

The BLNS states can opt for a consolidation within SACU behind South Africa and the TDCA or for South Africa and the BLNS to proceed on parallel pathways. Some scholars are of the view that SACU should push for a CU to CU bilateral deal with the EU and forego the EU-EPA.<sup>432</sup>

According to data and statistics collected by economists, Lesotho and Swaziland have their governments' revenue coming in from SACU and this means that the policies that can affect the revenue of SACU are imperative for these states to achieve economic development.

When studies are conducted on the results of SACU engaging in a full reciprocal liberalisation with the EU without South Africa in which sensitive products that require protection are not classified and in another instance SACU engaging in the same with both the EU and South Africa,<sup>433</sup> it is discovered that South Africa gains significantly when it is excluded from the full reciprocal liberalisation than it does if it is included and the EU gains enormously when South Africa is included and so does the rest of SACU while the reverse is quite contrary.<sup>434</sup>

#### 4.5.2 Implications of the TDCA and SADC EPA on the SACU CET

When the TDCA was implemented, it was discovered that there were sensitivities that were identified with 53 tariff lines and were not accommodated by the EU.<sup>435</sup> The BLNS states stated that they would align themselves to the TDCA provisions with South Africa if those sensitive products could be accommodated. The request of the BLNS countries was accepted by the EC and included in Annex 3 of the SADC EPA group IEPA.<sup>436</sup> There was an agreement that they would be fully liberalised by 2015.<sup>437</sup> South Africa unfortunately did not initial the IEPA and as a

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<sup>432</sup> Ron Sandrey and Hans Grinsted Jensen 'Implications of South Africa/SACU Free Trade Agreements for the BLNS countries (Botswana, Lesotho, Namibia and Swaziland)' available at [www.tralac.org](http://www.tralac.org). Accessed on 19<sup>th</sup> November 2013.

<sup>433</sup> Mphumuzi A Sukati, 'The Economic Partnership Agreements (EPAs) and the Southern African Customs Union (SACU) Region- The Case for South Africa' 2010. Munich Personal RePEc Archive available at <http://mpr.ub.uni-muenchen.de/25103/>

<sup>434</sup> Ibid.

<sup>435</sup> Proposal for a Council Decision on a EU position within the EC-South Africa Cooperation Council, 2010 Brussels. Available at <http://www.eur-lex.europa.eu>. Accessed on 15<sup>th</sup> November 2013.

<sup>436</sup> Ibid.

<sup>437</sup> Ibid.



result the tariff inconsistencies still exist between the IEPA and TDCA with regards to those tariff lines.

It is said that aligning the tariff lines that are applied in South Africa for EU exports to the ones applied by Botswana, Lesotho and Swaziland to the same EU products would be a way of ensuring that the SACU external tariff maintains its uniformity and that the amendment of the TDCA would be the best way to preserve the CU's tariff coherence as well as the quickest way to continue the full SADC EPA talks.<sup>438</sup>

#### **4.5.3 Repercussions for failure to conclude the SADC EPA**

The economies of many SADC countries have been sustained and held together by the EU having granted preferential market access to these countries.

The SADC EPA negotiations have been on-going following the signing of the IEPA in 2007 to allow for the smooth flow of trade. The EU is currently strict in pushing for the full EPA agreement to be signed and SADC EPA members will face loss of preferential market access to the EU should they fail to finalise the agreement before the IEPA expires in 2014.<sup>439</sup> The EU Trade Commissioner, Karel De Gucht indicated that the Agreement should be ratified by October 2014.<sup>440</sup> For example, the Commissioner stated that exports from Botswana into the EU would face a possibility of having to experience application of duties and quotas upon their entry if an agreement was not reached.<sup>441</sup>

The challenges are a result of the negotiations on the EPAs which are meant to be concluded on a regional basis still being bogged down because there are technical issues that still need to be solved.

It is emphasised that if the trade talks fail, the majority of the African countries are going to have limited preferential access to the EU markets or no preference at

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<sup>438</sup> Ibid.

<sup>439</sup> Karel De Gucht, 'EU warns SADC group over duties as deadline looms' 2013 available at [www.sundaystandard.info/article.php?NewsID=17354&GroupID=3](http://www.sundaystandard.info/article.php?NewsID=17354&GroupID=3). Accessed on 16<sup>th</sup> November 2013.

<sup>440</sup> Ibid.

<sup>441</sup> Ibid.

all.<sup>442</sup> The dangers of serious trade disruption have high chances of influencing countries to engage in individual trade deals with the EU thereby splitting from their respective regional groupings.<sup>443</sup> If the countries found themselves in this kind of situation, the CU having common trade policies would end their regional economic integration processes. This is particularly so with regards to Botswana and Namibia which have pledged regional unity but this can change and tensions will rise if the agreement is not signed.<sup>444</sup>

The European Commission has to take note that if the regional groupings in Africa split, the impact would be negative and would cause long lasting political and economic repercussions.

#### **4.6 BENEFITS TO BE DERIVED FROM THE TRIPARTITE FREE TRADE AGREEMENT**

The tripartite arrangement of COMESA, EAC and SADC is said to provide the foundation of the Continental Free Trade Area which is promoted by the African Union (AU) Commission, and its partners.<sup>445</sup> The three RECs decided to launch this initiative because they mainly wanted to remove the inconsistencies and costs which are currently in existence in regional integration and are brought about through overlapping memberships.<sup>446</sup>

The drawbacks of the RECs coming together were highlighted previously. The TFTA will hold benefits that will accrue as a result of its member states belonging to more than one REC. This section therefore details solutions to the overlapping membership problem that was discussed in chapter three.

The states have an opportunity to achieve economies of scale and the different regions will be in a position to compete globally through the development of a large internal market.<sup>447</sup> Moreover, the tripartite strategy entails implementing the

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<sup>442</sup> San Bilal 'Head of trade at the European Centre for Development Policy Management warns of the consequences if the EU and Africa fail to conclude their economic partnership agreements' 2013.

<sup>443</sup> Ibid.

<sup>444</sup> Ibid.

<sup>445</sup> Tripartite Cooperation available at [www.sadc.int/about-sadc/continental-interregional-integration/tripartite-cooperation/](http://www.sadc.int/about-sadc/continental-interregional-integration/tripartite-cooperation/).

<sup>446</sup> Mark Pearson op cit.

<sup>447</sup> Sindiso Ngwenya, 'Tripartite Free Trade Area: an opportunity not a threat' 2013. South African Foreign Policy Initiative available at [www.safpi.org/news/article/2013](http://www.safpi.org/news/article/2013).

TFTA, trade and transport infrastructure projects as well as free movement of business persons across the involved RECs.<sup>448</sup> This diversifies trade and deepens integration within the continent.

Furthermore the tripartite states account for half of the AU's membership. This means that they have a high GDP combined. The TFTA Area is considered to build on the FTAs that already exist in the three RECs.<sup>449</sup> In coming together the states will have to engage in negotiations and the fact that there are Preferential Trade Areas (PTAs) and FTA trading arrangements already in existence in those regions, not all the states will have to negotiate with each other<sup>450</sup> and this in essence decreases the chances of having too many conflicts.

#### **4.6.1 IMPLEMENTATION: WAY FORWARD**

The strategy that has been set up in order to implement the TFTA is underway and the states are taking all efforts to complete negotiations within the time they have set for themselves in the roadmap<sup>451</sup> (36 months).<sup>452</sup> The Tripartite Summit adopted a proposal in which states that belong to a FTA ought to extend the preferences to members of their own regional FTA and then to members that belong to other regional FTAs.

For example, COMESA members should device the COMESA FTA and offer non-COMESA FTA members the same preferences on a reciprocal basis as they offer actual members<sup>453</sup> and the same will be expected of the SADC and EAC. Members of COMESA who are non-SADC members together with EAC members will also have to offer SACU members duty and quota free market access on a reciprocal basis.<sup>454</sup>

#### **4.6.2 South Africa as a proxy for SACU**

The growth and regional integration of Africa has to be at the forefront, however regarding South Africa and its external trade policy as SACU cuts its trade

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<sup>448</sup> Ibid.

<sup>449</sup> Ibid.

<sup>450</sup> Ibid.

<sup>451</sup> Tripartite Cooperation op cit.

<sup>452</sup> Sindiso Ngwenya op cit.

<sup>453</sup> Ibid.

<sup>454</sup> Ibid.

barriers to non-African states, African states are somewhat at a disadvantage and the progress of integration is slowed down. African trade partners would be a priority hence speed up regional integration if the SADC CU was to adopt a SACU CET that is slightly modified.

#### **4.7 CONCLUSION**

It was mentioned earlier that the EU has decided that it will terminate duty and quota free access to the EU market by 1 October 2014 for those states that will have not concluded the full EPAs. This is of special concern because there is too much technical and policy work that still has to be done and the deadline pressurises the states unnecessarily, in particular the SADC EPA group since they would lose remarkably if preferential access to the EU markets was to be withdrawn.

A significant quantity and amount of goods that are imported into South Africa are from the EU and the BLNS states are attached to the TDCA due to the imports being freely transferred through SACU. There are products that are not almost duty free but for the BLNS states it is almost impossible to formulate sensible industrial policies because with South Africa dominating, the states are less independent in implementing tariff policies and this ultimately falls back to the issue of the mentioned states' revenues.

The TFTA will reduce trading costs for and within the three RECs. The RECs will have to harmonise their policies and in terms of SADC and SACU, it would be ideal if SACU expanded to accommodate the rest of the SADC members who are currently not SACU members however difficult this may turn out to be considering how complex and deeply integrated the SACU agreement is.

The SADC EPAs and the TDCA differ in that the EPAs are agreements meant to help in the development of the ACP states while the TDCA is an agreement with South Africa which is a country viewed as capable of international market competition. The SADC EPAs are therefore more favourable than the TDCA is. The pressure that the EU is exerting on the states with the states ultimately being off the list of states which will be enjoying preferential treatment come October 2014 if they have not concluded the full EPAs is going to have a negative effect on how the states make decisions that are in their best interests more so because they cannot

afford to lose the kind of preferential treatment from the EU that is offered in the EPAs. Despite this, all exports to the EU from the BLNS states except for sugar from Swaziland which will enjoy same treatment in 2015<sup>455</sup> will enter the EU duty and quota free.

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<sup>455</sup> Ron Sandrey and Hans Grinsted Jensen op cit.

## CHAPTER 5

### 5.1 CONCLUSION

Regional economic integration has been what most of SACU and SADC member states have aimed for. SADC sought to alleviate poverty in the region and by liberalising tariffs it has increased the chances of investment allowing for international competitiveness. Having its own RoO, goods originating from its member states have an advantage in the other members' markets.

Although market integration is what is sought after, SADC is still an FTA and will have to overcome many challenges to succeed in market integration. The merger between COMESA, EAC and SADC promises to help improve integration, however the lack of diligent implementation of mechanisms that ensure member states' compliance has to be given great consideration. This merger will also solve what appears to be the problem at the core of these states succeeding in regional market integration which is the fact that not one state belongs to just a single REC, and this renders them incapable of meeting their commitments under the multiple RECs.

SACU aims to promote industrialisation and facilitate trade and in doing so, it has taken steps to identify key barriers to trade with the assistance of the World Bank.

South Africa and the EU share a vision in which they have undertaken to promote economic integration so that they can contribute to the Southern Africa region's sustainable economic development under Article 1(c) of the TDCA. Policies are yet to be aligned and the effectiveness of the efforts made to harmonise these policies and the achievement of a solid regional market growth in an effort to attain deeper integration is what will improve SACU's performance.

SACU/SADC countries have evolved in trade due to the relationship with the EU and due to the fact that they are being recognised as growing states which are capable of trading internationally and participating as 'equal' partners in Agreements such as the CPA with the developed countries because of reciprocity. The negotiations of SADC EPA aim to enforce a trade relationship of equals among its signatories. The TDCA has integrated South Africa into the international market and

through the SADC EPA the signatories of this Agreement will also have an opportunity to grow their economies globally.

Looking at how South Africa has progressed under the TDCA, it remains to be seen whether the country will change or negotiate any amendments that will be beneficial via *de facto* application to the BLNS under the TDCA. Studies have shown that when this happens South Africa falls on the losing end. In respect of the SADC EPA, the EU is willing to open its market for South African sugar at a certain quota as well as expand duty free quota for wine at a certain quantity. As the deadline approaches, it will be seen what the African states decide. It should however be borne in mind that it does not appear as though the TDCA and SADC EPA will be aligned considering the position South Africa would be in when both Agreements are compared in respect of the country.

The SADC states have indeed benefited from preferential treatments but there are concepts that are going to be problematic on trade liberalisation regarding these states. For South Africa, the MFN clause restricts it when dealing with its new partners such as the BRIC and for all the other SADC EPA members and non-member South Africa inclusive, inhibits the scope of protection for their markets. The Modification of Tariff Schedules makes it impossible for the members to increase tariffs to a level higher than what is contained in the Agreement. This would inhibit members as compatibility with GATT provisions would have to be upheld when forming a CET but GATT does not prohibit the increase of tariffs when a CU is formed.

When SADC EPA is implemented, abolition of restrictions on exports is going to affect the members negatively because they will not be able to protect their infant industries from competition coming from other regions nationally and internationally through export duties.

States enjoying membership in more than one REC is the root problem in regional market integration and for the COMESA, EAC and SADC their formation of a TFTA is more likely going to assist in the resolution of the issues these RECs will face in forming a CU.

Under the TDCA there are products that are not almost duty free, but for the BLNS states it is extremely difficult to formulate sensible industrial policies because with South Africa dominating, the states are less independent in implementing tariff policies. The SADC EPA group is unnecessarily under pressure with the time limit the EU has set in place and also due to extreme technical and policy work that is still underway. This causes distress because these members stand to be disadvantaged remarkably if preferential access to the EU markets was to be withdrawn.

## **5.2 RECOMMENDATIONS**

The TDCA and SADC IEPA provisions on RoO and tariffs should be aligned and the issues relating to the MFN should also be sorted if the member states are to attain a complete EPA that will boost regional market integration within SACU/SADC. Issues that deal with trade competition and trade facilitation ought to be prioritised and included as SACU/SADC integration objectives.

It would also improve SACU integration if transaction costs were to be reduced and SACU members had increased opportunities within the region and the EU. Funded EU projects should provide the SADC region with technical and financial assistance as this would facilitate the implementation of the SADC EPA. As another way of improving market integration, regional trade in services should be expanded and investment within the region and the EU ought to be promoted.

Furthermore, the SADC EPA should be formulated in a way that encourages the building of common positions and the alliance of regional rules on matters dealing with trade facilitation among other things. The Agreement should also boost and ensure that the implementation of commitments in regional trade in goods is effective.

## **5.3 WAY FORWARD**

If SACU/SADC would opt for a marginally modified CET and then form a CU with the rest of SADC, some of the problems that this region is likely to encounter when it merges with COMESA and the EAC would be reduced. States should be obliged to comply and carry out their objectives and obligations as undertaken if market integration is to grow and this would also prevent the big players from



engaging in conduct that is adverse to the smaller players knowing the latter will not have the financial capacity to stand up for themselves.

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