30

The Impact of Economic Partnership Agreement Negotiations on Southern Africa

Talitha Bertelsmann-Scott

Introduction

The states of Southern Africa are currently in negotiations with the European Union (EU) on Economic Partnership Agreements (EPAs). The negotiations result from the Cotonou Agreement between the EU and 77 developing countries in Africa, the Caribbean and the Pacific (the ACP states). Cotonou came into effect in 2000 in succession to the Lomé Convention, which was an 'aid and trade' agreement between the ACP group and the EU.

The Cotonou Agreement encourages signatories either to conclude trade agreements with the EU by no later than 31 December, 2007, or to reach alternative arrangements. The negotiations are of critical importance to the ACP countries, given that for most of them, the EU is by far their major trade and development partner.

The EPAs are being negotiated as regional rather than national agreements, and their eventual outcome could have a significant impact on regional integration in Southern Africa and on the future shape of regional organisations. It is for the Southern and East African states to decide on the nature and composition of the EPAs, although the EU has stated on several occasions that it would like them to become engines for regional integration. The situation in the region is extremely complex, however, and it seems at the moment that the EPA talks are frustrating, rather than facilitating, regional co-operation. One reason for this is that Southern and East African states formed two new groups for negotiating purposes, having decided against negotiating through existing regional groupings. Since all these states already belong to at least one of a series of regional organisations that overlap in membership and goals, the two new groups are likely to further complicate the situation.

This chapter looks at the EPA negotiations, what they entail and what progress has been made towards reaching agreements. It also examines the move towards regional integration in Southern Africa and how this process might be influenced by the EPA talks. It argues that the EU's overall negotiating approach in part rests on the premise that successful regional organisations already exist (or will exist by 2008) to form the basis of the EPAs. Unfortunately, in Southern Africa this is not so. For this reason the implementation of the EPAs could have a negative impact on the region, unless the agreements address issues of development and supply-side constraints.

The problem faced by Southern African governments in negotiating EPAs that will contribute to their development is threefold. The first difficulty is a lack of progress towards regional integration, the second, a lack of uniform policies and practices among the states that inhibits regional integration, and the third arises from traditional constraints such as rules of origin (see below) that have hindered Southern African exports to the EU.

Background to the EPA negotiations

The Cotonou Agreement has its origin in the Lomé Convention, which dates back to the Treaty of Rome (1957) that established the European Economic Community (EEC). The EEC had committed itself to the economic development of its member states' former colonies; a commitment later translated into the Yaoundé Agreements, the forerunners of the Lomé Convention. At the time, the

This chapter was previously published in *Reconfiguring the Compass: South Africa's African Trade Diplomacy*, edited by Peter Draper. SAIIA (South African Institute of International Affairs), Braamfontein, 2005.

Caribbean and Pacific islands opted to ally themselves with the African states, which (ironically perhaps) enjoyed substantial political clout with the EEC. The resultant ACP grouping has, over the past few decades, grown into the largest single global instrument of North–South co-operation.

Initial steps towards dismantling the Lomé Convention were taken in 1996, when the EU released a Green Paper on the future of the Convention. Lomé had served as the principal tool for the EU to promote the development of its former colonies and their integration into the global economy. Its effectiveness had, however, come under question, in particular because despite the trade preferences they enjoyed under Lomé, ACP countries had not been able to diversify their production base (see Annex 1) or make real progress towards participation in the global economy. It was feared that the preferences were in practice locking countries into a rigid production and marketing regime rather than encouraging a search for new areas of comparative advantage. In addition, the preferences began to come under increasing pressure from the World Trade Organization (WTO). Lomé IV bis was legitimised through a waiver from general obligations under the WTO's forerunner, the General Agreement on Tariffs and Trade (GATT), but this became increasingly difficult to defend as the 'banana regime' case demonstrated (see Annex 2). (The Cotonou Agreement currently also has a waiver from the WTO, which will expire in December 2007.) The EU would prefer a future trade agreement with the ACP that would require no waivers from the WTO.[1]

Successive Lomé Conventions (Lomé II, III and IV, respectively in 1979, 1985 and 1990) brought with them increasingly cumbersome and complex instruments for development co-operation and aid disbursement, while a weakening of political ties between member states of the EU and their former colonies, in the wake of the expansion of EU and ACP groups and a changing geo-political climate, was a further factor to be considered.

Aside from these compelling arguments, the EU's desire to move from Lomé was informed by an ideology of liberalisation and globalisation in which colonial ties and preferences had no place. During the early 1990s serious doubts were raised among donor countries about the effectiveness of aid and trade preferences. Many donors believed that it was trade and not aid that would ultimately lift poor countries out of their cycle of poverty. It was felt that aid recipients had become overwhelmingly corrupt and incapable of government, let alone of using donor funds effectively. In Europe the welfare state was on the decline, budgets had became increasingly tight and European electorates objected to their taxes keeping corrupt foreign leaders in place and palace. These sentiments were unaffected by the wave of democratisation that swept through the ACP group. Increasingly, the EU began to attach political conditions to its development assistance – a move the ACP found highly offensive and one that put a severe strain on political relationships under the Lomé Convention.

With the establishment of the WTO as successor to GATT in 1995, the EU began increasingly to rely on the WTO to provide the primary framework for its trade relationships with the world and the Lomé Convention fell well outside that structure. In addition, while the EU was anxious to be seen as a driving force at the WTO it came under frequent criticism, in particular for its maintenance of European domestic agricultural subsidies that other WTO interests saw as distorting the international agricultural market. The EU was also involved in a very lengthy dispute at the WTO with the United States and Ecuador regarding its banana regime (see Annex 2), which formed one of the cornerstones of the Lomé Convention. Successive WTO rulings went against the EU.

Against this background the Lomé Convention had become a burden to the EU and needed reform, as was indicated by the publication of the 1996 Green Paper on its future. The paper contained four options for the future of the trade preferences contained in Lomé:

- maintaining the status quo;
- integrating into the Generalised System of Preferences;
- uniform reciprocity; or
- differentiated reciprocity.

Although all four options seemed somewhat unrealistic at the time the Cotonou Agreement, negotiated from 1998 to 2000, managed to strike a fine balance between them, introducing the concept of reciprocity while maintaining the Lomé *acquis*.

According to the European Centre for Development Policy Management:[2]

> *From the outset of the negotiating process, it became clear that the new round would not be business as usual. From an EU perspective, the imperatives were to apply greater aid selectivity and differentiation in the treatment of ACP countries; to link aid and performance; to make the trade régime 'compatible' with the requirements of the WTO; to ensure a closer involvement of civil society, the private sector and the economic and social actors, as well as to rationalise Lomé co-operation instruments.*

The Cotonou Agreement, signed in Benin in June 2000, replaces all the old Lomé conventions. It makes provision for aid and trade. Under aid, it identifies three main areas of support: economic development, social and human development and regional integration and co-operation. In addition, it stresses the pivotal role of the private sector in development. An investment facility has been created to assist the banking sector to finance local business ventures and the agreement provides for the establishment of an ACP–EU private sector business forum (see Annex 3 for information on the role civil society is expected to play).

In an effort to simplify the instruments of co-operation that had become so cumbersome under Lomé, Cotonou provides only two instruments — the investment facility, and grants. Financial assistance takes place at two levels with two different kinds of financial structures. They are, respectively:

- regional indicative programmes, with grants to regional integration organisations, targeting schemes that are regional in nature but mainly concern regional integration, trade and infrastructure; and
- national indicative programmes, with grants to ACP governments aimed at long-term development projects in limited areas in line with partner countries' national development plans.[3]

Joint institutions have been put in place to administer the agreement, including the ACP–EU Council of Ministers, the Joint Parliamentary Assembly and the Committee of Ambassadors.[4]

It was agreed that the ACP and the EU would negotiate trade agreements to replace the old Lomé provisions by December 2007, when the WTO waiver will expire. The new agreements, or forms of alternative arrangement, are supposed to be in place by the time the old Lomé preferences end. The negotiations are, however, still a long way from complete. Only the EU objectives are clear, although even there some contradictions can be found.

The European point of view

In line with the thinking behind the negotiations that led to the Cotonou Agreement, the EU is focusing strongly on developing regional integration among the ACP states. Although Cotonou provides for states to opt out of negotiating a regional EPA, the EU mandate focuses exclusively on options for regional agreements. Several EU officials have also pointed out that they would prefer to see progress towards regional integration between ACP countries before other talks begin, but this approach seems unrealistic, given that successor agreements must be in place by the time the Lomé trade preferences expire.

The preamble to the EU's negotiating mandate refers to 'the commitment of the parties to support the regional integration process within the ACP states and to foster regional integration as a key instrument for the integration of ACP countries into the world economy.'[5] In spite of this expressed aim, however, many observers in non-government organisations suspect that the EPA talks may be merely part of an aggressive strategy to open up opportunities for EU business in the ACP countries.

The overall aim of the EU is to establish free trade agreements (FTAs) between the EU and the ACP. These agreements should be WTO-compatible and therefore cover 'substantially all trade', but the exact definition of what constitutes substantially all trade is still up for debate. During South Africa's negotiations with the EU, the latter stated that the term means 'on average 90% or more of all

trade flows'. Despite this, however, South Africa eventually managed to secure only an 86% liberalisation level for its trade with the EU, with the EU liberalising more substantially to reach the 90% average. The ACP can probably expect an even lower level of coverage than South Africa achieved.

During the Cotonou negotiations it was agreed that no ACP country should be worse off under an EPA than it was under the Lomé Convention. ACP countries are therefore offered improved market access to the EU and it is generally understood that this will mean duty- and quota-free access for all of them. This may bring significant adjustment costs to some, if their preferential advantage *vis-à-vis* ACP competitor countries is eroded. Negotiators, therefore, must consider how to compensate the countries in question, or find a way to maintain their preferences without breaching WTO rules. To maximise gains from market access, they will also have to simplify and optimise rules of origin and address the difficulties ACP countries encounter in meeting the EU's stringent sanitary and phytosanitary (SPS) rules. Suggestions so far have leaned towards a simple 25% value-added requirement for rules of origin, with full 'cumulation' (that is, recognition of third-party value-added processes) with all developing countries, including South Africa.[6] The ACP should be closely involved in setting SPS standards and significant EU support should go to establishing regional centres of excellence capable of standards verification.

For its part the EU will expect liberalisation of ACP markets for EU products. The least-developed ACP nations will not be under an obligation to reciprocate unless they accept reciprocation as part of the agreement (this would be the case only if they decide to enter into a FTA with the EU, not if they opt for the Everything But Arms – EBA – option (see below) or the EU's Generalised System of Preferences – GSP). The negotiating mandate acknowledges that asymmetrical time frames and implementation periods are necessary. It is not clear, however, what exact measures are permissible as special and differential treatment (SDT). This is still under negotiation at the WTO; but one might expect a reduced level of product coverage and a lengthy implementation period, similar to concessions granted South Africa in the South Africa–EU Trade, Development and Co-operation Agreement (TDCA).

Controversially, trade-related areas such as investment, competition, procurement and trade facilitation, as well as trade in services, will be included in the talks. This has led many to comment that the EPA negotiating agenda is more ambitious than under the WTO and it is feared that the ACP will commit to concessions they would not have made within the WTO context. For example, since no decision has been reached in the WTO on preferences and SDT, it would seem sensible not to push the issue in the EPA talks.[7] (Ironically, the Common Market for Eastern and Southern Africa [COMESA] is quite advanced in formulating regional policy on these issues, but at present is not willing to discuss them with the EU.)[8]

Chief EU negotiator Karl Falkenberg contends that the EPAs will create regional markets that will eliminate the small fragmented markets currently common in the ACP and that the creation of competition, investment and procurement rules based on these enlarged markets will be to the benefit of the ACP:

> *When India argues that investment rules should not be negotiated internationally, from an Indian perspective, this may make sense. From a Burkina Faso or Mali or Mauritian perspective it makes no sense. These small economies will have to compete for investment and this competition should be built on a larger internal market, hence regional integration, and more stable, predictable rules for investors, hence inclusion of investment rules in EPAs.*

Falkenberg further argues that investment rules will be designed to favour small- and medium-sized enterprises and not necessarily large companies that manage to operate without such rules. On government procurement, the EU argues that:[9]

> *In countries that lack large public budgets, it is even more relevant that the existing resources are used in the best price quality ratio possible. In fact introducing procurement rules will essentially aim at transparency and predictability. The idea of preference in favour of local competition should be acceptable provided it is not to be a discretionary one.*

The European attitude to the EPAs will, therefore, only make sense if approached from a regional standpoint. Yet creating regional groupings capable of negotiating and finalising the EPAs becomes extremely problematic in the context of Southern Africa.

Challenges ahead

There are currently 77 ACP states. Quite aside from the fact that the EU approach to the EPAs is grounded in regionalisation, it is clear that negotiating separate FTAs with each of the 77 would have been excessively cumbersome and time-consuming for the EU. Logic might suggest that a regional grouping can only enter into an FTA with another region if the respective member states have established a customs union. The EU has stated, however, that regions that have made sufficient progress towards implementing free trade among themselves will also be considered for regional EPAs.

By presenting EPAs as regional trade arrangements, the EU is placing significant additional pressures on ACP countries. Not only will they have to engage in negotiations with, arguably, some of the most skilled trade negotiators in the world, but also a significant proportion of their preparations and discussions must be directed towards their neighbours rather than solely to their EU counterparts.

In Southern and East Africa, countries belong to an alphabet soup of overlapping regional organisations (see Table 1). This has posed – and to some extent still poses – a problem in deciding which countries will negotiate as a unit. The biggest difficulty is caused by the overlap between the Southern African Development Community (SADC) and COMESA membership. Most countries that are members of both have decided to negotiate within the COMESA fold. COMESA (minus Egypt) has established the Eastern and Southern Africa (ESA) negotiating group that in turn launched talks with the EU on February 7, 2004 (see Annex 1 for COMESA and SADC membership). The remaining SADC states, now called 'SADC-minus' – which includes the Botswana, Lesotho, Namibia and Swaziland (BLNS) group and Tanzania, Angola and Mozambique – were late in launching talks with the EU. They formally kicked off on 8 July, 2004.

The concern regarding the Southern and East African groupings is that there is little uniformity among them. In the first place, neither of the two has as yet established a customs union, nor a full free trade area. Furthermore, four of the member states are part of a customs union that already has an agreement with the EU through the TDCA. Finally, most of the Southern and East African states are classed as least-developed countries (LDCs). Under current WTO rules, developed countries are allowed to grant special preferences to LDCs without entering into FTAs with them, which puts into question the very need to negotiate EPAs with Southern and East Africa at all.

Only 11 of the 19 COMESA member states have free trade between themselves. A customs union has been postponed indefinitely; although December 2004 was initially set as the date for its implementation, some major issues (notably the common external tariff) still need to be resolved. The biggest problems are presented by Egypt, Zimbabwe and Mauritius, which still maintain very high tariffs on a few products and are reluctant to bring them down to 40% or less. The contrast with Uganda, for example, which maintains low tariff levels, is so marked that creating a common external tariff for COMESA has become almost inconceivable.

The SADC Trade Protocol aims to establish free trade in the region by 2008, but not all SADC states are on time, with Angola especially laggardly. Free trade within SADC-minus by the time the Lomé preferences expires is highly unlikely while a customs union for SADC remains a distant prospect (its Regional Indicative Strategic Development Plan states that it is committed to the creation of a union only in 2010).[10]

According to Meyn (2004), delay in progress towards integration in SADC is to some extent due to the different trade profiles of member states. Whereas countries such as Mauritius trade predominantly with the EU, Mozambique's exports are mainly aimed at South Africa. Botswana concentrates on the diamond trade, Angola has hardly any trade interests apart from oil and oil-related products and Lesotho is currently focusing on the US market through the Africa Growth and Opportu-

nity (AGOA) scheme. Common interests and opportunities are therefore hard to find.[11]

The absence of customs unions means that negotiating units will have no mandate to sign a collective regional agreement with the EU. Presumably individual countries will eventually sign separate bilateral deals, although possibly some of these bilaterals will be identical in content. Although it still makes sense to pool resources and negotiate as a group, rather than as 77 individual countries, the real benefit to regional integration of such a convoluted process becomes dubious.

More than half the members of the SADC-minus group are also members of the Southern African Customs Union (SACU), which includes South Africa, which in turn already has an FTA with the EU. Although the BLNS group was not directly involved in negotiations for the TDCA, that agreement is de facto between SACU and the EU, because the BLNS share a common external tariff with South Africa. This means that their imports from the EU are governed by the TDCA but their exports still enjoy a significant preferential margin above those from South Africa. Hence, while it might seem a simple option officially to incorporate BLNS into the TDCA, such a process would mean the BLNS losing some existing preferences which conflicts with the Cotonou Agreement stipulation that no ACP country should be worse off under the new arrangements than under Lomé. It is not easy to see how the BLNS dilemma might be resolved.[12]

Perhaps the most striking aspect of the two negotiating groupings is that of the 23 Southern and East African countries and excluding South Africa, only seven are not classed as LDCs. In SADC-minus only Namibia, Botswana and Swaziland fall outside this definition; and in the COMESA group, only Kenya, Mauritius, Seychelles and Zimbabwe. It is generally not expected of LDCs to negotiate free trade agreements. The EU is, however, encouraging such countries to participate in the EPA talks. But whereas in its negotiations the EU is pushing the ACP for substantial liberalisation, it is taking a more protectionist view in talks with the WTO regarding special and differential treatment. ACP countries can and should take advantage of this to use the WTO forum to push its EPA agenda.

Why are LDCs willing to negotiate?

Many analysts are unconvinced that reciprocity is to the benefit of the LDCs or that their economies can support the strain that liberalisation would place on them. The most significant problem facing LDCs will be that of finding alternative revenue sources. Some ACP countries are looking towards introducing a value-added tax to compensate for tariff-revenue losses.

The COMESA secretariat summarises the benefits of EPA negotiations for LDCs under four headings:

- LDCs have nothing to lose from participating in the negotiations, even if in the end they decide not to sign;
- the developmental aspect of the EPAs will be to the LDCs' benefit, especially where regional centres for skills transfer and capacity building are to be established;
- the process of negotiation makes LDCs aware of the importance of sound trade policy formulation, which can only redound to their benefit; and
- with EU expansion, existing minimal levels of attention to Africa and LDCs generally will further reduce; LDCs have an opportunity now to ensure secured and continued benefits in their trade relationship with the EU rather than face further marginalisation.[13]

There are not many options available to LDCs apart from negotiating EPAs with the EU. One that does exist, however, is to employ the EU's EBA initiative once Lomé trade preferences expire. All LDCs (even non-signatories to the Cotonou Agreement) enjoy duty-free, non-reciprocal access to the EU market under the EBA. They can export all originating products except for munitions (and rice, sugar and bananas over a transitional period) duty-free and without any quantitative restrictions. In addition, the EBA preferences are set to last indefinitely. One should keep in mind, however, that the EBA is not a contractual agreement but a preference granted by the EU that could be revoked at any time.

At the moment, ACP countries still prefer to export under old Lomé provisions rather than the EBA. This no doubt reflects some significant differences between the two agreements, one of which centres on rules of origin. While the requisite degree of processing tends to be the same in both agreements, a number of general rules vary substantially. These include the stipulation that 'diagonal' cumulation can only take place within four non-ACP regional groupings. This means that cumulation is not available to ACP states under the EBA, whereas Lomé allows for cumulation between ACP states and in some instances even with South Africa.[14] LDCs would, therefore, do well to negotiate EPAs that secure rules of origin similar to those under Lomé, rather than merely opt for participation in the EBA.[15] Under EBA they would not, however, have to introduce reciprocal liberalisation measures whereas an EPA will oblige them substantially to liberalise all trade with the EU.

LDC participation in EPA negotiations could be seen as tacit acknowledgement of the economic theory that argues in favour of extensive trade liberalisation, even for LDCs. Whatever its negative impacts, liberalisation should lead to deeper regional integration. At the political level the EPA could become an effective means of locking LDC countries into economic policies that cannot be changed on short-term political considerations or simply on whim. But creating a theoretical climate to promote domestic investment is no guarantee that this will happen. Foreign investors might indeed view EPAs as part of an EU-enforced policy that has little to do with real commitment to the interests of the people on the ground.

Potential impact of EPAs on the ACP

At a practical level, the negotiations should be seen as an opportunity for ACP states to gain some serious international political influence. Previously, benefits were granted to these countries without much negotiation, but the ACP can now legitimately demand certain compromises from the EU within the negotiations, and exercise some leverage in other international talks. While Lomé and Cotonou have always laid stress on the theoretical degree of partnership embodied in the EU–ACP relationship, the ACP will only achieve true partnership with serious clout if and when it is seen as a genuinely equal signatory to an internationally recognised trade agreement.[16]

Further, it may be argued that participation in EPA negotiations is probably the only way in which the ACP can hope to maintain unity.[17] It is clear that the EU would prefer to work with smaller groups, rather than with all 77 ACP countries banded together as one unit, whereas the ACP countries have tended to the view that their strength lies precisely in their numbers as a group. Negotiating similar EPAs, and participating in the remaining provisions of the Cotonou Agreement, will foster continued cohesion among the 77. The alternative, which would be for each of the 77 countries to tailor its own specific agreement with the EU, would effectively end the ACP as an entity, which would be detrimental to the separate political interests of the 77.

The likely impact of the EPAs on the signatories is a much-debated topic. In the first instance it will depend on the level of integration among the regional organisations that are signatories to the EPA, since the deeper those levels are, the better they will prepare the ACP for the implementation of reciprocal trade agreements. Szepesi (2004) argues that the impact will broadly depend on three factors:

- the economic character of each of the ACP states;
- the final provisions of the EPAs; and most importantly,
- the institutional capacity of individual ACP countries.[18]

A growing body of literature argues that the greatest single factor in determining the ability of developing countries to escape the poverty trap is the quality of their institutions. The contention is that the content of trade policy matters less than how the policy is formulated and implemented. This is a strong argument in favour of ACP officials basing their negotiating stance on developmental aspects and capacity building.[19]

Clearly, lack of capacity does not centre only on the institutional question. The biggest constraints to participation in global trade lie in the ACP struggle to adhere to very strict rules of origin and SPS. In addition, they find administrative burdens and product standards act as effective non-tariff barriers that leave them permanently unable to export to the EU. Furthermore, an inability to find alternatives to tariff revenues prevents the ACP from fully embracing liberalisation, and could hinder implementation of the EPAs, as is not unusual with past bilateral or multilateral agreements.

For EPAs to have a positive impact on Southern and East Africa, the negotiations must focus the remaining time almost exclusively on ways to overcome the constraints dealt with above. Failing this, the impact will most likely be negative, with high revenue losses for the governments involved and little prospect for adequate progress towards poverty alleviation and development.

Progress towards regional integration in Southern Africa

The EU and the ACP states have reiterated that the EPAs should contribute to regional integration and the development of the ACP countries. ACP countries have also voiced their belief that the EPA process should not interfere with current initiatives towards regional integration.

Table 1 shows that among regional integration efforts in East and Southern Africa, except for Mozambique all countries have overlapping memberships of at least two organisations aimed at establishing free trade areas and customs unions. Progress in these respects is very slow and frustrated by members' conflicting loyalties and commitments.

The two major organisations, SADC and COMESA, have each adopted a different approach to regional integration. SADC's is based on principles of co-operation and development. The organisation has concluded protocols over a wide range of activities, of which trade is only one. By contrast, COMESA drives integration through trade and focuses almost exclusively on tariffs and other impediments to trade. This means that while COMESA is progressing a little more quickly towards free trade, SADC is addressing issues of supply-side constraints before attempting to open up trade. There could, therefore, be a reasonable argument for membership of both organisations. Indeed, the Democratic Republic of Congo, Malawi, Madagascar, Zambia, Zimbabwe, Angola, Mauritius and Swaziland already belong to both.

A recent World Bank report argues, however, that the overlap between the organisations will become increasingly untenable:[20]

> *Whilst it is technically possible (although difficult) for the COMESA and SADC FTAs to co-exist, it will be impossible for any member state to belong to more than one regime when (if) they adopt a Common External Tariff (CET) and become a Customs Union (CU), unless each regime adopts the same CET and the same CU regulations. In addition, for Namibia[21] and Swaziland, their joint membership of COMESA and SACU has become a dilemma with the introduction of the COMESA FTA. These countries have been unable to implement preferential tariffs for other COMESA countries and cannot introduce free trade for imports from other COMESA countries in terms of this FTA. The SACU agreement CET cannot be broken by some members granting preferences in terms of other FTA regimes, unless all the other members agree to this arrangement.*

Slow progress towards free trade and customs unions in Southern and East Africa means that these countries do not have a unified negotiating base. Before 2008 they will have to find some common ground if regional negotiations are to carry serious weight.

Implications of the EPA negotiations for the region

The composition of the two EPA negotiating groups does not appear to the strategic advantage of Southern Africa in particular or conducive to regional integration in general.

Given their membership of SACU, which includes South Africa and which already has a free trade deal with Brussels, the BLNS are a special case. It therefore makes little sense for Tanzania, Mozambique and Angola to negotiate with them.

Tanzania is one of three countries in the East African Community (EAC) that formally signed a customs union in March 2005 but in which the other two members – Kenya and Uganda – are negotiating within the ESA grouping. Mozambique is not in COMESA but is a member of SADC and received its invitation to join ESA by virtue of that status. Angola is a member of COMESA and could easily have joined the ESA group.[22] All in all, it would have made sense for SACU states to negotiate as a separate bloc, while the other East and Southern African states launched an ESA grouping.

The EU itself seems wary of the composition of the negotiating groups. Commissioner Hubner said at the launch of the SADC–EU EPA talks that:[23]

> *Let's face it – a number of question marks do remain as regards the geographical configuration within which you have chosen to negotiate … EPA negotiations should provide scope for possible changes in their geographical coverage, which could happen in parallel with their progress on the substance of the issues at stake.*

Unhappiness does not arise only from the difficulties the two blocs pose in negotiating agreements when no common ground exists among them. It is also a consequence of implementing two different EPAs, respectively in Southern and East Africa. As Meyn points out:[24]

> *In* [the] *case that the SADC EPA agrees on different tariffs for EU imports than the ESA EPA, the inspection of origins of imports from the EU will not only be an enormous administrative burden but also hardly feasible, taking the imperfect supervision of rules of origin in Southern Africa into account. To avoid smuggling, trade diversion and economic polarisation in Southern Africa and to promote intra-regional trade and regional integration, the SADC and ESA EPA should therefore agree on a CET toward the EU. However, although a common external trade policy toward the EU would be in the best interest to promote intra-regional trade in Southern Africa, such a joint approach is rather unrealistic because of countries' different interests.*

There is suspicion in the region that South Africa played a dominant role in fragmenting the ESA group. Although, as mentioned earlier, South Africa will not be allowed to participate in the negotiations, it enjoys observer status and may advise its partners throughout. The conspiracy theory stems from the EU–South Africa Trade, Development and Co-operation Agreement (TDCA). Although it was signed only by South Africa and the member states of the EU, the fact that South Africa is a member of SACU means that all the SACU states effectively have an agreement with the EU through TDCA. It is argued that South Africa will use these EPA negotiations to reopen the TDCA and secure additional benefits for itself, and that a smaller group of countries is easier for South Africa to influence; *ergo* South Africa pushed its SADC partners to stay outside the COMESA negotiations. Clearly, South Africa has stronger political ties with SADC than with COMESA, of which it is not a member.

The South African government would do well to be aware of the existence and strength of these negative sentiments. South Africa's objectives are viewed with suspicion in Sub-Saharan Africa and its interests are not served by allowing the perception to persist that it is fragmenting the region.

Regional suspicions of South Africa were also reported in the December 2003 issue of *Trade and Development Update*: [25]

> *The TDCA itself is due for re-negotiation in 2004 and some East African states believe that South Africa is attempting to use the EPA process as a means to lever influence for these talks. South Africa might indeed have liked to draw more SADC countries into its orbit, an approach that has caused ructions with those attempting to build a joint SADC–COMESA position. COMESA's own press release, announcing the ESA group, recognised that, 'It is an open secret that this historic decision has not been welcomed in some quarters whose preference is that EPA negotiations with the EU should be on the basis of regional organisations.' Erastus Mwencha, Secretary General of COMESA, has argued in the East African Financial Standard … 'While South Africa is not a party to these EPA negotiations, except as an observer, she is openly advocating a SADC EPA… SADC countries with a real stake in EPA negotiations – mainly the non-SACU members – have*

opted to negotiate under ESA in spite of intense pressure from South Africa. If SACU states are put under pressure to go with South Africa, the states that face serious challenges are the three non-SACU states: Angola, Mozambique and Tanzania.'

The extent to which the review of the TDCA is important to either South Africa or the EU is, however, open to debate. One area potentially of interest to both is liberalisation of the services sector. At the moment, the TDCA only covers trade in services through committing the parties to the WTO's General Agreement on Trade in Services (GATS). It also commits them to explore the possibility of further liberalisation in services under the Co-operation Council, no later than five years after the implementation of the agreement. Thus far, South Africa has been reluctant to open its services sector, not only to the EU but also to the US, which leads some to comment that the EU would have more to gain from reopening the TDCA than would South Africa.

South Africa's influence over Southern and East Africa negotiations probably has more to do with the fact that its non-LDC SADC partners were afraid of being presented with a TDCA-like liberalisation schedule, such as that which the BLNS countries have to accept due to their membership of SACU. Mozambique, Angola and Tanzania have nothing to fear from the TDCA's being used as a blueprint, as they are LDCs and do not have obligations of reciprocity with the EU; their interest in the negotiations lies purely in improved market access to the EU and any other benefits that could accrue to them under development co-operation. The other, non-LDC SADC countries, Zimbabwe and Mauritius, would not be ready to accept liberalisation modelled on the TDCA. (The uneasiness in the region created by the EPA configuration has led some to comment that it might spill over into the cohesiveness of the G20 group of developing countries in respect to global trade negotiations.)

Conclusion

It is difficult to get a true sense of the EU's motives in negotiating EPAs with the ACP group. The process could be driven by self-interest and a ruthless liberalisation agenda. Although one should not entirely discount this possibility, any such approach would be tempered by the EU's genuine concern over the development and integration of the ACP into the world economy. The focus on partnership and development assistance, so important under Lomé, is by no means diminishing. Free trade is added as just another, although very important and defining, aspect of the relationship.

It is also clear that regional integration is emerging as the defining aspect of the EU's approach to the EPA negotiations. Although the theory behind this is sound, the reality in Southern Africa is that regional integration has not progressed much further than attempts to create FTAs among some states, and talks about possible customs unions. Integration is certainly not especially evident between the two groups that have emerged as EPA negotiating blocs. Apart from encouraging further regional integration, the negotiations, therefore, will have to focus strongly on development issues and on factors that keep the ACP from exporting to the EU, such as rules of origin and SPS.

It is further evident that ACP states are somewhat ill-prepared for the negotiations and that the bulk of the preparation for free trade areas will be homework, rather than discussions with EU technocrats about a multitude of tariff lines. Unfortunately, because the EU will probably not be able to conclude EPAs with defined regional organisations, any final agreements will not encourage either SADC or COMESA to finalise the implementation of free trade areas or customs unions in Southern Africa. The EPAs will, however, have a positive effect on regional integration insofar as they force Southern African states closely to examine their trade regimes, and to promote regular contact with their partners in the region. The spin-offs of such a process will far outweigh any benefits that EPAs might offer.

Table 1. Membership of regional organisations in Southern and Eastern Africa

	ESA-EU EPA	SADC-EU EPA	SADC	COMESA	IOC	RIFF	EAC	IGAD	SACU
Angola		X	X	X					
Botswana		**X**	**X**						**X**
Burundi	X			X		X			
Comores	X			X	X	X			
Djibouti	X			X FTA				X	
Drc	X		X	X					
Eritrea	X			X				X	
Ethiopia	X			X				X	
Kenya	**X**			**X FTA**		**X**	**X**	**X**	
Lesotho		X	X						X
Madagascar	X		X	X FTA	X	X			
Malawi	X		X	X FTA		X			
Mauritius	**X**		**X**	**X FTA**	**X**	**X**			
Mozambique		X	X						
Namibia		**X**	**X**			**X**			**X**
Rwanda	X			X		X			
Seychelles	**X**			**X**	**X**	**X**			
South Africa			**X**						**X**
Sudan	X			X FTA				X	
Swaziland		X	X	X		X			X
Uganda	X			X		X	X	X	
Tanzania		X	X			X	X		
Zambia	X		X	X FTA					
Zimbabwe	**X**		**X**	**X FTA**		**X**			
Aim	**EPA 2008**	**EPA 2008**	**FTA 2008**	**CU 2004**			**CU 2004**		

Countries in bold are non-LDCs.

Annex 1. Making trade preferences more effective[26]

Do trade preferences work? They are intended to help developing countries export. But do they? There is lively debate over whether the 'gains' for favoured states are 'paid for' by other countries that may be equally poor. Even for the favoured states, though, questions have been raised over how far their producers benefit. Does the small print of the trade preferences prevent exporters in general (or poor producers in particular) taking full advantage of them? Who gains most: poor-country exporters or rich-country importers? These questions have been addressed in a paper by the Institute of Development Studies (IDS), which compares trade preferences offered by Canada, EU, Japan and the US (the 'Quad') to Africa. IDS concludes that EU preferences have had a significant positive impact on the relatively small number of African states that are able to export preferred products, and that the US's African Growth and Opportunity Act has boosted clothing exports. The principal areas for further action are on the supply side, to facilitate diversification into preferred goods by a larger number of countries and to assist countries to meet increasingly onerous sanitary and phytosanitary standards. But there is also a need to change rules of origin that restrict trade.

Annex 2. The banana regime case[27]

The EU imports about one-third of all traded bananas – about the same amount as the US, but more than three times as much as the third biggest importer, Japan. EU policies therefore have a major impact on the world trade in bananas. The EU has the only major managed banana market in the world. The US and Japan allow bananas in freely, without any tariffs and with no limits on volumes imported. The EU produces almost 20% of its total banana consumption in the Canary Islands (Spain); in the French overseas Departments of Martinique and Guadeloupe; in Madeira and the Azores (Portugal); and (in very small quantities) in Crete (Greece). The remainder are imported from former Caribbean and African colonies (ACP bananas), and from Latin America (dollar bananas).

Historically, special ties developed between certain consuming countries within the EU and some producing countries, often within the context of a common colonial history. Until the Single European Market countries such France and Britain mostly imported the fruit from their old colonies. Other EU members imported the cheapest bananas available, which are from the large plantations of Latin America.

From July 1993 until February 2000 a dozen ACP countries, which traditionally exported bananas to the EU market, benefited from duty-free access to the EU market under the so-called 'Banana Protocol' of the Lomé Convention. In June 2000, the EU and 77 ACP countries signed the Cotonou Agreement, which replaced Lomé. Traditional ACP banana-exporting countries continued to enjoy duty-free access for their product. The main 'traditional' ACP banana-exporting countries are Ivory Coast, Cameroon, St Lucia, Jamaica, Belize, St Vincent and the Grenadines, Dominica, Suriname, Somalia, Grenada and Cape Verde. More recently the Dominican Republic joined the ACP and Ghana started exporting bananas for the first time. The EU regards both of these, however, as 'non-traditional' banana exporters.

So-called dollar-banana exporting countries are in Central and South America. In descending order of export volume they are: Ecuador, Costa Rica, Colombia, Guatemala, Panama, Honduras, Nicaragua, and Venezuela. They are called 'dollar' countries because they traditionally fall within the influence of the US dollar, but also because their banana industry is usually associated with US-based multinational companies that directly or indirectly control around 60% of their banana exports. Even in Ecuador, where multinationals own almost no land of their own, Dole, Del Monte and Chiquita are responsible for a substantial proportion of exports. Bananas represent a very important source of income for Ecuador, Costa Rica and Honduras in particular.

With the establishment of a single European banana regime in 1993, the EU set itself a number of objectives, which were not always easy to reconcile. Indeed, it was not possible to satisfy all members and the import regime was to become a source of major international trade friction. The objectives of the EU were to:

- harmonise the different pre-1993 national regimes;
- protect banana production in EU member states;
- supply European consumers with 'reasonably' priced bananas;
- respect European obligations towards ACP countries, as defined by the Lomé Convention, in order to support the economic development of these countries; and
- reconcile international obligations (notably under GATT) with national interests.

In most of the 12 traditional ACP banana-exporting countries, the cost of production was approximately twice as high as for dollar bananas. In the case of European producers, the cost could be up to three times higher. Higher production costs meant that these countries and regions could only sell on a protected market. Conscious of this, the EU set up a system of quotas and tariffs (and a system of direct support to its own banana farmers) to limit the entry of dollar bananas. The resulting internal price on the European market, substantially higher than the world price, enabled ACP and European producers

to survive. Preferential access to the European market protected them from direct competition with dollar bananas.

In 1996, a little more than a year after the establishment of the WTO, five countries – Honduras, Guatemala, Ecuador, Mexico and the US – lodged a complaint against elements of the European banana regime, which they considered to be 'discriminatory' to their interests. Honduras, Guatemala and Ecuador, the world's biggest exporter, claimed that they did not have sufficient access to the European market. The dispute continued for several years. Although the WTO ruled several times against the EU banana regime, it was not until 2001 that agreement was finally reached between the EU, the US and Equador. Under the agreement, EU import licenses will be allotted based on the way they were distributed during a 'historical reference period' of 1994–1996. The European Commission will also initiate the necessary procedures to propose to the EU Council of Ministers an adjustment to expand access for Latin American bananas and to secure a market share for a specific quantity of bananas of ACP origin.

According to European Trade Commissioner Pascal Lamy, the new scheme still guarantees ACP producers a share of the EU market but would not contravene WTO rules. A special quota of 750,000 metric tonnes of ACP-produced bananas – a slightly smaller amount than the 850,000 metric tonnes proposed previously – will still be allowed to enter the EU duty-free.

Since quotas are being treated as a transitional measure, the EC will begin negotiations with main suppliers as mandated by WTO rules (Article XXVIII GATT) in time to introduce a flat-tariff system ('tariff-only') in 2006. The Commission has also agreed to table the necessary proposals to the EU Council of Ministers and the European Parliament in order to fully implement the agreement as soon as possible.

Annex 3. Civil society participation in the Cotonou Convention[28]

Successive Lomé Conventions have often been considered a 'closed shop', reserved for central governments. The Cotonou Partnership Agreement breaks with this tradition. For the first time, a wide range of participants, many of them from outside government, has been invited as genuine development partners in ACP–EU co-operation. The idea is not only to involve the newcomers in project implementation, but also to associate with them in political dialogue and policy formulation. Their involvement poses challenges for the ACP and EU governments that signed the Partnership Agreement and to the many non-governmental interests that seek active involvement in the process.

In Africa generally, post-independence development strategies gave central governments the lead in promoting growth and development. Successive Lomé Conventions largely followed this line, providing only limited opportunities for other development players (for example, civil society, private sector or local governments) to participate in policy formulation and implementation or to access resources. While special provisions were made for micro-projects under Lomé I (1975–80) and for decentralised co-operation under Lomé IV (1990–95), participation was usually confined to project implementation at the local level and involved relatively small financial resources. There were virtually no opportunities for structured dialogue on policy issues or on co-operation priorities.

When the European Commission started the Green Paper consultation process on future ACP–EU relations in 1996 (see main text), non-state observers generally considered Lomé as belonging to central governments. This monopolistic state of affairs was seen as running counter to major changes taking place in ACP societies (such as economic liberalisation, democratisation and decentralisation). Broadening participation in the partnership emerged as a priority issue in the negotiations on a successor agreement to Lomé IV. It proved to be a difficult issue to resolve, both for political reasons (some ACP states resisted the idea) and for practical reasons (there was little past practice or expertise on how best to broaden participation). As far as participation is concerned, the new Agreement is a radical break with the past. It contains many provisions that offer opportunities for new development players to participate in ACP–EU co-operation. It is notable that 'participation' is defined as a *fundamental principle* of co-operation (Article 2).

Endnotes

1 Comments received from Christopher Stevens, Institute for Development Studies.
2. ECDPM, *Cotonou Infokit: History and Evolution of ACP–EU Co-operation*, 3, ECDPM, Maastricht, 2001.
3. Comments received from Thomas Feige, Regional Economic Advisor, EC-Delegation, Botswana.
4. For detailed discussions of the changes to the Lomé Convention, see various infokits at www.ecdpm.org.
5. European Union, *Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions*.
6. ILEAP, 'Negotiating EPAs between African sub-regions and the EU: Some concrete suggestions on market access', in *TNI*, 3, 4. July 2004.
7. According to the World Bank, the EU believes that, on the basis of a recent WTO ruling in a complaint that India brought against its GSP, the EU may be able to revise its GSP to provide greater unilateral preferences for selected non-LDCs (including many of the ACP countries that are non-LDCs). Such a revision could eliminate the need for the EU to enter into an FTA with the non-LDC ACP countries in order to maintain or enhance its current ACP trade preferences in a WTO compatible manner. Hence, in deciding how to proceed with the EPA process, the non-LDC ACP countries also need to consider the likely implications of a revised GSP system. Comments received from Lawrence Hinkle, Lead International Economist, Africa Region, World Bank.
8. Comments received from Mark Pearson, COMESA Secretariat, Zambia.
9. K Falkenberg, 'EPAs and DDA – Parallelism or crossroads?', in TNI, 3, 4, July 2004.
10. Comments received from Thomas Feige, Regional Economic Advisor, EC-Delegation, Botswana
11. M. Meyn, *Are Economic Partnership Agreements likely to Promote or Constrain Regional Integration in Southern Africa? Options, Limits and Challenges Botswana, Mauritius and Mozambique are Facing*. Conference paper prepared for the Namibian Economic Policy Research Unit (NEPRU): Monitoring Regional Integration in Southern Africa, Windhoek, 12–13 June 2004.
12. Comments received from San Bilal, ECDPM, Maastricht.
13. Interview with James Musonda, Senior Trade Advisor, COMESA Secretariat, on 2 June, 2004, Lusaka.
14. For a more detailed discussion of the varying rules of origin, see N. Joubert, L. Padayachee & G. Erasmus, *The SA–EU TDCA: A Comparison of the TDCA, Cotonou, EBA and AGOA*. Tralac Paper prepared for the World Bank.
15. Interview with Neil Joubert, Trade Law Centre for Southern Africa, on 17 May, 2004.
16. Interview with Hennie Erasmus, SADC Secretariat, on 27 May, 2004, Gaborone.
17. Some have argued that the exact reverse argument can be made as well: what will be left of the ACP group once regional EPAs are in place? What systemic difference will there be for instance between a SADC EPA and an EU–MERCOSUR FTA? Therefore, many have seen the EPAs move as a shift away from the ACP group. Comments received from San Bilal, ECDPM, Maastricht.
18. S. Szepesi, 'Coercion or Engagement? Economics and Institutions in ACP–EU Trade Negotiations', *ECDPM Discussion Paper* 56. ECDPM, Maastricht, 2004.
19. Ibid.
20. L. Kritzinger-Van Niekerk & E. Pinto Moreira, *Regional Integration in Southern Africa: An Overview of Recent Developments*. World Bank, Washington, 2002.
21. Namibia has withdrawn its membership from COMESA, effective June 2004.
22. Interview with Ambassador Sprietsma, Head of the European Union Delegation to Zambia, on 2 June 2004, Lusaka; Michel Cervone d'Urso, Windhoek, 22 April, 2004.
23. Launch of Trade negotiations between the EU and the South African Development Community (SADC). Opening Statement by EU Commissioner Danuta Hübner, Windhoek, Namibia, 8 July, 2004 downloaded 19 July, 2004 from http://europa.eu.int/comm/commissioners/hubner/speeches_articles/spdh07_en.htm.
24. Op. cit.
25. SADC split by EU trade talks', *Southern Africa–Europe, Trade & Development Update*, 3 2, December 2003, www.actsa.org.
26. Christopher Stevens and Jane Kennan, IDS. Copies of the study can be accessed at: www.ids.ac.uk/ids/ global/pdfs/CSJKTradePreferences.pdf.
27. Mainly sourced and adapted from www.bananalink.org.uk and the International Centre for Trade and Sustainable Development (ICTSD) at www.ictsd.org/weekly.
28. ECDPM, *Cotonou Infokit: Opportunities and Challenges*, 8. ECDPM, Maastricht, 2001. A full version of this study can be accessed at: www.ecdpm.org/ Web_ECDPM/Web/Content/Navigation.nsf/