



# The new EPAs: implications for SADC

## 1. Introduction

As of 1 January 2008, the EU and the ACP group of countries had spent 10 years in discussions about and five years in formal negotiations on trade. Significantly, that day was also the date when the European Commission, probably for the first time since 1957, raised import tariffs across the board. Remarkably, those tariff increases were imposed on imports originating from a group of poor, uncompetitive countries; the very same countries with which most of the European heads of government had met in Lisbon less than a month earlier to launch a collaborative political strategy.

The contents of the Economic Partnership Agreements are highly detailed and only recently have specifics emerged about what is actually contained in these agreements. Furthermore, all of the parties involved in the negotiations were very slow to move beyond generalities and, most importantly, the European Commission imposed a very rigid and almost unparalleled deadline on these trade negotiations.

This report describes the new, complex and diverse EPAs that have been negotiated and discusses, in particular, their implications for SADC.

## 2. The EU-ACP negotiations

### 2.1. The origin of the EPAs

The EU has had preferential trade and aid agreements with the ACP group since 1975. The latest agreement, the Cotonou Partnership Agreement of 2000, specified that the existing trade regime would be recast and a successor agreement implemented by 2008 even though the rest of the accord remains in force until 2020. The principal reason for doing so was that the Lomé Convention, which preceded the Cotonou Agreement, was the subject of adverse rulings during the 1990s, first in the General Agreement on Tariffs and Trade (GATT) and then in WTO. It was claimed that the EU had discriminated in favour of some developing countries, particularly those from within the ACP grouping, and against others in ways that could not be justified under WTO rules. After two years of negotiations, and in the context of the Doha ministerial summit, the EU obtained support from WTO members for a waiver that would allow this discrimination to continue to end-2007.

The EU has attempted to comply with WTO rules by recasting its relationship with the ACP countries in a way that fits with WTO provisions permitting conditional discrimination to those countries that are forming a free trade agreement or a customs union. An essential feature of any such recasting is that the ACP group must liberalise on imports from the EU; yet, it is precisely that requirement which has been the source of much of the contestation over the EPAs.

Controversy accompanied the EU's attempts to change the ACP policy beyond what was required by the WTO for a narrow FTA on goods. Essentially, the EU wanted other trade-related policies integrated into the new ACP EPAs. Specifically, the EU wanted a General Agreement on Trade in Services- (or GATS-) compatible liberalisation of services and investment, selected service offers for public enterprises and government procurement and binding rules on competition policies. Although the Caribbean and Pacific negotiators were keen to make major advances in these services negotiations, no other ACP group was happy with a rapid resolution on these topics. Critics have alleged that the EU's hard-line negotiating tactics on these so-called 'Singapore Issues' can be explained as an attempt to influence the Doha negotiations through the back door.

## 2.2. Available negotiation options

By early 2007, it was clear that negotiations had barely tackled the details which were at the heart of an FTA and that insufficient time remained for them to be completed in the way that was typical of trade negotiations.

In June 2007, the Overseas Development Institute (ODI) identified five options, ranked from least to most desirable, for dealing with the challenging situation into which the negotiations had settled:

- To replace the Cotonou Agreement in January 2008 with the EU's 'next best' trade regime while negotiations continued;
- To agree without negotiation to detailed schedules prepared by one party to the EPA talks;
- To seek an extension of the WTO waiver;
- To create a better 'fallback, interim regime' for the ACP than that which exists at present;
- To agree to those EPA agreements that establish the key principles but resolve to leave the details to further negotiation at some other stage (ODI, 2007b).

Each of these options is discussed in some detail below.

### 2.2.1. Option one: the 'next best' regime

For many of the ACP negotiators, the problem with the 'next best' regime option was that it was less advantageous to them than was the Cotonou Agreement.

The Generalised System of Preferences (GSP) has three 'levels' of tariff:

- The standard regime (which applies to all ACP countries other than those classified as least developed countries);
- The Everything But Arms regime covering all of the LDCs; and
- The GSP+ regime<sup>1</sup>.

The standard GSP regime is much less favourable for many ACP exports than is the Cotonou Agreement. ODI's research found that all non-LDC ACP states would experience an increase in the EU tariff applied to some of their exports if they were subject to the standard GSP regime (ODI, 2007a). Although many of the increases would be relatively small, for 267 goods exported to the EU in 2005, the tariff jump would be either of a 10% or more *ad valorem* magnitude or would involve new or increased specific or compound duties, some of which are very high. Nearly two-thirds of the non-LDC ACP states would experience tariff increases in excess of 25% of the value of their current exports to the EU, while for just over one quarter of them, the proportion affected would be greater than 50%.

### 2.2.2. Option two: imposed schedules

There were two possibilities associated with agreeing without negotiation to one party's schedule. One possibility involved the direct imposition by the EU of a set of liberalisation schedules prepared in Brussels as a *fait accompli*. The other would have been the rigid enforcement of the December 2007 deadline in such a way that the ACP parties' 'autonomous' schedules would be ill-considered and would go further than they would wish.

As an option, the imposition of schedules is clearly undesirable but it is worth examining what it would mean in practice because it throws light on the nature of the EPAs that were negotiated.

Now that the EPAs have been signed, it is the task of each ACP member state to draft and implement laws to lower its tariffs on imports



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<sup>1</sup> GSP+, a superior tranche of the EU's GSP, offers lower tariffs on a wider range of products than does the 'Standard GSP', yet is not as favourable as the other GSP tranche – the Everything But Arms regime for LDCs. To be eligible, countries needed to apply during 2005 and had to implement a large number of international social, labour and environmental conventions. No ACP state applied at that time, although Seychelles and Nigeria did apply in late 2007, but the EU declined to vary its current regulation that applications will not be re-opened until 2009.



from the EU over a period lasting, in most cases, nearly two decades. Even with agreed, negotiated schedules, there will be great scope for reluctant states (see section 3) to backtrack on this agreement. Only if and when the EU declares one of its partners a defaulter would it change its treatment of their exports. As things stand, this would be to the GSP regime and the effect would be almost identical to, and simply a delayed outcome of, that resulting from option one.

### 2.2.3. Option three: an extended WTO waiver

An extended waiver was the option favoured by many non-governmental observers, the ACP negotiators and some European official sources, such as the European Parliament. Waivers have traditionally been the response of choice of the Organisation for Economic Development and Co-operation (OECD) states wishing to ensure the multi-lateral legality of their preferential accords. But this option presented two related problems to the negotiating parties.

The first problem was that the Commission steadfastly refused to seek a waiver extension. It was also not made explicitly clear that other interested parties (such as the ACP group) could bypass it and make their own application. Given that the GATT and WTO rulings went against the EU's trade policy, it is the EU that should be brought into conformity with the rules. A waiver, to allow the ruled-against practices to continue for an extra period of time, must be sought by the party that has the problematic trade policies: namely, the EU. The ACP group asked the EU to act but it was not willing to do so.

The second problem was that obtaining a waiver might have created a 'collateral damage' effect of eroding the ACP preferences even further. The EU's reluctance to seek the waiver arose partly from a legitimate desire not to have to seek a further extension of policies that have been declared 'WTO illegal', and partly because other WTO

members had begun to ask for 'favours' in return for agreeing to the waiver. To obtain the original waiver, the EU 'bought' the votes of Thailand, Indonesia and Philippines by conceding fish quotas to them, a step which also eroded the ACP preferences. It was possible that further 'pork barrelling', or vote buying, would likely have accompanied a waiver extension but with consequences for ACP exporters.

#### 2.2.4. Option four: a better fall-back regime

According to the Cotonou Agreement, the EPAs are not the only option available to it, merely the first of its options to be investigated. Article 37(6) of the Cotonou Agreement commits the EU to consider providing those states that do not join an EPA with a 'new framework for trade which is equivalent to their existing situation ...' and 'in conformity with WTO rules'. The EU's problem is that it agreed to an obligation that it could not easily fulfil. In 2000, when it signed the Cotonou Agreement, none of its other trade regimes was 'equivalent' to it and during the subsequent eight-year period, it failed to create such a regime.

One regime, however, comes close to that provided under the Cotonou Agreement: the GSP+ regime that is available to the 15 countries that applied by December 2005 and met its criteria. Although the beneficiary lists are now closed until 2009, unless the EU decides otherwise, it would have been possible for the EU to accord GSP+ status temporarily to all non-LDC ACP states from January 2008. That meant it could also have extended the GSP+ preferences for the ACP countries alone to ensure that it conferred Cotonou equivalence to them. The EU has this leeway because the GSP+ is a wholly autonomous regime that it can amend at will.

Selecting this option might only have conferred a temporary respite because other WTO members may have challenged the EU's innovativeness. But since such a challenge would take at least 18 months to come to fruition (given the WTO's normal dispute settlement timetable), doing so would have avoided a short-term disruption to trade because it provided all parties with the breathing space in which either to finalise an EPA or to ratify and implement the remaining conventions needed to establish permanent eligibility for the GSP+ regime (or both).

#### 2.2.5. Option five: a 'framework EPA'

Although the 2007 deadline represented a substantial challenge for a 'normal' trade agreement, it would not necessarily have been unattainable for an accord that established its key principles but which left its detail for negotiation at a later stage. Rather than simply extending the negotiations for two to three years, as some within the ACP group sought, and which might have resulted simply in a loss of momentum, a framework EPA could have been used to maintain the pace by establishing the following:

- The parties' intention to liberalise 'substantially all' trade as per a key WTO requirement;
- The date by which liberalisation would be completed;
- The phasing of liberalisation within this period by specifying the dates by which groups of products would be liberalised and the dates for the parties to agree to the precise list of goods to be liberalised in each group;
- Similarly broad provisions of principle on the development dimensions of an EPA and any other provisions (such as on services trade) to which the parties were willing to agree in principle (with target dates for agreement on the details); and
- Institutional and safeguard arrangements.

Such an accord could be WTO compatible, or at least not incompatible with it, provided that it represented a genuine commitment and was implemented according to its timetable.

### 2.3. The outcome

The purpose in discussing the options available to the negotiators is to emphasise that alternatives existed. The discussion of such details also serves to highlight that the Commission decided to ignore the least disruptive option available to it.

What was ultimately chosen was a combination of options one and two; in other words, the GSP regime plus the imposed schedules, which are considered the least desirable outcomes.

In November 2007, in deference to the rapidly approaching deadline, the European Commission did agree to split the negotiations into two stages. But this initiative did not match up to option five which called for a framework EPA. The EU agreed that only 'interim agreements' needed to be initialled before the end of 2007, but these had to include complete provisions on goods. In other words, splitting the negotiations into two phases failed to allow the details of the goods offer to be agreed to at a more reasonable pace, since only the non-goods issues could be deferred until 2008.

Thus far, the incidence of options one and two has depended largely on the characteristics of the ACP states involved. The severe consequences of a full-scale application of option one, which involves being downgraded to the GSP, have been avoided, at least for the time being. However, this has occurred at the cost of great confusion, the existence of accords that appear to have many anomalies and possibly, a wider application of option one as 'phase two' of the negotiations continues in 2008 and beyond.

### 3. The ACP states' differing interests

Formally, the EPA negotiations were conducted between the EU and, up until recent months, six separate sub-groups of the ACP: the Caribbean, West Africa, Central Africa, Eastern and Southern Africa (ESA), Southern Africa (SADC-minus) and the Pacific.<sup>2</sup> During the second half of 2007, the five countries of the East African Community – Burundi, Kenya, Rwanda, Tanzania and Uganda – intimated that they were considering negotiating as a separate region, but this was not confirmed until December, when they created a seventh group and incorporated some members from the ESA and the SADC-minus groupings.

#### 3.1. Categorising the ACP countries

Effectively, though, the various ACP countries fell into one of three categories which cut across all of these sub-groups. With the exception of the Caribbean Forum (CARIFORUM) and the EAC, all regions 'lost' members that had not initialled the interim EPAs, while two countries from one region – Ghana and Côte d'Ivoire from the Economic Community of West African States (ECOWAS) – signed EPA treaties that were different in their details from each other.

It is worth looking at the three categories into which the various ACP countries fell in some detail.

##### 3.1.1. Category one: preference dependent non-LDCs

One category consisted of countries that stood to lose in a very tangible way if the pre-existing regime for their exports was discontinued or unimproved; in other words, if they were downgraded to the GSP regime. Kenya, for example, faced the imposition of significant tariffs on its exports of horticulture and processed tropical fruit.

The SACU states were among the most extreme cases of preference dependence. The beef exports of Botswana and Namibia to the EU, for example, are totally dependent on a continuation of a strong preferential regime. Had preferences ended for Botswana in 2008, the EU's import taxes on its beef exports would have been equivalent to 80% of their value, obviously making the trade commercially unviable (ODI, 2007b). Some 87% of Swaziland's exports to the EU (by value) would have experienced an increase in tariffs had the country been downgraded to the standard GSP regime.

Neither of the other two groups of countries faced the danger of an immediate, significant increase of barriers to their exports if the Cotonou



<sup>2</sup> As explained later, the term 'SADC-minus' was coined to cover the five Southern African Customs Union countries plus Angola, Mozambique and Tanzania which negotiated as one group and separately from the other SADC states that negotiated alongside non-SADC countries under the ESA banner.

Agreement came to an end and was not replaced by an equivalent new regime. Hence, they may have faced this prospect with equanimity, yet for differing reasons.

### 3.1.2. Category two: countries with a safety net

Within this category, there were two groups.

The larger of the two groups consisted primarily of LDCs. Since 2001, the EU has extended duty- and quota-free (DFQF) market access, under the EBA initiative, to all LDCs from the ACP and non-ACP regions alike. Hence, the end of the Cotonou Agreement for these countries meant only the need to fill in different forms in order to export to the EU under the EBA framework. There may have been problems for some countries over differences in the rules of origin but, in most cases, once the administrative changeover had been made, trade was unlikely to be disrupted.

While consisting primarily of LDCs, a second group included an additional member – South Africa. Under the EU–South Africa Trade, Development and Cooperation Agreement, South Africa has preferential access to the EU, although not as good as that available to other ACP states. Although a failure to agree to an EPA would not improve the status quo ante, neither would it cause a deterioration in trade for South Africa.


The SACU states were distributed across categories one and two. Botswana, Namibia and Swaziland (BNS) were very firmly in category one; Lesotho and South Africa were in category two. This difference has had an impact both on the negotiations and the outcome as of January 2008.

### 3.1.3. Category three: non-sensitive exporters

The reason why the third category of ACP states did not fear the end of the Cotonou Agreement was that their main exports were all in non-sensitive products for which the EU's standard tariffs were either zero or very low. The oil exporters, such as Nigeria, Gabon and Congo, and the non-signatory Pacific states, which export mainly fish to the EU and for whom the 'real' negotiations occur in the Fisheries Partnership Agreements, are included within this category.

## 3.2. Signatories

As of early January 2008, as indicated in Table 1, only 35 of the 76 negotiating states have signed the new EPAs and most of them,



equivalent to 26 out of 37, are LDCs.<sup>3</sup> Table 1 also identifies by region which of the signatories are LDCs. Those non-LDCs that have failed to sign (and which are currently facing GSP or most-favoured-nation tariffs) are the Republic of Congo, Gabon, seven of the Pacific Islands, Nigeria and South Africa, which continues to export under the TDCA.

In two regions, all members have signed. These are the Caribbean Forum and the EAC regions. The latter is perhaps the most noteworthy, since all but one signatory have LDC status and hence there is no immediate need to join an EPA to avoid tariffs being increased on their exports to the EU. In both cases, all parties have agreed to the same liberalisation schedule and the EPAs should not, in principle, cause any problems for achieving a common external tariff.

In contrast, West African countries have lagged the other regions. Only two countries have signed interim EPAs and they are significantly different from each other. In other words, more than 80% the ECOWAS members have not joined the interim EPA. There is no established accord and if all ECOWAS countries joined, it would provide a region-wide agreement. In principle, it would be possible for all of the non-signatories to accede to the text agreed to either by Ghana or by Côte d'Ivoire. But even if that were to happen, there would still be at least one country in the region with different tariff obligations towards the EU from that of all the rest.

The Communauté Economique et Monétaire de l'Afrique Centrale (CEMAC) is notionally in the same position as the CARIFORUM and the EAC, in that there is just one text and liberalisation schedule. The reason for this is that Cameroon is the only country within the CEMAC group to have initialled an interim EPA. As with the ECOWAS group, over four-fifths of the CEMAC members have not yet signed the EPA.

The other regions of the ESA, the Pacific and the SADC-minus fall between these two extremes. Each of the signatories within the group has agreed to an identical text, but their liberalisation schedules differ. Due to the last-minute creation of the EAC EPA, there have been substantial changes to the composition of the ESA EPA, which consists of four islands plus Zimbabwe.

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<sup>3</sup> 75 of the 77 countries that received trade preferences under the Cotonou Agreement negotiated an EPA. Somalia and East Timor did not. In addition, South Africa (which does not receive Cotonou preferences) was a negotiating party, thereby making a total of 76 negotiating countries.

Table 1: Overview of the new EPA signatory states

Members		Signatory states (December 2007) <sup>a</sup>	Countries falling into EBA/Standard GSP	Proportion of signatory countries (% of total)	Number of liberalisation schedules
ESA EPA	Comoros Djibouti Eritrea Ethiopia Madagascar Malawi Mauritius Seychelles Sudan Zambia Zimbabwe	Comoros Madagascar Mauritius Seychelles Zimbabwe	Djibouti Eritrea Ethiopia Malawi Sudan Zambia	45	5
EAC EPA	Burundi Kenya Rwanda Tanzania Uganda	Burundi Kenya Rwanda Tanzania Uganda	-	100	1
SADC EPA	Angola Botswana Lesotho Mozambique Namibia South Africa Swaziland	Botswana Lesotho Mozambique Namibia Swaziland	Angola	71	2
CEMAC EPA	Cameroon Chad Central African Republic Congo Democratic Republic of Congo Equatorial Guinea Gabon Sao Tomé e Príncipe	Cameroon	Chad Cent. African Rep. Congo DRC Equatorial Guinea Gabon Sao Tomé e Príncipe	12.5	1
ECOWAS EPA	Benin Burkina Faso Cape Verde Côte d'Ivoire Gambia Ghana Guinea Guinea Bissau Liberia Mali Mauritania Niger Nigeria Senegal Sierra Leone Togo	Côte d'Ivoire Ghana	Benin Burkina Faso Cape Verde Gambia Guinea Guinea Bissau Liberia Mali Mauritania Niger Nigeria Senegal Sierra Leone Togo	13	2
PACP EPA	Cook Islands Federation of Micronesia Fiji Kiribati Marshall Islands Nauru Niue Palau Papua New Guinea Samoa Solomon Islands Tonga Tuvalu Vanuatu	Fiji Papua New Guinea	Cook Islands Federation of Micronesia Kiribati Marshall Islands Nauru Niue Palau Samoa Solomon Islands Tonga Tuvalu Vanuatu	14	2
CARIFORUM	Antigua/Barbuda Bahamas Barbados Belize Dominica Dominican Republic Grenada Guyana Haiti Jamaica St Kitts/Nevis St Lucia St Vincent/Grenadines Suriname Trinidad/Tobago	Antigua/Barbuda Bahamas Barbados Belize Dominica Dominican Republic Grenada Guyana Haiti Jamaica St Kitts/Nevis St Lucia St Vincent/Grenadines Suriname Trinidad/Tobago	-	100	1

## Notes:

(a) Countries in blue are classified as LDCs. In the table compiled by the Commission (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/15&format=HTML&aged=0&language=EN&guiLanguage=en>), Somalia and Timor Leste are listed as LDC non-signatories of the ESA and PACP groupings, respectively. Since neither has played any part in the negotiation of EPAs, they are omitted in this tabulated list.

(b) Cape Verde has been classified as non-LDC since January 2008 but will be able to export to the EU under the EBA initiative for a transitional period of three years.

## 4. The EPAs and SADC

### 4.1. Group membership

The SADC countries are now split into four groups:

- Signatories to the SADC-minus EPA;
- Signatories to the ESA EPA;
- One signatory to the EAC EPA; and
- Non-signatories.

It is an unsatisfactory situation and it is worth noting that pressure from the EU was certainly a key contributory factor to this fragmentation, but it is also clear that the group splintered in these particular ways because of underlying fault lines within the SADC.

The initial split occurred in the run-up to the creation of the EPA negotiating groups in May/June 2004. One group of SADC countries joined the negotiations with their COMESA neighbours under the ESA banner; the other, known colloquially as the 'SADC-minus' group, consisted of Botswana, Lesotho, Namibia and Swaziland (BLNS) and was joined later by Angola, Mozambique and Tanzania. It was then realised, very belatedly by the EU, that South Africa could not be excluded from the negotiations since it was a member of the same customs union as the BLNS countries.

Back in the 1990s, when South Africa negotiated the TDCA with the EU, there was no such constraint. The SACU still retained the character of its original form in which South Africa did more or less what it wanted. In 2004, when a new SACU agreement was negotiated, the SACU acted more like a 'normal' customs union. One of the changes that the new agreement introduced was that no member could negotiate a new external trade regime without the consent of the others. Hence, South Africa has been a party to the SADC-minus negotiations since 2006.

An EPA with the EU that does not include all five members would appear to be legally unenforceable in the SACU. Yet that is currently what has happened. South Africa, as a category two country with a safety net, stood to lose nothing from the failure of the EPA negotiations. It is also very sensitive about the non-goods issues being raised by the EU. South Africa has thus far refused to sign the new EPA. Botswana, Swaziland and Namibia stood to lose if the Cotonou Agreement came to an end and, understandably, they have signed the agreement, as did Lesotho, presumably in the interests of solidarity.

What this implies in practice remains to be seen. The status quo is stable so long as neither the EU nor South Africa chooses to destabilise it. The EU has granted EPA treatment to the BLNS countries for their exports even though the agreement they have initialled appears not to be enforceable across the SACU. It would be possible for each of these countries *de facto* to apply the EPA tariff to those goods originating in the EU that enter the SACU through their territory, provided that South Africa does not actively object. For example, imports travelling directly by air to Gaborone could be taxed by the Botswana customs authorities at the EPA level rather than the TDCA tariff rate if they are different. However, only a very small proportion of the EU-originating goods that are consumed in the BLNS countries actually enter through the territories of these four countries; most are imported in bulk into South Africa and split into smaller consignments, some of which are transhipped to the BLNS markets. These imports will necessarily pay the TDCA tariff so long as South Africa remains aloof from the agreement.

This situation could continue indefinitely if one of three things happens. First, if neither South Africa nor the EU objects to the *status quo*, it is likely to continue. The second possibility is the extreme opposite of this *laissez faire* position: it involves South Africa joining the EPA. The third offers a midway position – South Africa could remain outside the EPA but may act autonomously to remove discrepancies between the TDCA and the EPA tariffs. All that is required for this midway position to be achieved is for South Africa to agree, in the SACU ministerial council, that it will adjust the tariffs it applies on imports from the EU to the EPA levels. Whether or not it would be in its interests to do this, and whether the EU would accept this ‘solution’, depends on what it means in practice: determining which tariffs would decrease most or fastest and which least or slowest as required under the TDCA. Hypothetically, the midway position does exist and South Africa does not necessarily have to commit itself to further negotiations on services and other non-goods issues in order to stabilise its BLNS neighbours’ trade relationship with the EU.

## 4.2. The implications for regionalism

One of the claims made by the EU during the negotiations was that the EPAs would strengthen regionalism within the ACP. Always a sickly child, it was unclear whether the stresses of the EPAs would, indeed, be the essential catalyst that would force the various ACP governments to implement their numerous declarations on regionalism or would signal an end to the entire process.

The initial impression created was that the EPAs had undermined pre-existing regional groups in the COMESA, SADC, Central and West Africa and the Pacific, but may have helped in East Africa and the Caribbean.

The EPAs created two problems: first, it resulted in a very visible splintering of some groups and second, it created a less obvious but equally corrosive set of reasons for countries not to remove restrictions at their borders.

By definition, customs union signatories must have one, common set of tariffs on most imports. They can have preferential as well as MFN regimes, as does the EU, but each needs to be nearly identical. It is not consistent with customs union membership for one member to have zero tariffs on some imports from the EU, by virtue of its EPA commitments, while its neighbour maintains tariffs on some goods but has removed them on others. This is precisely why the EPA position in the SACU is anomalous. If a customs union is not yet complete, as is the case in both SADC and COMESA, members can have different implementation schedules and may maintain different rates during this period, but only up until the customs union is due to be completed.

Those states that belong only to a regional FTA have more latitude because they retain separate and different external tariff regimes. But if countries' liberalisation schedules are not harmonised, they will have a new incentive to keep rigorous border controls. For example, if country A excludes flour from liberalisation and maintains a 100% tariff on it but its neighbour, country B, removes all duties, then traders may circumvent country A's restrictions by transporting EU goods across the border from country B. To avoid this, either the tariff difference between countries A and B must be sufficiently small to make such trans-shipment commercially unviable, or rigorous border controls must be maintained to prevent any trans-shipment that would undermine country A's milling industry. The latter will hurt intra-regional trade in the process. This is because the evidence suggests that it is precisely the paraphernalia associated with physical barriers at land borders that are the most serious constraints to intra-regional trade, rather than differences in trade policy *per se*, although the latter do underpin the former (Charalambides, 2005; Hess, 2000; Visser and Hartzenburg, 2004).

There is no intrinsic reason why a barrier should be created between neighbours that join and do not join an EPA. In practical terms, little is achieved by staying outside of an interim EPA (which applies only to goods) unless a country erects a barrier against its neighbour. The principal reason to remain outside a goods EPA is to avoid reciprocity. But this goal would be undermined by cross-border trade if the outsider also participated in an effective FTA or customs union with countries that were also EPA members.

The problems of incompatible trade policy, as described above, arise *a fortiori* for countries that are not liberalising on any product. This implies that an absolute barrier has been erected between all EPA signatories and countries that have not signed any reciprocal deal with the EU. A potential barrier has been created between signatories of

those agreements that are different from those of their regional partners. Between them, these two groups include all of the countries of the SADC.

Tanzania's position has long illustrated the inconsistencies of African regionalism. Although a member of the EAC, it has also retained its membership of SADC and, until the last months of the EPA process, was negotiating within an entirely different group from all of its EAC partners. The fact that Tanzania has joined the EAC EPA and along with Kenya, Rwanda, Burundi and Uganda has accepted the disciplines that this entails, suggests that a decisive shift might have been made. All of the tariff reduction commitments of these countries are based upon the EAC common external tariff. In other words, the countries have pledged themselves to implement this tariff before the first tranche of the EPA tariff reductions commences in 2015.

Madagascar, Mauritius and Zimbabwe have signed a text that is different from the one negotiated in the SADC-minus grouping and have established liberalisation schedules in relation to the COMESA common external tariff (even though details of exclusions vary). Like Tanzania, therefore, their liberalisation will not be organised around a common SADC list.

Mozambique is the only remaining SADC state, apart from the BLNS countries, to have signed an EPA. Its schedule is quite different from that of the rest of the BLNS grouping. The latter has a common schedule which is based upon, but not identical to, the TDCA.

## 5. The EPA obligations

It is worth considering how substantial are the differences in the liberalisation schedules agreed to by signatories and how soon they are likely to emerge. The answers given will determine how great a barrier the EPAs have created to regional integration among the signatories as well as between them and the non-signatories.

Attempts to establish the differences between these categories of signatories and non-signatories is beset with practical difficulties, and predicting the pace and extent of implementation involves assumptions about future interests and policies.

### 5.1. Comparing the EPA provisions

The problems of establishing exactly what has been agreed to, and how it differs from that to which others have agreed, is illustrated well by the BLNS EPA which foresees liberalisation occurring in tranches between 2008 and 2018.

The BLNS EPA is based upon the TDCA, although precisely how it differs from the TDCA is far from certain. The BLNS liberalisation schedules are recorded using predominantly the 2007 version of the



Harmonised System (HS) nomenclature. Naturally, the most recent data available on imports and tariffs (for 2006) use an earlier (2002) version. Since the HS codes change over time, there are gaps between recorded imports and the commitments that have been made – and those differences are significant. For example, 7% of the items imported by Botswana from the EU in 2004-2006 (accounting for 15.6% of import value) are not listed in its EPA schedule (either for liberalisation or exclusion).<sup>4</sup> Similar problems apply to the other three signatories. The ‘gap’ reflects the fact that goods have been reclassified, but tracking this reclassification down is problematic. All anomalous Botswana items have been reviewed using a 2007 to 2002 HS concordance, but this resolved the problem for only 28% of the codes in question. Moreover, very few of the items for which a concordance could be established actually appear on the list of ‘gaps’ identified for Lesotho, Namibia and Swaziland.

The differences between the BLNS schedules and those in the TDCA, which uses the 1996 or earlier versions of the HS, are even greater. Moreover, the TDCA has a ‘negative list’ whereas the BLNS EPA (like all of the others except in the CARIFORUM EPA) is a ‘positive list’. Under the former, any product not specifically listed in the schedules is liberalised on the entry into force of the agreement. In the latter, the agreement lists what is to happen to each and every item. As a result of these two differences, as many as 56% of the codes listed in the BLNS EPA are not listed in the TDCA. This makes it impossible to determine from these two documents the extent of the overlap.

What is clear is that the BLNS group will liberalise on some goods faster than South Africa is required to do so under the TDCA. This can be observed by comparing the BLNS EPA provisions with the tariff applied in 2006 by South Africa on imports covered by the TDCA (according to the tariff schedule available in the UNCTAD Trade Analysis and Information System, or TRAINS, database). Under the TDCA, South Africa agreed to liberalise in three tranches: on entry into force in 2003, in 2005 and in 2012. In other words, all the liberalisation that South

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<sup>4</sup> The import values referred to are in fact mirror data on the EU exports to BLNS markets, as reported to the United Nations’ Comtrade database. Mirror data have been used because recent data are unavailable in the Southern African Trade Database and only Namibia has reported recent imports to Comtrade in HS 2002.

Africa is required to do under the TDCA has either already happened or will not happen until 2012. Hence, the commitment made by the BLNS states to liberalise, before 2012, any item that was not duty-free under the TDCA in 2006 must involve, by definition, a more rapid tariff removal than South Africa is required to make.

The BLNS governments have committed to liberalisation in three tranches that end before or by 2012, as well as in a further four tranches, all of which begin before 2012 but end afterwards. Due to the changes in the nomenclature and the fact that the schedule ranges from a four-digit to six-digit and eight-digit level, it is not always possible to ascertain how many of the items listed in each tranche were not duty-free in 2006. But all the items for which the TDCA tariff is known in the smallest tranche, which will be liberalised between 2008 and 2010 (and covering 21 items, accounting for 0.2% of imports from the EU), certainly faced tariffs of between 7.5% and 22.5%. In addition, some of the 4,161 items that will be liberalised in 2008, which account for 55% of total imports, and the 1,326 items to be liberalised in 2008-2012, equivalent to 12.2% of imports, faced either tariffs in 2006 of up to 33.75% or specific duties.

Were South Africa autonomously to accept these commitments (or to sign an EPA), it would need either to establish differential transitional tariffs for imports or it would need to bring forward its own liberalisation. It might object to this but the EU may find it difficult to accept the corollary that some items, scheduled for full liberalisation by 2012 under the TDCA, will not be liberalised by the BLNS grouping until 2018.

## 5.2. Implementing the EPA

The problems associated with identifying differences in the schedules are multiplied when attention shifts to the process of actual implementation.

The commitments that the ACP countries have made in the EPAs will have a direct impact only if they are implemented, and implementation will tend to occur only if the costs associated with it are lower than those associated with non-implementation. Since many, but not all, EPAs defer any reduction of tariffs for some years, these issues are likely to be fully played out some time into the future when few, if any, of the current protagonists will still occupy their official posts.

It is possible to distinguish 'conditionality' under an EPA from that which has been well analysed in relation to 'policy-based aid lending'. In the latter, actions were normally required of aid recipients quite quickly, but the lender had an interest in viewing such action through rose-tinted spectacles. In order to have their loans serviced, lenders depended to a certain extent on the borrower receiving aid from other



donors to supply the required foreign exchange. Aid donors, in turn, looked to the International Monetary Fund and the World Bank for advice on whether reform was proceeding satisfactorily before providing aid. In cases where the policy-based lender was the IMF or the World Bank, a clear potential existed for a conflict of interest, giving rise to the suspicion that their verdicts on policy implementation were made unduly optimistically in order to ensure a continued flow of the aid needed to permit the debt to be serviced. And borrowing countries were able to take advantage of this.

A similar sort of shift in the 'balance of power' also applies in the case of the EPAs. The capacity of the EU to enforce implementation is linked to the following:

1. Its ability to obtain evidence that implementation is not occurring;
2. An inclination to monitor implementation sufficiently closely to notice this evidence;
3. The availability of sufficiently strong sanctions to enforce change; and
4. A willingness to use them.

The first and third requirements involve the collection and analysis of factual evidence; the other two relate to attitudes. While the attitudinal requirements must be a matter for speculation, especially given the time that will elapse before any 'non-implementation' occurs, there is doubt over the more factual requirements.

Knowing whether an EPA is being implemented is not as straightforward as it may seem to be. By the time countries start to reduce tariffs, the HS will have evolved further and some of the codes listed in the schedules will no longer exist. It will be extremely difficult (and very time consuming) for the EU to check whether the items that are actually liberalised in, say, 2015 are actually those that were agreed to in 2007.

The existence of strong sanctions is also uncertain. For so long as it is a major source of aid for the ACP, the EU (and its members) will have a significant leverage over policy decisions through the threat of withholding (or amending) flows. This power of leverage is quite independent of the EPAs which do not, at present, contain any additional financial provisions over and above what the countries can receive under either the Cotonou Agreement or the member states' bilateral programmes. The extra leverage afforded by the EPA is currently limited to the renunciation, by the EU, of its preferences for ACP exports.

Hence, the credibility of EU action against non-implementation by an ACP state of its EPA trade commitments is limited to the commercial



value of the preference. This will diminish over time as the EU extends more favourable tariff treatment to an increasing number of countries. The speed at which it will be eroded is not easily predictable and will certainly vary between products. It is reasonable to suppose that the more time that elapses, the greater will be the change in the HS nomenclature and the more substantial the erosion of preferences.

The timing of the SADC liberalisation commitments is, therefore, relevant to the credibility of implementation.

The phasing of the BLNS and Mozambique liberalisation is relatively fast compared to that for the other ACP states. The removal of tariffs by the BLNS countries on the goods not excluded from liberalisation (or subject to partial liberalisation) will be complete by 2018. In Mozambique, too, the process is due to be completed by 2018 and will begin in 2008 with the removal of positive tariffs ranging up to 25%. Madagascar, Mauritius and Zimbabwe, by contrast, will not need to liberalise before 2013 any item that faces a positive COMESA common external tariff. Hence, these initial efforts will not go beyond what is needed simply to comply with the COMESA commitments. Only after 2013, in a process to be completed by 2022, will items subject to positive COMESA tariffs be liberalised.

### 5.3. The EU's liberalisation

The future commercial value of the EPA preferences depends on which products currently receive a deep preference and which are important exports to the EU by the SADC states. The EU has, since January 2008, accorded DFQF access to all its imports from the EPA states apart from sugar and rice, where this access will be phased in over the period up to 2015 and 2010, respectively.

Given the likelihood that the EU will negotiate further regional trade agreements and also that there may still be a conclusion to the Doha Round, it is reasonable to assume that not much commercial advantage will remain for goods on which the standard GSP tariff is currently 10% or less. The continued commercial attractiveness of the EPA membership is likely to be limited to some of the goods for which there is an ad valorem tariff of over 10% and/or a specific duty under the standard GSP regime (or the MFN, if the item is not included in the GSP).

Table 2 lists for each non-LDC SADC signatory the export groups in which that country currently has tariff preferences of this order of magnitude. Since all LDCs have access to the EBA, it is only the non-LDCs that would face a potential tariff hike upon leaving an EPA. The main product groups, as shown in Table 2, are beef, grapes, fish, citrus, sugar and processed foods containing sugar or cereals.

While any assessment of changes to the EU tariffs over the next five or more years must necessarily be speculative, it does appear pos-

sible that several of the SADC states would face a significant commercial shock if they were downgraded to the standard GSP-MFN regime on at least some of their exports. Hence, there is a *prima facie* case that the value of the EPA preferences may still offer the EU some leverage in the region by the time the non-SACU states have started reducing significant tariffs.

Not all of the current exports of all of the listed countries will necessarily be vulnerable. In some cases, they may have disappeared by then. Consider the example of beef products. The key variables for beef are the cost of meeting sanitary standards and the EU liberalisation offered to other suppliers. If the cost of sanitary compliance continues to rise, the EU may cease to be a profitable market for ACP exporters. And if the EU offers increased tariff quotas to Mercosur, the Common Market of the South, either in the context of a regional agreement or under the Doha framework, that are sufficiently large for it to make commercial sense for these countries to take over the BNS markets, it is unlikely that those African beef exporters could compete on price. The best that can be said is that the continued commercial value of the EPA membership for beef in five years time is 'uncertain'.

For sugar, the key, interlinked variables are the future EU price and the extent to which LDC suppliers will expand exports. Under the DFQF, the EU will retain safeguards on non-LDC sugar exports even after 2015. The same will apply to processed sugar. It seems likely that Swaziland, at least, will have a continued interest in exporting to the EU, but the position of Mauritius is less certain.

In most other cases, though, it seems likely that the EPA membership may continue to offer commercial advantages during a period when most of the SADC states will have to complete their tariff cuts. Real commercial loss will be incurred if countries exit the EPAs now. The SADC states need to identify as soon as possible the precise differences in their schedules in order to determine the implications for the region's trade as a whole.

**Table 2.** SADC exports for which EPA membership offers the greatest commercial advantage

Country	Ex HS chapter	Product
Botswana	02	Fresh or frozen beef
	16	Preserved beef
Mauritius	03	Fresh, chilled, frozen fish
	10	Manioc or rice starch
	15	Preparations of animal or vegetable fats or oils contain milkfats
	16	Preserved fish
	17	Sugar and confectionery
	19	Cereal preparations
	20	Preserved fruit and vegetables
	21	Miscellaneous edible preparations
	22	Beverages and spirits
	23	Bran, sharps and other residues
	24	Cigarettes
	25	Salt suitable for human consumption
	64	Miscellaneous footwear
87	Bicycles	
Namibia	02	Fresh or frozen beef
	03	Fresh, chilled, frozen fish
	07	Fresh or chilled beans
	08	Fresh table grapes
	64	Slippers
Swaziland	02	Fresh or frozen beef
	03	Fresh or chilled fish
	07	Vegetables
	08	Citrus fruit
	10	Maize
	17	Sugar
Zimbabwe	03	Fresh, chilled, frozen fish
	07	Vegetables
	08	Citrus fruit, peaches, nectarines, plums
	10	Maize
	16	Preserved beef
	17	Sugar
	18	Chocolate
	19	Cereal preparations
	20	Preserved fruit and vegetables
	22	Wine and ethyl alcohol
24	Cigarettes and tobacco	
64	Women's shoes	

Source: ODI, 2007a



## 6. Conclusion

It is clear that adverse rulings in GATT and the WTO on the EU's trade preferences for SADC and other ACP states required a change in the *status quo ante*. The EU has a strong defence of the need to do 'something' – but that is as far as its defence goes. EPAs were not the only option, and an enforced, immutable deadline of 31 December 2007 was not the only way to negotiate EPAs. Even as late as mid-2007 there existed options, which the European Commission chose to reject.

There are lessons to be learned within Europe and about Europe. Was the way in which the negotiations were conducted down to the structure of the European Commission and the personalities involved? Or is the issue a more fundamental one: that an EU of 27 members, a majority of which have no colonial ties and are poorer than the EU average can no longer be expected to strike a pro-development stance? The latter explanation has broad implications: for follow-up to the Euro-Africa summit, for Africa's relations with China and other non-traditional partners, and for the likelihood of a 'breakthrough' in the stalled Doha Round.

But there are also lessons – and hard choices – for SADC. The problems that it now faces may have been foisted on it by external pressures, but they are ones with which it will need to deal. The current pattern of countries which have initialled interim EPAs and those that have not done so is incompatible with a SADC customs union. It is even incompatible with a continuation of SACU in its current form. A problem has been created for the region with which it alone can deal.

Just as overhastily completed EPAs were not the only solution to 'the WTO problem', there exists more than one solution to the SADC and SACU problems. Countries can remove the policy incoherence created during the EPA process (in ways that do not involve the EU) if they wish to do so. Margaret Thatcher famously told the British that "there is no alternative" to her policies. She was wrong – and so are most who claim inevitability for what are actually simply the options that best suit their interests.

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