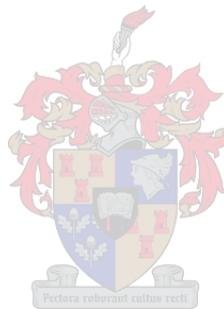


**EPA Negotiations between the EU and SADC/SACU grouping:
Partnership or Asymmetry?**

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Thesis presented in partial fulfilment of the requirements for the degree of Master of
Arts (International Studies) at Stellenbosch University



Prof. A.J. Leysens

March 2009

Declaration

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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ABSTRACT

Europe and Africa share a long history that is characterized both by oppression and development. The relationship between the European Union (EU) and the African, Caribbean and Pacific (ACP) countries is a particularly important aspect of EU development cooperation policy. The developmental history between the EU and Africa started with the Yaoundé Conventions of 1963 and 1969, which were replaced by the Lomé Convention. Unfortunately, the favourable terms and preferential access for the ACP countries to Europe failed and the Lomé Convention was replaced by the Cotonou Partnership Agreement (CPA) in 2000. As a result of a WTO-waiver, the discriminatory non-reciprocal trade preferences, which were previously enjoyed under the Lomé Convention, continued until December 2007. The Cotonou Agreement points out that these trade preferences will be replaced by joint WTO-compatible Economic Partnership Agreements (EPAs).

During the EPA negotiations, the EU preferred to negotiate on a regional basis instead of negotiating with the ACP as a whole or with individual countries. Consequently, Sub-Saharan Africa formed two negotiation groups; the Eastern and Southern Africa (ESA) EPA group and the Southern African Development Community (SADC) EPA group, represented by the five Southern African Customs Union (SACU) countries, together with Mozambique and Angola. Although Southern Africa is the region that leads the continent; from an economic perspective, the Southern African states show considerable disparities. Due to the economic differences between South Africa and the BLNS countries (Botswana, Lesotho, Namibia and Swaziland), the interests of the individual SACU countries are diverse and often contradictory, which resulted in complicated EPA negotiations. However, maintaining a favourable long-term trading relationship with the EU is of great importance to the economic and political well-being of the SADC, since the EU is the main trading partner of most African countries. By December 2007, an interim EPA (IEPA) was initialled by the BLNS countries as a result of the pressure to fall back to the unfavourable Generalized System of Preferences (GSP). Due to the bilateral Trade Development and Cooperation Agreement (TDCA) that is in force between South Africa and the EU, South Africa was not negatively influenced by the expiry of the WTO-waiver.

The EPA will have a negative impact on regional integration within SADC and will promote distinction within the regional economic communities. Duty free, quota free access was offered to the BLNS countries, but the EU did not extend this offer to South Africa because of the developmental status of the country and the pre-existing TDCA. Consequently, South Africa will be required to export at higher prices and will experience increased competition within the region. The downside of the removal of import tariffs for the BLNS countries is that government revenues will decrease, which might result in income

losses and will accentuate poverty. The standstill-clause of the IEPA prevents the SACU countries from diversifying economically and from developing new industries. The Most-Favoured Nation clause primarily impacts negatively on South Africa, since it prevents South Africa from negotiating freely with other countries such as Brazil and China. Furthermore, the strict intellectual property rules of the IEPA undermine access to knowledge and hereby fail to support innovation. The content of a chapter on liberalization of services, that will be included in the full EPA, is still being negotiated. Liberalization of services might lead to more foreign investments in the BLNS countries, as a result of which the quality of services will increase, leading to better education, infrastructure and more job opportunities. However, foreign companies will gain power at the expense of African governments and companies. South Africa is the main supplier of services in the BLNS countries and will therefore be confronted with economic losses when the services sector is liberalized.

From an economic nationalist perspective, the EU included numerous provisions in the IEPA that were not necessary for WTO compatibility. However, the EU is aware of the importance of trade agreements for the BLNS countries and found itself in the position to do so to fulfil its own interests. By making use of the expiry date of the WTO waiver; the IEPA was initialled by the BLNS countries within a relatively short period of time. South Africa, in its own national interests, opposed the provisions of the IEPA, which has led to the negotiations deadlock.

Because of the economic power and negotiating tactics of the EU and the self-interested attitude of South Africa in this respect, regional integration is undermined and the poorest countries are once again the worst off. Although Economic Partnership Agreements have to be established, the partnership-pillar is, in my opinion, hard to find.

OPSOMMING

Europa en Afrika deel 'n lang geskiedenis gekenmerk deur beide onderdrukking en ontwikkeling. Die verhouding tussen die Europese Unie (EU) en die Afrika, Karibiese en Stille Oseaan (AKS) lande is 'n baie belangrike aspek van EU samewerkende ontwikkelingsbeleid. Die geskiedenis van ontwikkeling tussen die EU en Afrika het met die Yaoundé Konvensies van 1963 en 1969 begin, en is mettertyd deur die Lomé Konvensie vervang. Die gunstige terme en voorkeur toegang vir die AKS lande ten opsigte van Europa het gefaal, wat daartoe gelei het dat die Lomé Konvensie deur die Cotonou Vennootskap Ooreenkoms (CVO) vervang word in 2000. As gevolg van 'n Wêreld Handelsorganisasie (WHO) kwytskelding is die diskriminerende nie-wederkerige handelsvoorkeure wat gegeld het onder die Lomé Konvensie voortgesit tot Desember 2007. Die Cotonou Ooreenkoms beklemtoon dat hierdie handelsvoorkeure vervang sal word deur gesamentlike WHO-versoenbare Ekonomiese Vennootskap Ooreenkomste (EVOs).

Sub-Sahara Afrika lande het twee onderhandelingsgroepe gevorm om sodanige EVOs daar te stel, by name die Oos en Suidelike Afrika (OSA) EVO groep en die Suider-Afrikaanse Ontwikkelingsgemeenskap (SAOG) EVO groep, verteenwoordigend van die vyf Suider-Afrikaanse Doeanes-unie (SADU) lande, asook Mosambiek en Angola. Hoewel Suider-Afrika 'n leidende rol op die kontinent speel, is daar tog beduidende dispariteite tussen Suider-Afrika state, vanaf 'n ekonomiese perspektief gesien. Vanweë ekonomiese verskille tussen Suid-Afrika en die BLNS lande (Botswana, Lesotho, Namibië en Swaziland) is die belange van individuele SADU lande uiteenlopend en dikwels teenstrydig, wat dan lei tot uiters ingewikkelde EVO onderhandelinge. Desnieteenstaande is die behoud van 'n gunstige langtermyn handelsverhouding met die EU van groot belang vir die ekonomiese en politieke welvaart van die SAOG aangesien die EU die hoof handelsvennoot van meeste Afrika lande is. Teen Desember 2007 is 'n voorlopige EVO (VEVO) onderteken deur die BLNS lande as gevolg van druk om terug te keer na die ongunstige Algemene Stelsel van Voorkeure (ASV). As gevolg van die bestaande bilaterale Handel, Ontwikkeling en Samewerking-Ooreenkoms (HOSO) tussen Suid-Afrika en die EU is Suid-Afrika nie negatief geraak deur die verval van die WHO kwytskelding nie.

Die EVO sal 'n negatiewe invloed op streek integrasie hê en bevorder tweespalt binne streeks ekonomiese gemeenskappe. Doeanes en kwota-vrye toegang is aan die BLNS lande aangebied, maar die EU het nie hierdie aanbod aan Suid-Afrika gemaak nie, vanweë die ontwikkelingsvlak van die land en die bestaande TDCA. Die nadeel van die opheffing van invoertariewe vir die BLNS lande is dat staatsinkomste sal afneem, wat lei tot inkomsteverliese en armoede. Die stilstand klousule, die Mees-Bevooregte-Nasie klousule en die streng intellektuele eiendom reëls van die VEVO verhoed die SADU lande om

ekonomies te diversifiseer, om vryelik te onderhandel en om nuwe industrieë te ontwikkel. Die inhoud van 'n hoofstuk aangaande die liberalisering van dienste wat ingesluit sal word in die finale EVO word nog onderhandel. Liberalisasie van dienste kan moontlik lei tot meer buitelandse belegging in die BLNS lande wat sal lei tot 'n toename in die kwaliteit van dienste. Maar, buitelandse maatskappye sal meer mag bekom ten koste van Afrika regerings. Omdat Suid-Afrika die hoof diensteverskaffer in die BLNS lande is, sal die land seer sekerlik ekonomiese verliese lei indien die dienste sektor geliberaliseer word.

Vanaf 'n ekonomies nasionalistiese perspektief het die EU etlike voorwaardes in die VEVO ingesluit waarvoor WHO versoenbaarheid nie nodig was nie. Maar die EU is ook ten volle bewus van die belangrikheid van handelsooreenkomste vir die BLNS lande, en was in 'n posisie om ooreenkomste in sy eie belang te beding. Deur gebruik te maak van die vervaldatum van die WHO kwytstelling is die VEVO binne 'n relatiewe kort tydperk deur die BLNS lande onderteken. Suid-Afrika het die terme van die VEVO uit eie-belang teengestaan, wat gelei het tot 'n onderhandelings-dooiepunt. As gevolg van die ekonomiese mag en onderhandelingsstaktiek van die EU, asook die eie-belang benadering van Suid-Afrika is streeksintegrasie ondermyn en kom die armste lande weer eens die slegste daarvan af. Alhoewel Ekonomiese Vennootskap Ooreenkomste gesluit moet word, is die vennootskap-kern, in my opinie, moeilik om te vind.

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List of Abbreviations

ACP	African, Caribbean and Pacific
ALA	Asian, Latin-American
ANC	African National Congress
BLNS	Botswana, Lesotho, Namibia and Swaziland
BLS	Botswana, Lesotho and Swaziland
CNM	Common Negotiating Mechanism
COMESA	Common Market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
DG	Directorate General
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
ECCAS	Economic Community of Central African States
ECDPM	European Centre for Development Policy Management
ECSC	European Coal and Steel Community
EEC	European Economic Community
EMS	European Monetary System
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
EURATOM	European Atomic Energy Community
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GAU	Government of African Unity
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
HCT	British High Commission Territories
IEPA	Interim Economic Partnership Agreement
IOC	Indian Ocean Commission
LDC	Least Developed Country
MDG	Millennium Development Goals

MFN	Most-Favoured Nation
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Co-operation and Development
OEEC	Organization for European Economic Co-operation
PTA	Preferential Trade Area
RSF	Revenue-Sharing Formula
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
TDCA	Trade Development and Cooperation Agreement
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department on Economic and Social Affairs
UNECA	United Nations Economic Commission for Africa
VOC	Vereenigde Oostindische Compagnie
WTO	World Trade Organization

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Chapter 1 Introduction

1.1 Background

“Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.”

Nelson Mandela, 2005

Enormous contradictions are in existence in Southern Africa. Nevertheless, it is the region that leads the African continent in numerous fields. Namely, it has the greatest industrial base, the most urbanized population and the wealthiest population per capita. These positive characteristics of the region are mainly the result of the economic well-being of South Africa (Bauer & Taylor, 2005, p. 329-330). On the other hand, this region is faced with various challenges that affect the stability of the region. The most pressing issue is how to tackle the widespread poverty and human deprivation; the region is home to four of the fifteen poorest countries of the world, it has the world's highest proportion of poor people, it has the highest HIV/AIDS rate of the world and the numerous refugees lead to long-term conflicts between the regional states (Cheru, 2008, p. 8).

Many of the Southern African states share a common colonial and postcolonial history. There has been an extensive Portuguese, Dutch (Afrikaner) and German influence. Although these foreign influences are still in existence in some of the Southern African states, the Anglo heritage in the field of the law, economy and politics, plays the dominant role in most of the contemporary states.

From an economic perspective, Southern African states show considerable disparities. These can be attributed to several factors. The states differ substantially in population size (which has an effect on the size of the workforce), location (in terms of access to the sea), decades of peace compared to the decades of war to which some states were exposed and the availability of natural resources (Bauer & Taylor, 2005, p. 3-8).

The Southern African states can be analysed in various ways. For example, one can analyse states by measuring the import and export rate and the amount of foreign investment, by determining to which Treaties and Conventions the states are party, by verifying its social standards and characteristics (such as the unemployment

rate, life expectancy rate, and the quality of medical services), by determining whether the states have a democratic and/or federal government, and by studying the economic sectors of the countries (services, tourism, agricultural goods). Another way of analysing states is on the basis of trade relations, such as by determining whether a state is member of the Southern African Customs Union, or not. The membership of the Southern African Customs Union (hereafter SACU) is narrow and consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. It was established in 1910 for the purpose of developing cooperation on an economic level. Its Secretariat is located in Windhoek, Namibia. Article 2 of the 2002 SACU Agreement contains the objectives of SACU, with which I will deal in Chapter 2.1.3.

Among other things, the 2002 SACU Agreement governs the (economic) relationships between the member states and between the member states and third parties by promoting the integration into the global economy through enhanced trade and investment. Due to the economic structure of the customs union, the member states are linked by a single tariff and there are no customs duties or other barriers applicable between them, which has led to the free movement of goods. A common external tariff is applicable to non-members of SACU (www.sacu.int).

An overlapping membership exists between SACU and the Southern African Development Community (SADC; formerly known as the Southern African Development Coordination Conference, SADCC). The SADCC was established in 1980 by the Lusaka Declaration with nine signatory states (Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe). In 1990, Namibia joined after independence. It was the objective of SADCC to promote regional integration and resource mobilization and to decrease dependence on South Africa. However, SADCC was not particularly successful in reaching these goals. In 1992, black majority rule appeared to be imminent in South Africa. As a result, SADCC was transformed into SADC in the same year. Consequently, upon the election of the African National Congress (ANC) in 1994, South Africa became a member state of SADC. Currently, SADC has fourteen member states; Angola, Botswana, the DRC (since 1997), Lesotho, Madagascar, Malawi, Mauritius (since 1995), Mozambique, Namibia (since 1990), South Africa (since 1994), Swaziland, Tanzania, Zambia and Zimbabwe. Until 1992, SADCC did not have an appropriate legal status. The Declaration and Treaty establishing SADC was signed in Windhoek, Namibia, on 17 July 1992. The key objective of SADC is to create a Southern African

common market. SADC focuses on the ideals of free trade, a single currency, free movement of persons, democracy and respect for human rights. SADC integration is based on principles of development and cooperation. The SADC Treaty is legally binding and sanctions may be imposed on member states that infringe on the Treaty (Venter & Neuland, 2007, p. 129-142).

Europe and Africa share a long history that is characterized both by oppression and development. The European Union (hereafter EU) acknowledges the importance of relationships with the African, Caribbean and Pacific (ACP) countries. The ACP group consists of 77 states, of which 48 are African states. The 48 African states account for 62.3 percent of its membership, and therefore dominate the ACP. The ACP was created in order to form a unified negotiating body. Since 1997, all the Sub-Saharan African countries are members of the ACP group, including South Africa (Venter & Neuland, 2005, p. 159).

The relations with the ACP are a particularly important aspect of EU development cooperation policy and its external action (Arndt, Schilder & Kneifel, 2005). The European Union finds its roots in the European Coal and Steel Community (ECSC) that was created by Belgium, France, Italy, Luxembourg, The Netherlands and West-Germany in 1952 in order to unite Europe after World War II. Subsequently, the 1957 Treaty of Rome established the European Economic Community (EEC) and the European Atomic Energy Community. As a result of the 1992 Maastricht Treaty the EEC became known as the European Union. Nowadays, the EU consists of 27 member states (<http://europa.eu>).

Examples of the aforementioned developmental history between Europe and Africa are the Yaoundé Conventions of 1963 and 1969 and the Lomé Conventions. In 1957, the six EEC countries signed the Treaty of Rome, which led to a free trade area between the six countries and the associated African countries. As a result, the EEC countries could sell their industrial products in Africa and were not limited to sell these products in their own, separate colonies anymore. On the other hand, African tropical products could be imported in Europe more easily. The Treaty of Rome provided for the commercial and financial association of the African overseas territories with the EEC, which was the first Yaoundé Convention, or the Convention on the Association (OCTs).

The first Yaoundé Convention, which was in force from 1964 to 1969, was an association agreement between 18 associated African states and the 6 EEC

countries. The objective of this Convention was to bind Africa to Western Europe in order to limit the spread of Communism and to control separate tendencies. Since this Convention only had a validity period of five years, the Yaoundé Convention was renewed and signed in 1969. The agreement entered into force in 1971 and was signed by 19 African countries. This second Convention expired in 1975 and led to the desire to create a broader Convention. This broader Convention was embodied in the Lomé Convention of 1975 (<http://www.ena.lu/>).

The Lomé Convention was signed by the EEC and 46 developing countries in Africa, the Caribbean and the Pacific, and was renewed three times. The Convention arose out of the attempts of the EU to establish an institutionalized arrangement governing its relations with (former) colonies of its member states. This Convention grew from a colonial association of African territories to the EEC, based on a mixture of moral obligation to compensate the former colonial countries and on the self-interest of the European states (Venter & Neuland, 2005, p. 160). South Africa was admitted to the Lomé Convention in 1997 on extremely restricted conditions (Davies, 2000, p. 6-7). The Convention was a legally binding agreement and covered the provision of aid to the ACP. It gave the states of the South more favourable terms for commodity price-stabilization plans and preferential access to the European markets. As a result, some states managed to partly reschedule their debts through the innovative refinancing plans. However, Europe refused to negotiate concessions on a regular basis, no Common Fund was established and the Lomé Convention did not constitute a common market, free trade area or political alliance (Brown, 2002).

The Convention provided for almost totally duty-free access for most of the ACP products. Some sensitive agricultural products were excluded from the Convention and regulated by separate protocols. These commodities included beef, veal, bananas and sugar. The preferential schemes were non-reciprocal trade preferences, which means that, although trade preferences were offered to ACP countries, the EU did not demand trade advantages in return. However, because of the fact that the preferences were only offered to certain developing countries, the preferences discriminated positively in favour of Europe's ex-colonies at the expense of the developing countries that were not members of the Lomé Convention (Gibb, 2008). The favourable terms and preferential access for the ACP countries to Europe failed and the Lomé Convention did not fundamentally improve the problematic situations of the ACP countries (Kerkelä, Niemi & Vaittinen, 2000).

The disappointing effects of the Lomé Convention can be attributed to the following factors. Firstly, the Lomé Convention was initially designed to provide a solid foundation for trade cooperation between the ACP states. However, due to the fall of communism, the preference schemes of the EU shifted to Central and Eastern Europe, to the detriment of the developing ACP countries. In terms of trade and aid, this changing status seriously downgraded the privileged positions of the preference-receiving South and had a disappointing impact on ACP export performances. To illustrate this; the share of ACP in total imports of the EU declined from 6.7% in 1976 to 2.8% in 1999 (European Commission, 2001, p. 92). Furthermore, EU food aid, distributed to ACP countries, accounted for 66% in 1989 of the aid disbursed from the general EU budget, but declined to 50% in 1990. This was the result of growing aid, distributed by the EU to Asian, Latin American (ALA) and Mediterranean countries (Overseas Development Institute, 1995). While most of the developed countries experienced sustained economic growth during the 1990s, 54 developing countries, of which most of them were located in Sub-Saharan Africa, suffered average income declines over the course of the decade (United Nations Development Programme, 2003). In addition, the average annual growth rate of the real GDP of SADC and Africa in general declined tremendously during the 1990s.

Table 1.1 Average annual growth rates of real GDP (%)

ECONOMY	1980-1990	1990-2000	1990-1995	1995-2000	2000-2005	2005-2006
Developing economies: Africa	2.6	2.4	0.8	3.3	4.7	5.5
Northern Africa excluding Sudan	2.6	2.8	1.9	3.5	4.9	5.2
Sub-Saharan Africa ¹	2.5	2.2	0.2	3.2	4.5	5.7
African economic grouping						
SADC (14)	1.9	2.1	0.4	2.7	3.9	5.6

Source: UNCTAD secretariat computations based on UNDESA, Statistics Division.

<http://www.unctad.org/Templates/WebFlyer.asp?intItemID=3631&lang=1>

Secondly, the 'rules of origin' requirement was in force under the Lomé Convention. In order to receive trade preferences or nil tariff rates, the ACP countries had to satisfy the rules of origin of the EU's Generalized System of Preferences (GSP). A product had to originate wholly in a GSP beneficiary country (one of the fifty Least Developed Countries). In the event that a product contained inputs from other countries, the product should have undergone sufficient processing in the beneficiary

country. Furthermore, at each stage of processing, information on the rules of origin had to be available (by means of packaging or labelling). The rules of origin requirement led to an unfavourable bargaining position for the developing ACP countries, which made it even more difficult for them to gain a market share in Europe. Thirdly, in order to profit from the Lomé Convention, the ACP countries had to focus on exporting primary products due to the deprivation of market access that encouraged asymmetry. Unfortunately, the demand for primary products was falling in the world markets in 1998 as a result of the East Asian financial crisis, which led to an even more disadvantaged position for the developing countries (http://www.wto.org/english/news_e/pres99_e/pr149_e.htm). Lastly, stringent European regulations on health and the environment were applicable to the products produced in the ACP countries (Alam, 2008, p. 135-140).

In conclusion, the preferential trade arrangements under the Lomé Convention have had limited success in generating export growth or improving the trade shares of the beneficiaries. The effectiveness of trade preferences is being questioned to a large extent. It is even argued that the cooperation under the Lomé Convention did not have any positive effect on the situation of the ACP countries at all (Asante, 1981, p. 666).

In 1997 the European Commission published the *Green Paper on relations between the European Union and the ACP countries* (CEC-DG VIII 1997c). In this paper, the Commission described the state of development in EU-ACP cooperation. It also contained a view on the areas that are still in need of development and the options for this development. In presenting these areas, the European Commission included a two-part analysis. The first part reviewed the past and the broad political, social and economic trends. The second part comprised the options for galvanizing the EU-ACP partnership. In doing so, the European Commission tried to restore the effectiveness and focus needed to cope with the challenges of the 21st century. The main conclusion of the European Commission was that the Lomé Convention belonged to an earlier era and that the relations with the ACP states were in a '*new phase*' now. According to the Commission, a new global environment was in existence and '*The colonial and post-colonial period are behind us and a more politically open international environment enables us to lay down the responsibilities of each partner less ambiguously*' (CEC-DG VIII 1997c:vi). Furthermore, the key argument put forward by the EU for ending the Lomé Convention was the

incompatibility with WTO rules. Namely, the non-reciprocal trade preferences infringed on the principle of non-discrimination established by Article 1 of GATT. This article makes clear that all preferences granted to one member have to be extended to the other members automatically. Exceptions to this principle are included in GATT as well: In order to be allowed to ‘discriminate’ against other states, the discriminatory agreement must either be reciprocal, or the agreement must be granted by a developed country to all developing countries. The agreement can also be granted to a recognised sub-group, but only in the case of a sub-group that exists of least developed countries (*enabling clause*). The Lomé Convention did not fulfil the requirements of the exceptions and its provisions were therefore considered discriminatory and incompatible with the WTO rules (Lecomte, 2001, p. 14).

The Lomé Convention was created during the post-colonial period and was, to a certain extent, based on post-colonial ‘guilt’ from the perspective of the EU. The Lomé Convention expired in the year 2000 and due to the aforementioned circumstances; renewal of its provisions was desired. The Lomé Convention was replaced by the Cotonou Partnership Agreement. On 23 June 2000, the Cotonou Partnership Agreement (CPA) was signed by the 77 African, Caribbean and Pacific (ACP) countries and the fifteen EU member states. The implementation of the Cotonou Partnership Agreement led to a better balance between the aid and trade concepts on the one hand, and the moral, political, democratic, good governance and antipoverty principles on the second hand (Venter & Neuland, 2005, p. 160).

The Cotonou Agreement contained a clear political dimension and throughout the negotiating process on the new Partnership Agreement, the EU stated clearly that it wanted an explicit joint agreement on political principles (CEC-DG VIII 1997d:11). In a scheme, the ACP-EU cooperation during the last 5 decades can be illustrated as follows:

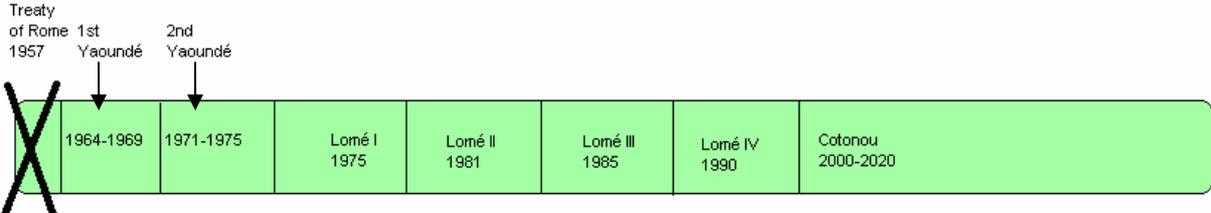


Figure 1.1 Timetable of ACP- EU Cooperation

The Cotonou Partnership Agreement has five pillars, of which the first one deals with the economic issues and trade cooperation between the EU and the ACP states. The second one comprises developmental aid. Among others, the objective of the CPA is to build a partnership between the EU and the ACP countries (article 1) and to reduce poverty (article 19). The provisions of the Cotonou Partnership Agreement will be dealt with extensively in Chapter 3.1. The Cotonou Agreement is set to last for 20 years and will be reviewed every five years. The first pillar on trade preferences states that the nonreciprocal benefits, which were previously enjoyed by the ACP states under the Lomé Convention, would continue until December 2007. This was made possible by a WTO waiver that was obtained by the EU. Therefore, these provisions, which were the cornerstone of the previous Lomé Conventions, expired in 2007. The Cotonou Agreement points out that these provisions will be replaced by joint Economic Partnership Agreements (EPAs). The Cotonou Agreement foresees in negotiations on these new trade arrangements (Venter& Neuland, 2005, p. 160-162). In 2008, EPAs, compatible with the trade rules of the World Trade Organisation (WTO), had to enter into force. However, this implementation year has been postponed and it is now the objective to complete the negotiations on EPAs in 2009. The Cotonou Agreement distinguishes between least-developed countries (LDCs) and non-least developed countries (non-LDCs). The LDCs will continue to receive non-reciprocal trade preferences. On the other hand, the non-LDCs will be offered reciprocal EPAs (Alam, 2008, p. 140-144).

An EPA aims to substantially liberalize all trade between the various ACP regions and the EU (Le Roux, 2007). However, the negotiations on an economic partnership agreement (EPA) between the Southern African Development Community (SADC) and the EU, in which the Southern African Customs Union (SACU) countries negotiate as part of SADC, have thrown SACU into crisis. The EPA replaces Europe's long-standing preferential trade arrangements with the ACP countries which are no longer legal under the World Trade Organisation (WTO) waiver (Reuters, 2007).

In terms of the EPA, the EU offered duty free, quota free market access to the Southern African countries, but did not extend that offer to South Africa. The reason for this is that a bilateral agreement on trade between South Africa and the EU was signed in 1999, entered into force in 2004, and is still applicable; the Trade Development and Cooperation Agreement (TDCA). Until now, South Africa is the

only African country to have signed a Strategic Partnership Agreement with the EU. The EU engagement through partnerships with key states is part of its external reposition which is aimed at strengthening its relations with important emerging powers in the developing world (Chevallier, 2008).

The main objective of the TDCA is to create a free-trade area between the EU and South Africa over a 12-year period. The current TDCA access to the EU market does not provide the same or better access than the Cotonou Agreement. This agreement only covers trade in goods and will coexist next to the future EPA. The 12-year period is not concluded yet. When the aforementioned duty free, quota free access will also be offered to South Africa, the creation of a free trade area will be hindered (http://www.southafrica.info/business/trade/relations/trade_europe.htm).

An interim agreement has been signed by Botswana, Lesotho and Swaziland; Namibia (on services liberalization) and South Africa opted out, claiming that the demands of the EU are too onerous. Furthermore, the interim agreement contains numerous instances of South Africa, being treated differently and unfavourably from the BLNS countries. South Africa states that these provisions could undermine regional integration. As a result, South Africa threatened to break up SACU (Draper, Khumalo & Sidiropoulos, 2007).

At the beginning of March 2008, European Union Trade Commissioner Peter Mandelson promised South Africa greater access to European markets in exchange for a return to the negotiating table to resolve a standoff over the stalled regional trade deal with the EU. Fortunately, South Africa backed off from this threat after a meeting of the SACU trade ministers in Gaborone in March 2008, but South Africa still remained outside the negotiations with the EU (Le Roux, 2008). From a European perspective, it is important to keep the discussions on the new EPA with South Africa going, since South Africa is the main African trading partner of the EU (<http://europa.eu/scadplus/leg/en/lvb/r12551.htm>). President Thabo Mbeki stated on the 6th of March 2008 that South Africa will continue engaging with the EU to ensure that new trade deals with African countries do not harm regional integration (Reuters, 2007). In the beginning of July, it became clear that the EU is prepared to negotiate with the five SACU states, as well as with Angola and Mozambique, which are part of the SADC. The European Commission stated that the concerns of South Africa and Namibia will be on the agenda. South Africa's chief trade negotiator, Xavier Carim, said that the European Commission was ready to accept a single-tariff offer for SACU

into the EU (which would have effects on the Trade Development and Cooperation Agreement (TDCA) under which South Africa currently trades with the EU) and said that the EU respects the integrity of SACU (Le Roux, 2008).

Although the parties are formally in negotiation again, the process could still be derailed, since an agreement on the EPA has not been reached yet. It is likely that more problems will arise in the near future, since the participating states and institutions all have their own, more often than not contradictory, interests. This state of affairs does not only affect the SACU countries and the EU as such, but also has a negative impact on the negotiation of EPAs, generally.

1.2 Problem Statement

The stalemate that occurred during the negotiations has been partly solved by putting the concerns of South Africa and Namibia on the agenda for the next phase of the negotiations. As a result, South Africa backed down from its threat to break up SACU and returned to the negotiation table. This deadlock has, however, not been solved entirely and there are concerns about the future of the creation of an EPA.

When states, that are asymmetrical in terms of negotiation power, negotiate on a multilateral trade agreement, then it is likely that the interests of the stronger, more dominant states will prevail over the interests of the weaker states. When these weaker states agree on a trade proposal from the stronger states without opposing certain unfavourable provisions, unfair trade agreements will most probably be the result.

Were the demands of the EU too onerous, in the sense that the EU demanded far-reaching benefits for itself by making use of its negotiation power, without providing the Southern African states with equal benefits? Or, was South Africa mainly focusing on the protection and expansion of its own foreign policy during these international negotiations, as a result of which it backed down from the negotiations and threatened to break up SACU? By taking into account the objectives and interests of the different countries, is it likely that a comparable deadlock will emerge in the near future, making the creation of a new EPA impossible?

My research aim is to explore the reasons and background, the origin and the possible future outcome of the current impasse. Firstly, in order to determine whether the demands of the EU were too onerous, the aims, objectives and position of the EU

in the negotiation process should be explored. Secondly, in order to answer the question relating to South Africa, it is important to analyse its attitude and the reason behind its attitude, the aims, objectives and position of South Africa.

Thirdly, under article 37(5) of the Cotonou Agreement, the ACP countries were expected to establish their own EPA groupings. The BLNS countries decided to negotiate an EPA together with Mozambique and Angola, which are two least developed countries. This negotiation grouping is called the SADC EPA group. Most of the members of COMESA, except for Angola, Namibia and Swaziland, decided to form the Eastern & Southern Africa (ESA) EPA group. Since March 2007, with the inclusion of South Africa in the negotiation group as an active participant, all SACU states are negotiating as part of the SADC EPA group. Due to the customs union and the common external tariffs that are applicable, the BLNS countries are *de facto* member of the TDCA between South Africa and the EU (Kruger, 2007). Since the TDCA will coexist next to the future EPA, this EPA will have to be streamlined with the TDCA, which made SACU an important regional group within the SADC EPA group. Although a SADC-EU EPA will be established eventually, in my thesis, I will specifically focus on the regional group, SACU. Therefore, I will analyse the attitudes, the backgrounds, the aims, objectives and positions of SACU as a whole and the differences between these attitudes, aims, objectives and positions of the separate countries. Where necessary, I will refer to the characteristics of the SADC EPA negotiation group, of which the SACU countries are members.

Lastly, I will focus on the consequences of this crisis and the possible outcome of the negotiations. The deadlock does not only affect the creation of an EPA, but might also have negative impacts on the relationships between the SACU and SADC countries.

I have referred to the aims and objectives of the countries and/or institutions several times. Although these two terms are always linked, it is important to make a distinction between aims and objectives. On the one hand, aims can be defined as the changes an organization or country hopes to achieve in the end. Secondly, objectives are there to achieve the aims; the objectives are the activities and measures an organization or country will undertake to bring the changes about. The objectives form a smaller part of the aim and will need to be specific, measurable, achievable, realistic and time constrained. In legal regulations, objectives are often further divided in general and specific objectives (<http://ro.uwe.ac.uk>).

1.3 Theoretical Approach and Conceptualisation

1.3.1 Theoretical Perspectives

- **1.3.1.1 Trade Strategies**

Margaret Thatcher, British Prime Minister from 1979 to 1990, outlined her views on European integration in a speech at the College of Europe in Bruges, Belgium in 1988. She dedicated part of her speech to the cooperation between the EU and least developed countries, in which she stated:

'[...] My fourth guiding principle is that Europe should not be protectionist. The expansion of the world economy requires us to continue the process of removing barriers to trade, and to do so in the multilateral negotiations in the GATT [...]. We have a responsibility to give a lead on this, a responsibility which is particularly directed towards the less developed countries. They need not only aid; more than anything they need improved trading opportunities if they are to gain the dignity of growing economic strength and independence. [...]' (Thatcher, 2003, p. 49-54).

Even Margaret Thatcher, who had the reputation of a virulent Euroskeptic because of the fact that she resisted most attempts to expand the powers of the EC institutions and tried to block the ratification of the Maastricht Treaty in 1993, acknowledged the importance of fair and free trade with least developed countries. She referred to the undesired European protectionism.

In the field of international trade, two aspects are of great importance. These aspects are the existence of barriers to trade and the medium of exchange. Although most countries in principle favour trade liberalization; protectionism is still very important in international trade. Protectionism is a barrier to trade, in which policies of countries or organizations restrict the import of goods and/or services. This protection can take the form of tariffs, currency controls, subsidies, quotas, voluntary export restraints and administrative regulations. A multilateral reduction of trade barriers would lead to open markets. From an international economic perspective this might be desirable, however, it would make national states vulnerable to foreign companies

in the sense that they might start to undermine the sovereignty of host governments by gaining influence in a country. Furthermore, national companies might be disadvantaged as a result of the competitive environment in relation to imports. Therefore, in terms of the national interest, liberalization might be undesirable since the national interest would most probably suffer from free trade. In general, in order to develop, some degree of protectionism is needed.

As became clear from the speech of Thatcher, an issue that occurs in the discussion on the desirability of protectionism is the place of developing countries in the world trading system. A very important question emerges in this field of study; 'Will international trade in a free trade area promote development or is development better achieved behind protectionist barriers?' In general, developing countries have limited bargaining power in international trade negotiations. As a result, developing countries form coalition or negotiation boards in order to be able to negotiate as a stronger body, for example the ACP-countries (Alam, 2008).

In answering this question, a distinction should be made between manufactured products and agricultural products. As becomes clear in table 1.2, the share of GDP in agriculture in developing countries is higher than the share in developed countries.

Table 1.2 GDP Composition by agricultural sector 2008 (%)

Country/ Regional Group	Share of GDP in agriculture	Country/ Regional Group	Share of GDP in agriculture
Benin	37,3	Canada	2,2
Congo, Democratic Rep.	51,2	EU	2,1
Central African Republic	51,8	France	2,2
Eastern Africa	31,2	Germany	1,0
Ethiopia	47,5	Ireland	2,4
Lesotho	16,2	Japan	1,4
Liberia	76,9	Netherlands, the	2,3
SADC	19,8	Singapore	0
Sierra Leone	47,2	United Kingdom	0,9
Somalia	65	United States	0,9

Source: UNCTAD secretariat computations based on UNDESA, Statistics Division.

(<http://stats.unctad.org/Handbook/TableViewer/tableView.aspx>)

The developed and industrialized countries have welcomed the liberalization in manufactured products. However, they have been reluctant with regard to the

liberalization of agricultural products, which has a negative impact on developing countries. Developed countries still implement discriminatory policies in the field of agriculture. Protection of the domestic product will lead to excess domestic production, which will eventually result in lower world prices. When the world price for an agricultural product is lower, the incomes of the producers in the developing countries, that are dependent on the export of their products, will decline. As shown in table 1.2, the share of GDP per sector in developing countries is focused on the agricultural sector. A disadvantaged position in the agricultural sector in their relation to developed countries will have a negative effect on international trade between developing and developed countries.

During the Doha negotiations of the World Trade Organization (WTO), agriculture is a key issue. Unfortunately, disagreements emerged in the field of subsidies and other forms of protectionism and in the end no compromise was reached (O'Brien & Williams, 2007, p. 137-173).

According to some authors, economic growth is highly dependent on international trade. The merit of free trade was introduced by Adam Smith in his work *The Wealth of Nations* more than two centuries ago. Alam points out that trade growth increases the stock of human capital. He argues that a genuinely open and fair international trading system is a fundamental economic instrument for developing countries to increase their standards of living. On the other hand, it can be argued whether economic growth is dependent on international trade. The extent to which countries are dependent on international trade depends on many factors, such as population and natural resources. Rich and small countries with few natural resources but large populations are generally the most dependent on international trade (Alam, 2008).

In this context, the work of Bhagwati is of importance. Bhagwati introduced the term '*the tyranny of the missing alternative*' and hereby explained that free trade is the target of a growing anticapitalist and antiglobalization agitation among the young and of human rights activists and environmentalists. However, Bhagwati is of the opinion that capitalism is able to destroy privilege and create economic opportunities. The fact that free trade is being criticised and economists that are in favour of free trade were unable to react on this criticism in a positive way, made the concept of free trade even more undesirable. Next to that, free trade is losing popularity because every substantial international crisis that emerges in the international trade

environment is an argument against freer trade. According to Bhagwati, the key element that causes the crisis for free trade is the market failure, or as Bhagwati characterized it, the presence of a distortion. A distortion occurs when a market does not work well, or is absent or incomplete. A distortion is an economic scenario that might occur when a governing body intervenes in a given market. This distortion can create market failures in a country. In an open economy that works well, free trade can be seen as the optimal solution to growth. However, if a market does not work well and lacks the possibility of growing, free trade should not be seen as the best policy. So, in the presence of a distortion, free trade could not be declared the necessarily best policy, especially not for a small country. On the other hand, Bhagwati argues that if a suitable other policy can be used to offset the distortion; this country can adhere to free trade once again. As a result of his analysis in cooperation with Ramaswami, he states that *'free trade could be maintained as the best policy when used in conjunction with a domestic policy addressed to the domestic distortion'*. This domestic distortion should be addressed by a specific domestic policy that has the objective to maximize the gains from trade. According to Bhagwati, this objective can only be achieved by free trade (Bhagwati 2002, p. 3-28).

Bhagwati admits that free trade does not imply that a country will have a higher growth rate as well. Namely, in many economic models free trade might even reduce the growth rate, or leave it unaffected. For example, a Harrod-Domar model on economic growth rate or output (Y) depends on three variables. The first variable is the saving ratio (s); the second variable the marginal product of capital ($\frac{dY}{dK}$); and the third variable is the depreciation rate (δ). In this model, the economic growth rate can be measured in the following way:

$$s \frac{dY}{dK} - \delta = Y$$

The saving ratio times the marginal product of capital, minus the depreciation rate equals the economic growth rate. So if the saving ratio is 0,21, the marginal product of capital is 0,3 and the depreciation rate is 0,012 the growth rate will be $\{(0,21)(0,3)\} - 0,012 = 0,051$, which is equal to 5,1 per cent. In the Harrod-Domar model, economic growth rate can be increased in three ways: by increasing the saving ratio (s); by decreasing the depreciation rate (δ); or by increasing the marginal product of capital ($\frac{dY}{dK}$). The other way around, the economic growth rate will

decrease by decreasing the saving ratio; by increasing the depreciation rate; or by decreasing the marginal product of capital. This model ignores all the non-capital determinants such as labour input and technology. However, these two factors are considered to be very important in determining the growth rate of an economy. The last few decades, technology has become a significant development factor and labour became a binding constraint as a result of free trade. Since non-capital determinants are not included in the Harrod-Domar model, free trade seems to decrease the economic growth rate. Namely, measured by the Harrod-Domar model, the economic growth rate might decrease as a result of free trade, since, without taking into account the non-capital determinants, the saving ratio will decrease (Gupta, 2004). To illustrate this, if the saving ratio of the aforementioned example is 0,15 instead of 0,21, the economic growth rate will be 3,3 per cent ($\{(0,15)(0,3)\} - 0,012 = 0,033$).

Bhagwati states that the several models that are in existence, of which the Harrod-Domar model in one, can lead in different directions. In order to discover the real growth, the policy economist must try to choose the model that is most appropriate in the specific circumstances. He argues that economists must choose the approaches that generate favourable outcomes for growth when trade is liberalized (Bhagwati, 2002, p. 82-89).

In this thesis, I focus on the negotiations to establish an EPA between the EU and SACU, as part of SADC. In line with my subject, it is essential to consider the effects of free trade in poor countries. Some poor countries have frequently criticised free trade, since, in their opinion, it only accentuates poverty. However, a shift from autarky towards closer integration into the world economy is able to produce better results for the reduction of poverty. For example, India produced an average annual growth of 3.5 per cent as a result of autarky for over a quarter of a century until the early 1980s. During this period, poverty and unemployment were present to a large extent. Since the introduction of free trade in India during the 1980s, the growth rates increased to 6.5 per cent annually and the amount of poverty in the country reduced. The most important aspect of the introduction of free trade in a poor country is the speed of introduction. An optimal speed is required and political and economic factors determine this speed. During this introduction, drawbacks will emerge occasionally and these drawbacks accentuate poverty. Consequently, an adjustment assistance program will be needed to deal with the adverse effects. In relation to the

introduction of free trade in poor countries, it is problematic that these countries are often unable to produce such programs, since they require budgetary support (Bhagwati, 2002, p. 89-90).

Accordingly, the Dutch Consul General of Gambia, Plusquin, admits that free trade might indeed function as a good method to achieve economic growth in developing countries. However, this growth will only be achieved if efficiency in the field of communication and production is more developed, which, more often than not, lacks in the developing countries (Interview Plusquin, **Appendix 1**).

To conclude, the introduction of free trade in poor countries is able to produce economic growth. However, the introduction of free trade in these countries is not without risks. According to Bhagwati, these risks could be reduced by making use of an optimal speed of introduction and an assistance program to deal with the adverse effects of free trade. On the other hand, Plusquin focuses on the efficiency of communication and production within the developing countries in order to reduce the risks related to the introduction of free trade. Both academics admit that the introduction of free trade is never without risks. Management and budget, needed to reduce these risks, are unfortunately most of the times not present in poor countries. A possibility to introduce free trade in a poor country that does not have the required management and budget needed to reduce the related risks, is by making use of the experiences and budget of developed countries or unions, such as the EU.

- 1.3.1.2 Theoretical Perspectives

South Africa decided to remain outside the negotiations between SACU, negotiating as part of SADC EPA group, and the EU. A negotiations deadlock, for example the one that emerged during the negotiations on this EPA, can be analysed according to a number of different explanations. It is important to analyse this deadlock in order to understand its origin and to be able to forecast and react on possible future developments. By analysing the deadlock in different ways, we will be able to look at the deadlock from several perspectives and we might be able to understand the states' strategies. The position of South Africa can be explained by using the economic nationalist or liberal perspective of trade dynamics. With regard to my research questions, I will specifically focus on state-centric behaviour of the actors during the negotiations. The EU consists of 27 separate member states. Although all

these countries have their own, sometimes contradictory, interests in the content and the establishment of an EPA; I will consider the EU as an actor itself. I am aware of the fact that other actors than states and unions, the sub-state actors such as multinational companies and non-governmental organisations, influence the establishment of the EPA. In my thesis, I assume that the interests involved, and the actual influence of sub-state actors, are incorporated in the negotiation positions of the states or unions. The critical perspective will be left out of my analysis, since this perspective considers other interests than those of states or individuals to be the most important aspects of the global political economy.

- 1.3.1.2.1 Economic Nationalism

Economic nationalists or mercantilists consider the state to be the main actor in a global political economy. The idea of mercantilism was the dominant school of thoughts during the colonial period throughout the 16th to the 18th century (Keynes, 1936). According to mercantilists of this period, governments had to play an important role in encouraging exports and discouraging imports by making use of tariffs. In an ideal economy, the export rate should be higher than the import rate, resulting in a positive balance of trade. However, the mercantilist thought failed to include the notion of comparative advantage and failed to understand the benefits of trade (Cannan, 1904, IV.8.1).

Economic nationalists view the state as the primary actor both in domestic and international affairs. A more powerful state can be built by the creation of economic policies by the government. Therefore, economic nationalists view economic actors as subordinate or subject to the political authority and its goals. International economic relations are characterized by the pursuit of power and are perceived in zero-sum terms (O'Brien & Williams, 2007, p. 14-17). This means that each state must protect its own interests at the expense of others; the profit of one state inevitably leads to the loss of another state (Goldstein & Pevehouse, 2006, p. 298). The analytic core of economic nationalism recognises the importance of power in inter-state relations (Gilpin, 2001, p. 14). The powerful negotiation tactic that the EU used during the negotiations on an EPA can be explained in the light of this perspective. The inter-state relations between the European countries and the Southern African countries are, to a large extent, influenced by power. Namely, the

EU as an actor, consisting of developed countries, is able to propose far-reaching provisions that are beneficial for the EU itself. The developing Southern African countries possess less persuasion or negotiation power, since they are highly dependent on the future EPA with the EU. In this sense, power determines the inter-state relations and the content of the future EPA.

From an economic nationalist perspective, protective policies, such as barriers to the flow of services, goods and capital, are justified to build a powerful state. This justification is in line with the basic idea of the economic nationalist perspective that each state should protect its own interests. Consequently, this perspective leads to market relations that are influenced and mainly created by political institutions (Kamminga, 2007). To illustrate this; the government of Namibia initialled the interim EPA and hereby signed the provision on duty free, quota free access. As a result, Namibian companies will be provided greater access to the EU.

The economic nationalists consider the state to be the main actor in the global political economy. In general, economic nationalist policies lead to conflict since all states only act in their own interest. Such a conflict emerged in the current trade issue as a consequence of South Africa's aim to meet its own national interest.

Economic nationalism differs from neorealism in relation to its views on international affairs. Where economic nationalists consider the state to be the primary actor; neorealists argue that the international structure is a force in itself and constraints state behaviour. Neorealism was outlined by Kenneth Waltz in his book '*Theory of International Politics*' of 1979. According to Waltz, the material capacity that a state possesses, determines its political behaviour. The capabilities of a state define a state's position in the international system. Consequently, the international structure determines the outcome, instead of the individual states (Gilpin, 2001). However, states always act to maximize their power relative to other states in order to improve their chances of survival. As a consequence, states might hesitate to engage in cooperation if the benefits arising from that cooperation may be distributed unevenly among the other participating states (Bauer & Taylor, 2005, p. 8-11). From a neorealist approach, the dominant position of South Africa can be explained as follows. South Africa has indeed increasingly displayed a neorealist regional economic policy. Namely, it uses its economic power to address domestic problems at the expense of the other participating SACU member states. The negotiations on the new EPAs were not satisfactory for South Africa itself, regardless of the possible

benefits for the BLNS countries. As a result, South Africa opted out of the negotiations and, by even threatening to break up the SACU, left the remaining SACU countries in crisis.

- 1.3.1.2.2 Liberalism

“If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.”

Adam Smith, 1776

A liberal would argue that the sovereignty of the individual is more important than the value of the nation. The liberal theory is based on the positive-sum idea, where every state benefits from trade. Profits emerge as a result of interaction between diverse individuals that are pursuing their own ends. The global political economy is viewed as essentially cooperative by liberalists. The focus on cooperation leads to a view of the world systems as one of interdependence (O’Brien & Williams, 2007: 18-21).

In his book *‘On the Principles of Political Economy and Taxation’* of 1817, Ricardo described the theory of comparative advantages. This theory is considered to be one of the key concepts of international trade and is seen as a motivation for the liberal approach to free trade. According to Ricardo’s theory, countries are assumed to differ only in their productive capacities. As a result of the focus on productivity, the theory of comparative advantages is often confused with the concept of absolute advantages. However, there is a distinction between these two concepts. The concept of absolute advantage covers cases of international trade where there is a clear advantage for a country. The concept of comparative advantage covers cases that are less obviously advantageous for countries (Suranovic, 2007). When Germany has a higher productivity in coal compared to Australia, while Australia has a higher productivity in wheat compared to Germany; Germany would have an absolute advantage in coal production and Australia in wheat production. As a result, Germany will concentrate on coal production and Australia on the production of wheat. The total combined output of coal and wheat would rise, because the resources would shift from lower productivity industries to higher productivity industries. Consequently, both Germany and Australia would end up with more coal

and wheat than before. So, in this situation, both countries would gain from international trade. However, there are situations where the advantages are difficult to determine. For example, what would happen if Germany produces more coal and more wheat than Australia?

The answer to this question can be found in the theory of comparative advantage. Ricardo demonstrated that trade with a country that is technologically superior in more than one good, could still be advantageous for other countries. He argued that a comparative advantage is present for the products of a country if this country produces 'most-best' in comparison with other countries. This comparative advantage is even present, if the product is produced less productively in relation to another country. For example, if Germany produces ten times the amount of coal (10x) and twice the amount of wheat (2x) than Australia is producing, Germany is clearly most-best at producing coal. If at the same time, Australia is $\frac{1}{2}x$ as productive in wheat and $\frac{1}{4}x$ as productive in coal, the most-best product of Australia will be wheat, since $\frac{1}{2}$ is more than $\frac{1}{4}$. Hence, Australia will have a comparative advantage in wheat in comparison with Germany. The fact that Australia is not able to produce wheat as effectively as Germany, does not affect the determination of comparative advantages.

By introducing the theory of comparative advantages, Ricardo demonstrated that both countries can benefit from international trade because productivity is not the only determinant of economic advantage. He argued that industry advantage is the result of a combination of productivity and average wages. Namely, if a country has lower productivity in most domestic industries, the country will also have lower average wages. If there would be no trade between Germany and Australia, wage differences will occur. Most-best productivity in Australia will exceed the average wage, in order to make wheat production profitable in comparison with Germany. To illustrate this, wage differences between Germany and Australia will fall in the range between 10x and 2x. As a result, the wages in Germany will most probably be 5 times higher than in Australia. So, if the wages in Germany are 1x; the wages in Australia will be $\frac{1}{5}x$. Consequently, the productivity of the highest productivity industry, wheat ($\frac{1}{2}x$ as productive), will sufficiently exceed the average wage ($\frac{1}{5}$ as high) to make the wheat production profitable in comparison with Germany. Germany is most-best in producing coal (10x). It will be profitable for Germany to export this coal to Australia, since its wages for producing are only 5x higher. On the other hand,

it will not be profitable for Germany to export wheat to Australia since its productivity is only 2x higher and therefore not sufficient to compensate for the 5x higher wages. As a result, Germany will most probably import cheaper wheat from Australia. Australia's wage advantage of 1/5x will be overwhelmed by its productivity disadvantage of 10x in the coal industry. Therefore, despite the lower wages, coal production will not be profitable for Australia and consequently, Australia will import coal from Germany.

With its model, Ricardo showed that international trade is able to generate higher living standards in the world and produce greater output, without raising the quantity of resources. As a result of free trade, economic efficiency will increase both nationally and internationally. The theory only shows that countries can benefit from increased output and international trade; the theory does not show that the countries will indeed gain. The theory has limitations as well, since it is a simplification compared to the real international trading world and not all circumstances possible in international trade are incorporated in the model (Suranovic, 2007).

International interdependence and the idea that every state benefits from trade form the basis of the liberal perspective. The theory of comparative advantage functions as a motivation for the liberal approach to free trade. As mentioned above, Southern Africa is largely dependent on Europe in terms of trade. As the world economy develops, states will become increasingly interdependent.

For example, the states of the European Union are interdependent in numerous fields. The European Union itself even finds its roots in the European Coal and Steel Community that was created by Belgium, France, Italy, Luxembourg, The Netherlands and West-Germany in 1952 in order to unite Europe to a certain extent after World War II. By uniting the coal and steel economies (the two economies that are essential to engage in war), interdependence emerged and a new war in Europe became nearly impossible.

Economic interdependence is part of the process of globalization and has given rise to a great complexity of connections between societies. These connections influence all aspects of life, including wealth creation and distribution, culture, technology and the environment (White, Little & Smith, 2005, p. 57). In relation to the current trade issue, economic interdependence affects not only the relationship between Southern Africa and the EU, but also affects the relationships between the SACU countries and hereby its citizens.

- 1.3.1.3 Theoretical Approach

In order to minimize their vulnerability and dependence on other states (liberalistic approach) while maximizing their own wealth (economic nationalist approach), states develop economic strategies. One such a strategy is autarky, in which a state avoids to become dependent on other states by trying to produce everything it needs by itself. Another strategy that could be followed is the abovementioned protectionist strategy – protection of domestic industries from international competition. Policies connected to protectionism are all contrary to the liberalistic approach, since they seek to distort free markets to gain an advantage for the state (O'Brien & Williams, 2007).

In writing my thesis, I will use the economic nationalist perspective of trade dynamics to focus on the actors involved in the negotiations. Although free trade might be desirable from a liberal perspective, the liberal perspective will not be able to assist me wholly in explaining the difficult process towards the establishment of an EPA. Free trade might indeed be desirable from a certain point of view, but free trade between the EU and SADC will most probably only lead to more poverty at this moment. The economic nationalist perspective is more appropriate to assist me in the subject of my study, since, in this view, the states are considered to be the main actors in international affairs. As a result, states will act in their own interest, which is exactly what happened during the negotiations on the establishment of an EPA.

1.4 Research Methodology

This ethnographic and, to a lesser extent, comparative study is primarily qualitative in nature, in the sense that it is based on a literature review applied to this specific case. Therefore, the analysis of data (books, journal articles, news articles, etc.) is the basis of this thesis. I focus on the SACU countries, the EU, the WTO, the Cotonou Agreement, the SADC, and EPAs and developing countries in general.

Furthermore, reference is made to the debates on the possible neo-imperialist behaviour of the EU in Africa and to the ways of doing trade in a global political economy. Views on the question as to whether economic growth is highly dependent on trade or not, are given.

On the basis of interviews, opinions of knowledgeable people in the field of this international trade issue are presented as well. I conducted a telephone interview with Bert Plusquin, Consul General of Gambia for the Dutch Embassy, on the 28th of September 2008 (**Appendix 1**). On the 25th of September 2008, a nonschedule-structured interview was held with Paul Kruger, who is working for the Trade Law Centre Southern Africa and is specialized in EPAs (**Appendix 2**). Lastly, I conducted a nonschedule-structured interview with Denise Prévost on the 3rd of September 2008. Prévost is working at the Maastricht University for the Institute for Globalisation and International Regulation (**Appendix 3**).

1.5 Outline

In this thesis I focus on a current international trade issue; the creation of a new EPA between the EU and SADC. In this part of the thesis I have, so far, introduced the negotiations deadlock, the parties to the negotiations and the previous conventions and agreements. Furthermore, I have considered several trade strategies and explanations of trade dynamics and described the difference between aims and objectives.

In Chapter 2, I discuss the policies, objectives, positions and roles of governments of the separate SACU countries and the EU as an institution. Where relevant, I refer to the overlapping relationship between SACU and SADC. This discussion will take the form of in-depth analysis of such policies and positions.

In Chapter 3, I consider the current trade issue that emerged during the negotiations between the EU and SADC in specific. In doing so, I discuss the provisions and objectives of the Cotonou Partnership Agreement and the positions of the different countries and institutions involved. Furthermore, I focus on the demands expressed by the actors, both orally and in writing, during the negotiations towards the establishment of an EPA. I specifically deal with the demands which led to the negotiations deadlock.

I focus on potential resolutions, if any, of the deadlock in Chapter 4. Consequently, I analyse comparable cases, and distinguish between the possible resolutions that were applied in these cases. I focus specifically on the consequences of the interim EPA on the SACU countries. These consequences are drawn in a cost-benefit analysis of the interests of the actors involved. Lastly, I apply the resolutions

to the current trade issue in order to determine whether an adequate and potential resolution is available.

Chapter 5 contains the conclusions of my thesis. Starting with a general background on and overview of the institutions and countries and their positions and objectives, I continue with the explanation of the current deadlock. Where relevant, I refer to the different perspectives of trade dynamics in order to present the behaviour of the actors in a more comprehensible way. To conclude, I present potential resolutions, based on a comprehensive analysis of former comparable cases.

Chapter 2 Actors and Dynamics

2.1 Southern African Customs Union

The Southern African region has three principal organizations that focus on regional economic integration: the Southern African Customs Union (SACU), the Southern African Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA).

2.1.1 Historical Overview

SACU was established in 1910 in order to develop cooperation on an economic level through regional coordination of trade. Its narrow membership consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. The 1910 Agreement was in effect until 1969 and its aim was to create:

- Free movement of SACU manufactured products within SACU without any barriers or other restrictions;
- A common external tariff on all goods imported into the SACU;
- A common pool of customs duties as per the total volume of external trade;
- A revenue-sharing formula (RSF) for the distribution of customs and exercise revenues collected by SACU (www.sacu.int).

SACU was created during the colonial era, which led to the fact that SACU favoured South Africa and created a large dependency on this country. During Apartheid, South Africa was the only administrator of the revenue pool of SACU. South Africa was also the sole country to set SACU import duties and to set excise policies (Bauer & Taylor, 2005: 329-333). As a result, an imbalanced union emerged with an inequitable revenue sharing and an unfair management and decision-making process. Consequently, the British High Commission Territories (HCTs) constantly called for revision of the 1910 Agreement. Eventually, negotiations to change this Agreement started in the early 1960s and resulted in the 1969 Agreement.

The two main changes that were provided by the 1969 Agreement were:

- The inclusion of excise duties in the revenue pool;

- A multiplier in the revenue sharing formula that enhanced the revenues of Botswana, Lesotho and Swaziland (BLS) annually by 42%. (Note that at this time, South West Africa (Namibia) was a *de facto* member to the Agreements since it was administered as part of South Africa).

Although the changes that were made, led to a less imbalanced union, South Africa was still the sole decision-maker over customs and excise policies. South African manufacturers benefited from this position in comparison with the BLS manufacturers, also because of the fact that South Africa retained open access to the BLS countries, while the high common tariff raised barriers for Southern African neighbours' exports to SACU (www.sacu.int).

As a result of the abolition of Apartheid in South Africa and the independence of Namibia in 1990, negotiations on a new SACU Agreement started in November 1994, resulting in the 2002 Agreement. The key issues of the BLNS countries were addressed in this new Agreement:

- A joint decision making process was included as a result of the establishment of several independent institutions designed to enhance equal participation by member states.
- The Revenue Sharing Formula was revised in order to include a customs excise and development component.
- External trade; during the negotiations on the new Agreement, the BLNS countries argued that South Africa entered into preferential agreements with other countries without organizing any benefits for the other SACU countries. The 2002 Agreement stated that there was a need to develop strategies that enhance the political, economic, social and cultural integration of the union, without jeopardizing the economies of smaller states (www.sacu.int).

In conclusion, SACU was created in the colonial era and even decades later; this historical background was still present in the processes. The imbalances were subsequently addressed in renegotiations in 1969 and in the 1990s, resulting in the present 2002 Agreement. This customs union has led to free movement of goods within the SACU countries, except for agricultural products. In addition, the member states have a common external tariff.

2.1.2 Institutional Structure of SACU

Article 7 of the 2002 Agreement determines which institutions are in existence within SACU. It states that the Council of Ministers, the Customs Union Commission, the Secretariat, the Tariff Board, the Technical Liaison Committees, and an ad hoc tribunal are established. The institutions that are most important for the creation of an EPA are described below.

Council of Ministers (Article 8 2002 SACU Agreement)	
Members	At least one minister from each member state.
Powers	<ul style="list-style-type: none">• The Supreme decision making authority on SACU matters.• Supervision of implementation of policies of SACU.• Supervision of Customs Union Commission.• Appoint the Executive Secretary and the members of the Tariff Board.• Approve the budgets, custom tariffs, rebates, refunds or drawbacks and trade related remedies• Authority to create additional committees and institutions.
Further information	The Council shall meet at least once in each quarter of a financial year.

Customs Union Commission (Article 9 2002 SACU Agreement)	
Members	Senior officials at the level of Permanent Secretaries, Directors-General, Principal Secretaries from each member state.
Powers	<ul style="list-style-type: none">• Responsible for the implementation of the 2002 Agreement.• Responsible for the implementation of the decisions of the Council.• Responsible for the management of the Common Revenue Pool.• Supervision of the Secretariat.
Further information	The Commission shall meet at least once in each quarter of a financial year or at request of a member state.

Secretariat (Article 10 2002 SACU Agreement)	
Powers	<ul style="list-style-type: none">• Responsible for the day-to-day administration of SACU.• Responsible for the coordination monitoring of the implementation of the decisions of the Council and Commission.

- Arrange meetings, disseminate information, and keep minutes of meetings of SACU Institutions.
- Assist in harmonization of national policies and strategies.
- Keep records of all transactions into and out of Common Revenue Pool.
- **Coordinates and assists in the negotiation of trade agreements with third parties.**
- Depository of all records of SACU.

Technical Liaison Committees (Article 12 2002 SACU Agreement)

Powers	<ul style="list-style-type: none"> • These specialized committees assist the Commission in its work and cover specific sectors.
Further information	<p>Currently, there are five committees:</p> <ol style="list-style-type: none"> 1. Agricultural Liaison Committee 2. Customs Technical Liaison Committee 3. Trade and Industry Liaison Committee 4. Transport Liaison Committee 5. Finance Liaison Committee

Especially these institutions are important for the creation of an EPA. There are, however, more institutions that are part of SACU. In a scheme, the institutional structure of SACU can be shown as follows:

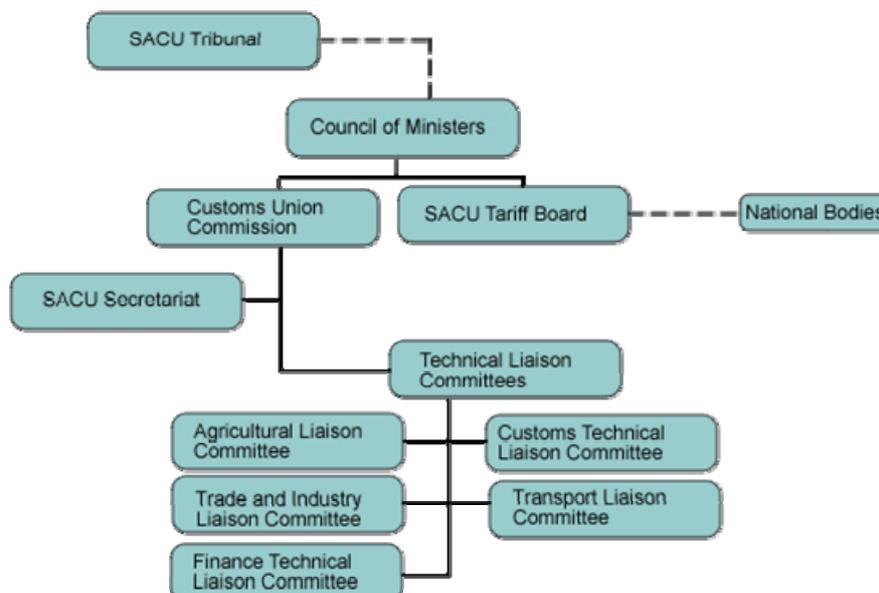


Figure 2.1 Institutional Structure of SACU (Source: www.sacu.int)

2.1.3 Objectives

In order to understand the position of SACU as a whole, the objectives of this regional organization must be explored. Article 2 of the 2002 SACU Agreement states that the objectives of the Agreement are:

- (a) to facilitate the cross-border movement of goods between the territories of the Member States;*
- (b) to create effective, transparent and democratic institutions which will ensure equitable trade benefits to Member States;*
- (c) to promote conditions of fair competition in the Common Customs Area;*
- (d) to substantially increase investment opportunities in the Common Customs Area;*
- (e) to enhance the economic development, diversification, industrialization and competitiveness of Member States;*
- (f) to promote the integration of Member States into the global economy through enhanced trade and investment;*
- (g) to facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by Member States; and*
- (h) to facilitate the development of common policies and strategies.*

As becomes clear from these objectives, sub 'f' focuses on international trade negotiations. It provides for the promotion of the integration of member states into the global economy through enhanced trade and investment. This objective forms a challenge, in the sense that, within the SACU region, economic diversity exists. In addition, uneven development is present within the region. The key response to this challenge is to identify common interests on global trade and regional issues. Consequently, the goal is to achieve benefits for all the SACU countries. In its global trade strategy, SACU tries to achieve economic growth on the basis of export and investment expansion.

The obligations for the SACU countries under the global trade function are included in part 5 of the 2002 SACU Agreement, more specifically article 31 on Trade Relations with Third Parties. This article states that a Common Negotiating Mechanism (CNM) shall be established for the purpose of undertaking negotiations with third parties. Secondly, no member state is allowed to negotiate and enter into

new preferential trade agreements with third parties or amend existing agreements without the consent of other member states. As a result, the SACU Council took an in-principle decision that all trade negotiations with third parties must be conducted with SACU as a whole (www.sacu.int).

2.1.4 Member States

The Southern African Customs Union consists of five member states, between which numerous differences exist. As mentioned before, the disparities between the SACU countries could be attributed to several factors, from population size to location and from decades of peace to the availability of natural resources.

In order to show these regional differences, I have included the, in my opinion, most important characteristics of the five countries, that determine the state of welfare and international attractiveness of the countries.

Country	Botswana	Lesotho	Namibia	South Africa	Swaziland
Land area (sq. km)	585,370	30,355	825,418	1,219,912	17,203
Coastline (km)	0	0	1,572	2,798	0
Population	1,842,323	2,128,180	2,088,669	43,786,115	1,128,814
HIV/AIDS adult prevalence rate	37,3 % (2003 est.)	28,9 % (2003 est.)	21,3 % (2003 est.)	21,5 % (2003 est.)	38,8 % (2003 est.)
GDP (purchasing power parity)	\$25.68 billion	\$ 3.092 billion	\$10.72 billion	\$467.1 billion	\$5,626 billion
GDP – per capita (PPP)	\$16.400 (2007 est.)	\$1.300 (2007 est.)	\$5.200 (2007 est.)	\$9.800 (2007 est.)	\$2.936 (2007 est.)
Labour Force	288,400 (2004 est.)	838,000 (2000 est.)	660,000 (2007 est.)	20.49 million (2007 est.)	300,000 (2006 est.)
Unemployment Rate	7.5 % (2007 est.)	45 % (2002 est.)	5.2 % (2007 est.)	24.3 % (2007 est.)	40 % (2006 est.)
Exports (billion f.o.b.)	\$5.025	\$853	\$2.916	\$76.27	\$1.926
Export partners	- EFTA 87% - SACU 7% - Zimbabwe 4%	- US 79.8% - Belgium 14.5% - Canada 1.7%	- South Africa 33,4% - US 4%	- EU 19.8% - US 12.1% - Japan 10.1% - China 8.6%	- South Africa 59.7% - EU 8.8% - US 8.8% - Mozambique 6.2%

Table 2.1 Characteristics of SACU countries (Source: The World Factbook. 2008. (www.cia.gov))

As becomes clear from this table, the countries differ in size and location. Since South Africa is the biggest country in terms of population size, it also has a labour force of almost 70 times larger than Botswana's labour force. South Africa's land area is 70 times larger than the land area of Swaziland. Furthermore, South Africa and Namibia are the only two countries that have direct access to the sea, which leads to a more advantageous position in terms of trade in comparison with the landlocked countries. South Africa is by far the largest export country of the region and its main export partner is the European Union. While exploring the economic and social differences between the countries, it becomes apparent that it is difficult to reach common agreements on international trade issues. In order to understand the current negotiation deadlock within SACU, it is important to gain knowledge on the specific countries and their level of development.

- 2.1.4.1 Botswana

Botswana has been independent from Britain since 1966. Since its independence, Botswana has been a stable, multiparty democracy in which one party dominates. Botswana is landlocked and has a harsh arid climate and a small population. In 1966, Botswana was one of the poorest countries in the world. It is designated an 'upper middle income country' since it had a per capita gross national income of U.S. \$3.630 in 2001.

Most of this economic growth can be attributed to the discovery and exploitation of diamonds after independence. By 2003, Botswana was the largest producer of diamonds by value in the world. Transparency International has rated Botswana the least-corrupt country in Africa and Botswana was ranked the most competitive economy in Africa by the World Economic Forum. By the 1980s, Botswana had the highest economic growth rate in the world. The economic growth has led to investment in infrastructure and human resource base. The roads are of high quality and free universal education is provided for all. Unfortunately, the country struggles with the second highest HIV/AIDS infection rate of any country in the world. Secondly, a challenge can be found in the need to further diversify its economy. The trade in diamonds is durable in the sense that the forecast is that Botswana will run out of diamonds around the year 2040, and therefore supporting economies are needed. Furthermore, challenges are found in the geographic position of Botswana.

It borders Namibia, Zimbabwe and South Africa and closely borders Angola. Some of these countries are deeply troubled in terms of economy, war and refugees. The current Zimbabwe crisis has obvious spillover effects on Botswana (Bauer & Taylor, 2005, p. 81-107).

- 2.1.4.2 Lesotho

For sixty-three years, Lesotho, Botswana and Swaziland were ruled by the British High Commission. The three countries were subject to the same colonial policy. Lesotho became independent in 1966 after three decades of economic underdevelopment and a century of colonialism. The country's altitude ranges between 5.000 and 10.000 feet and it has three ecozones; the lowlands, the foothills and the mountains. Although the lowlands only constitute fifteen percent of the land area of Lesotho, almost 85 percent of its human population is located in these lowlands. Lesotho's resources include sugar cane, citrus fruit, cotton, forestry products, coal and asbestos.

Lesotho's history is characterized by the migration of the Basotho (Lesotho nationals) men to the South African gold mining industry. Even now, in the 21st century, it is virtually impossible to absorb all its workers domestically. In the post-1977 period, this labour seemed to be in jeopardy and uncertainty within the country increased. As a result, the government became unstable and repressive. More recently, the political history of Lesotho has been punctuated by a series of coups since 1986. The military coup overthrew the Jonathan government and subsequently, there was a coup within the military in 1991 (Harris, 1993, p. 179-193).

Since its independence, Lesotho has relied heavily on developmental aid from various international agencies. After the donor aid, the government began to receive larger loans. As a result, Lesotho became a debtor nation and is now paying a substantial amount of debt service. To illustrate this; Lesotho's percentage of debt service rose from 7.5 per cent in 1980/81 to 27 percent in 1984/85 (<http://stats.unctad.org/Handbook/TableViewer/tableView.aspx>).

- 2.1.4.3 Namibia

Namibia (formerly South-West Africa), a former German colony, was administered by South Africa following the end of World War I. Consequently, pressure was exerted on South Africa to relinquish control of the territory and grant Namibia independence. In this period, Soviet-backed Cuban troops were occupying neighbouring Angola. Therefore, by referring to security concerns, South Africa refused to change the relation with Namibia. In 1988, Cuba and Angola agreed to a withdrawal of Cuban troops as part of a regional peace settlement. The United Nations created a peacekeeping operation in the Southern African region, which, eventually led to the independence of Namibia. At independence in 1990, Namibia adopted a constitution that can be seen as one of the most liberal and democratic of the world.

Namibia is a lower-middle-income country. Especially the fishing stocks have a positive effect on the economy. Secondly, the tourism industry has seen steady growth as well. However, as became clear from table 2.1, Namibia is an immense country with a relatively small population. Therefore, Namibia will never become the African economic powerhouse, since its manpower is simply too small and foreign investment is difficult to attract. Next to that, Namibia is struggling with a HIV/AIDS crisis, which also has negative effects on the population size and impacts every facet of life in devastating ways (Mingst, 2004, p. 173-175). In its fight against HIV/AIDS, Namibia is leading the way in the sense that is providing antiretroviral drugs to pregnant women to decrease the chance of mother-to-child transmission (Bauer & Taylor, 2005, p. 234).

It is the goal of the government to achieve a sustainable economic growth rate, as well as a real increase in per capita incomes. Just like Botswana, Namibia focuses on the diversification of its economy. Fishing, mining and commercial agriculture form the foundation of the economy.

Inequality is still present in Namibia. For example, less than 5% of the population is white, while about 37% of Namibia's land area is owned by white people. This inequality remains a social issue in Namibia and attempts for redistribution are made. However, this redistribution is hampered by the high prices of commercial farms and the lack of government funds to purchase them. Since June 2003, new legislation makes it possible for the government to purchase land under the market price (Bauer & Taylor, 2005, p. 205-236).

- 2.1.4.4 South Africa

The first European - South African connection dates back to 1652, when the Dutch Vereenigde Oostindische Compagnie (VOC) used the Western Cape Region as a rest and refill station for its trade in the Indian Ocean. The area appeared to attract Dutch and French Huguenot farmers and a colony was soon established. The British arrived in the Cape as well, and the military and commercial capacity of Britain dominated the Dutch hegemony. From this moment onwards, the Western influence grew to a permanent oppression of the African population that eventually led to the cruel Apartheid regime. Due to this regime, South Africa's economy was faced with international pressure. Clandestine murder and corruption were present all over the state and the government lost control. South Africa became a weakened state and changes were needed. The first all-race election in 1994 changed the former domination of the white minority over the black majority. The African National Congress (ANC) won the elections and became the leader of a new Government of African Unity (GAU). After the elections, South Africa, from an economic and political perspective, immediately claimed a leadership position on the African continent. Unfortunately, South Africa faces a lot of challenges, ranging from high crime levels to HIV/AIDS. The crime level is rated as one of the highest and most violent of the world. HIV/AIDS is present in high amounts throughout the whole country; South Africa has the highest amount of infected nationals anywhere in the world (Bauer & Taylor, 2005, p. 237-276).

The Apartheid regime and the crime and HIV/AIDS rates did not prevent South Africa from being the most diversified and strongest economy on the African continent. Unfortunately, there is still extensive inequality in the field of landownership, industry and the distribution of wealth. It might seem positive that the economy is growing at an average of more or less 3 percent per year; however, analysts have stated that a growth of 6 to 7 percent will be needed to prevent unemployment and inequality (Mattes, 2002).

- 2.1.4.5 Swaziland

Swaziland, which could be seen as a peripheral country, received its earliest stimuli from South Africa. Some decades later, it experienced direct core development from Britain. Swaziland became independent in 1968; two years after Botswana and Lesotho. The post-independence government focused on the repurchase of land and the localisation of the bureaucracy and lower-level management in the private sector. Its economy can be delineated in different periods. The period 1910 – 1945 was characterized by mine labour recruitment, the development of the plantation economy and land alienation; 1946 – 1977, by local industrialisation in mining and manufacturing; and 1978 – present, by an economic recession that was caused by the incorporation into the global economy, mine labour recruitment restrictions and labour surplus. The quota on Swazi labour outflow to the gold mines in 1977 led to a decrease in opportunities for mining employment. As a result, male workers migrated to the urban areas of the country where unemployment was already high. Because the unemployment rate was high, employers did not adhere to the working conditions. Therefore, the working conditions were no better than the worst working conditions in South Africa during that period.

The early 1980s could be characterized by a fast-growing tourism sector. The hotel, manufacturing, and restaurant sectors became one of the most important parts of the private and public sectors (Harris, 1993, p. 55-81). Today, the sugar industry of Swaziland forms a significant part of its political economy. Since independence, Swaziland is mainly dependent on the production of sugar, which makes the country vulnerable in the sense that it does not have a diversified economy. In spite of its relatively small size, the sugar production is the country's largest employer with a labour force of 60.000 in the late 1990s. South Africa is the biggest investor in the sugar industry of Swaziland. Although foreign, non-South African, investment has increased, Swaziland's dependency on South Africa increased as well. Namely, foreign investment companies are in need of materials and these materials are being bought in South Africa, which made Swaziland even more dependent on South Africa. To avoid further extensive dependence on South Africa, Swaziland signed a trade agreement with Mozambique in 1977 for the exportation of sugar and coal. In this way, landlocked Swaziland could reduce the use of the South African ports (Bischoff, 1988, p. 462).

Within SACU, Swaziland did not have a favourable position before the renegotiations in 1988. In order to increase its leverage within SACU, the government of Swaziland recommended to raise Swaziland’s customs capability; to hold South Africa to the letter and spirit of SACU; and to actively develop trade linkages with other countries in the Preferential Trade Area (PTA) (Harris 1993, p. 70-81).

To conclude, Swaziland is clearly trying to reduce its dependence on South Africa. Trade agreements with other countries than South Africa are the primary objective of the government of Swaziland. Still, its economy is not diversified, which leads to vulnerability. And, ironically enough, the tourism sector is growing due to the increase of South African tourists visiting the country.

2.1.5 African Regional Organisations: Cross-Cutting Memberships

The European Union negotiates with the Eastern and Southern Africa (ESA) configuration and with the Southern African Development Community (SADC) on Economic Partnership Agreements (EPAs). These EPAs are intended to replace the Lomé Conventions. It is the mission of SADC to promote intra-regional trade. SADC has an overlapping membership with ESA. Secondly, the Common Market for Eastern and Southern Africa (COMESA) also has an overlapping membership both with SACU and SADC.

For the purpose of negotiating EPAs with the EU, new groups were formed within Sub-Saharan Africa. As a result, overlaps between the different regional integration processes emerged, as can be seen in figure 2.2.

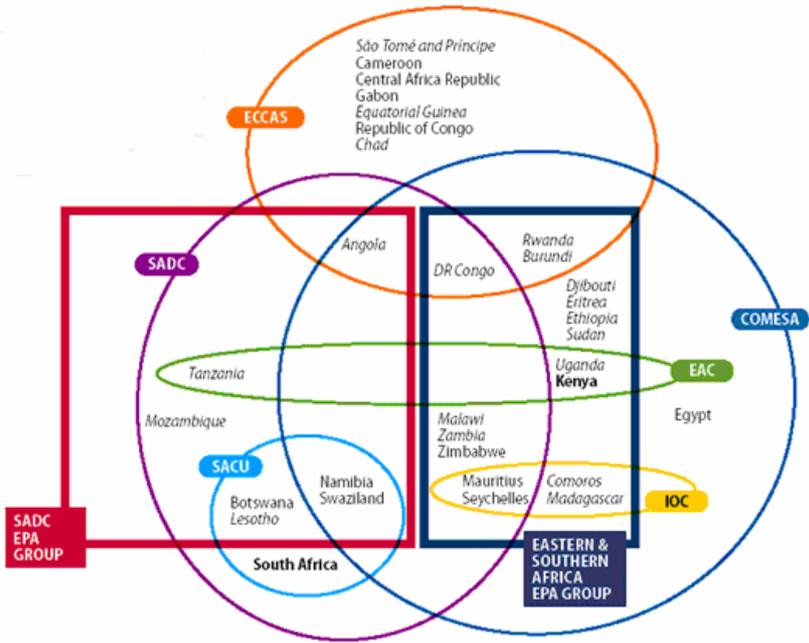


Figure 2.2 African regional economic communities and the negotiations on EPAs
(Source: Kamidza 2007)

As becomes clear from figure 2.2, there are numerous overlapping memberships in existence within Sub-Saharan Africa. This creates difficulties for ESA and SADC, because of the fact that these communities must comply with various tariff reduction schedules, rules of origin and other liberalization requirements. ESA has made provisions for the COMESA and SADC regional blocs to join the negotiations at a later stage in the process. The Sub-Saharan African countries are expected to implement both the COMESA Free Trade Area and the SADC Trade Protocol. The trade preferences offered in these two Trade Agreements, differ from each other. As such, this fact does not cause any problems. Problems do arise in the field of customs unions. Namely, it is impossible for a country to belong to two different customs unions, unless exactly the same trade policies are applicable. Until now, SACU is the first and only customs union within Southern Africa. However, various regional blocs, such as SADC, EAC, and COMESA, plan to create customs unions by 2010. With the numerous overlaps between the African communities, this would lead to problems. As a result, certain countries, for example Angola, Kenya and Tanzania, will be obliged to choose between COMESA and EAC (Kamidza, 2007).

As mentioned in Chapter 1, the EU is negotiating EPAs with two regional groupings: the SADC EPA group and the ESA EPA group. During the current negotiations on the new EPA, SACU is negotiating as part of the SADC EPA group. So, since all SACU countries are members of SADC, SACU is participating in the EPA negotiations through the SADC configuration (Sasman, 2008).

SACU can be seen as the grouping with the most capacity and institutional maturity to negotiate an EPA. The Trade, Development and Cooperation Agreement (TDCA) is in force between the EU and South Africa. Consequently, the BLNS countries are already *de facto* part of the TDCA, because of the fact that a common external tariff is applicable within the union. At this moment, the possibilities of creating an EPA in combination with the TDCA are being analysed. It must be noted that the provisions of the future EPA must preserve the provisions of the Cotonou Agreement. The access to the EU market under the current TDCA does not provide the same or better access than the Cotonou Agreement. If the trade arrangements under the TDCA are not at least as good as the arrangements under the Cotonou Agreement, an EPA in combination with the TDCA will not be created (Interview Kruger, **Appendix 2**).

2.2 Southern African Development Community

The EU is negotiating an EPA with SADC, which includes the SACU countries, Angola (currently trading under the Everything But Arms-scheme) and Mozambique. Due to the TDCA between South Africa and the EU that influences the BLNS countries and because of the fact that all SACU countries are represented in the SADC EPA group, SACU has great saying during the negotiations. Although I am focussing on the negotiations deadlock within SACU, the SADC EPA group forms the basis of the future EPA. Therefore, the SADC EPA group has to be discussed as well, be it to a lesser extent.

The widespread poverty and human deprivation is the most pressing issue in Africa as a whole, and several programs, such as the Millennium Development Goals (MDGs), are created to fight poverty and to improve the standards of life. Unfortunately, slow progress is measured in the improvement of economic and social standards in Africa. Several reasons can be identified in this respect. Firstly, the persistent decline in agricultural productivity has had a negative impact on Africa. Agriculture is the most important industry in almost all African countries. However, the significant and pervasive taxation of agriculture in most countries, combined with restrictions on market entry, commodity pricing and private investment, led to this decline and left Africa in an unchanged, maybe even worsened, economic situation than before. Another factor that negatively affects economic growth in the agricultural sector is the climate change. Although the cause for climate change can not be found in Africa, it is a continent that will be hit hard. The unpredictability of rainfall, water scarcity, deforestation and land degradation made farming in Africa even more difficult and the African governments rarely have the capacity to put in place adaptation measures. By taking into account the fact that in Sub-Saharan Africa agriculture accounts for 35% of the GDP, 70% of employment and 40% of exports, one can imagine the extensive impact of the decline in agricultural productivity and climate change.

Another reason for the slow economic and social progress is the fact that more than fifty percent of the population is under the age of twenty. Furthermore, each year around 100.000 highly educated Africans leave the continent. This has an immense impact on the functioning of the industry, companies, institutions and health systems in Africa (Cheru, 2008).

One of the objectives of the future EPA will be the reduction of poverty. SADC- EU EPA negotiations started on 8th July 2004 in Windhoek Namibia when both the EU and the SADC EPA group agreed on a joint plan setting out the timeframe, principles, organisation and main stages of the negotiations. This organisation and negotiation process is supported by the EU through the SADC EPA Support Facility (accounting for €7.5 million). This facility commenced in May 2006 and will most probably run for 3.5 years (<http://www.sadc.int/tifi/sadc-ec-epa/background.php>).

The countries that are negotiating as part of the SADC EPA group are highly dependent on EU trade. For example, 33 percent of all SADC exports are destined for the EU market.

Country	Main Export Product to EU	Percentage
Botswana	Diamonds, not mounted or set	95.3%
Lesotho	Diamonds, not mounted or set	69.1%
Namibia	Diamonds, not mounted or set	28.5%
South Africa	Natural and cultured pearls, precious stones	24.8%
Swaziland	Solid cane or beet sugar and chemically pure sucrose	57.8%
Angola	Oils, petroleum, oils from bituminous minerals, crude	80.3%
Mozambique	Unwrought aluminium	83.2%

Table 2.2 SADC export rates to EU (%). (Source: Fontagné, Laborde & Mitaritonna, 2008)

In table 2.2, I included the percentages of SADC export of main products to the EU, which illustrates the importance of EU-SADC trade cooperation for the SADC countries. On the other hand, SADC trade is relatively unimportant for the EU given the fact that the EU is the world’s largest trading bloc and since the whole ACP only represented 2.5 percent of the EU import market in 2005. An EU-SADC trade agreement is far more important to Africa than it is to Europe (Fontagné, Laborde & Mitaritonna, 2008).

2.3 European Union

Today, the European Union consists of an economic and political order, governed by an extensive legal system. In order to understand the current position of the EU, it is important to start with a short history on the creation of the EU.

2.3.1 Historical Overview and Institutional Structure

In the aftermath of the Second World War, integration became an important aspect in Europe. The European states desired to secure a lasting peace in their territories. In these times, Europe faced severe post-war economic problems and the onset of the Cold War was a big concern. In 1947, the USA announced its Marshall-plan, which was a scheme to provide financial aid to Europe. On the contrary, Europe was obliged to create an organisation to administer the programme. As a result, the Organization for European Economic Co-operation (OEEC) was established in 1948, which was followed up by the Organization for Economic Co-operation and Development (OECD) in 1960. The UK insisted on an intergovernmental organization which would not comprise state sovereignty. Since Britain could not be convinced to participate fully in concrete moves towards the desired European integration, French foreign minister, Robert Schuman, proposed a Franco-German coal and steel cooperation. Drafted by Jean Monnet, this economic cooperation plan had more objectives than just economic ones. Namely, the establishment of cooperation in this field represented an attempt to restabilize the relations between the countries after the war. Furthermore, in this way Germany was bound within a limited framework of peaceful cooperation in order to avert emerging rivalry over the coal-producing regions of Germany (the Ruhr and Saar region). The European Coal and Steel Community (ECSC) was set up and signed in 1951 by France, Germany, Italy, The Netherlands, Belgium and Luxembourg. In terms of European integration, the ECSC was the first supranational authority in which states lost part of its sovereignty to an independent institution (Craig & De Búrca, 2003).

In Rome, on the 25th of March 1957, the member states of the ECSC signed the treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM) (Nelson & Stubb, 2003, p. 15). The EEC, established by the Treaty of Rome, led to a common economic market

among the member states. In essence, this meant a market in which goods flow freely between the member states without applicable taxes, while uniform tariffs are imposed on goods from outside the Community. Over a period of twelve to fifteen years, the internal tariff barriers among the member states were gradually eliminated. Furthermore, free movement of workers, capital, agriculture, enterprises and transportation was introduced.

From a liberal economic perspective, the economic welfare would be enhanced with the creation of the EEC. Namely, since the creation, the economic market became larger, which would permit economies of scale and benefits of specialization. As a result, competition and innovation should be stimulated and opportunities for investment should be improved. Products from outside the member states are discriminated against, in the sense that a common external barrier in the form of taxes is applicable and products from within the union are privileged. This discriminatory aspect of the EEC is incompatible with the liberal perspective (Mingst, 2004, p. 250-254).

Between the 1960s and 1980s, political actions were required to avoid stagnation and to promote further integration. Consequently, Denmark, Great Britain and the Republic of Ireland became member states of the EEC in 1973. Subsequently, the EEC was joined by Greece in 1981, by Portugal and Spain in 1986, by Austria, Finland and Sweden in 1995; by Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia in 2004. Lastly, in 2007, Romania and Bulgaria became members of the EU (<http://europa.eu>).

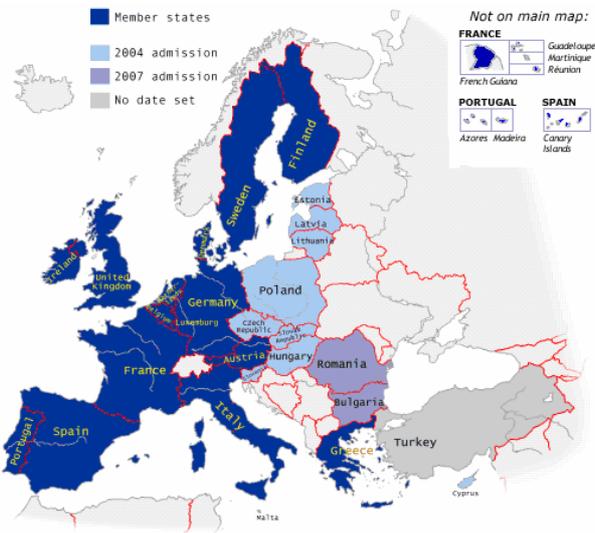


Figure 2.3 Expansion of the European Union (Source: <http://europa.eu>)

Apart from the expansion of the size of the EEC, other measures were taken in order to further integrate 'Europe'. In 1979, the European Parliament (EP) became directly elected, because of the belief that people would be more loyal towards the EEC if individual rights could be exercised, in the sense that the EEC was not only a cooperation between the heads of states, but a cooperation between the states influenced by the expression of opinions from the nationals of the states. Secondly, the European Monetary System (EMS) was created (<http://europa.eu>).

The Single European Act, signed in 1986, established the goal of completing a single market by 1992. As a result, numerous measures needed to be taken, varying from the removal of barriers between the countries to the harmonization of the national standards of health. Because of the fact that a political union was desired as well, the Maastricht Treaty 1992 led to the creation of the European Union (EU), which succeeded the EEC. Upon signing this Treaty, three pillars of the EU were created. The first pillar is the Economic Union. The other two pillars are intergovernmental, namely, the Common Foreign and Security Policy and the Justice and Home Affairs Cooperation. In 1997, the Treaty of Amsterdam was signed which extended competence on Justice and Home Affairs. Furthermore, European Citizenship was defined in this treaty. As a result of the introduction of a single currency in the Maastricht Treaty, the Euro was introduced in 2002 in most EU member states (Craig & De Búrca, 2003, p. 22-28).

Lastly, there are five principal EU institutions which are entrusted with carrying out the tasks of the Community (art. 7 EC Treaty). In order to understand the negotiating and decision-making procedures of the EU, the structure of the EU must be explained. In a scheme, the five institutions can be described as follows:

The European Commission	
Members	<ul style="list-style-type: none"> • Over 25 members, supported by a staff of 15.000 people. • Special provisions are in existence for more powerful states.
Powers Art. 211 ECT	<ul style="list-style-type: none"> • Initiates proposals for legislation (right of initiative). • The Commission is the 'guardian' of the Treaties. • Manages and executes EU policies. • Manages and executes International Trade Relations.
Appointment Art. 214 (2) ECT	<ul style="list-style-type: none"> • <u>The President</u>. The Council nominates a person by qualified majority. This nomination must be approved by the European Parliament.

	<ul style="list-style-type: none"> • <u>The Commissioners</u>. The council adopts a list of proposed commissioners in accordance with the desires of the member states. Approval by the European Parliament.
Further information	The <i>Directorates General (DG)</i> are permanent officials who work in the Commission and are responsible for specific areas. There are <i>DGs</i> for internal, financial and external areas. The tasks of the <i>DGs</i> dealing with external relations include: Development, Enlargement, EuropeAid-Cooperation Office, External Relations, Humanitarian Aid, and Trade.

The Council of the European Union (or Council of Ministers)	
Members Art. 203 ECT	Representatives of each member state at ministerial level that are authorized to commit the government of that state.
Powers Art. 202 ECT	<ul style="list-style-type: none"> • Legislates. • Sets political objectives. • Coordinates national policy and resolves differences
Further information	Decisions in the Council are taken by a qualified majority or by unanimity, dependent on the subject.

The European Parliament	
Members Art. 189 ECT	<ul style="list-style-type: none"> • The overall number of Parliament members should not exceed 732. • The composition of Parliament is set (Appendix 4).
Powers Art. 202 ECT	<ul style="list-style-type: none"> • Legislates (Art. 192 ECT). • Supervises the executive (Art. 193-194 ECT).

Court of Justice	
Members	Judges and Advocates-General appointed by member states for 6-year renewable terms.
Powers	<ul style="list-style-type: none"> • Ensures the uniform interpretation of EU laws. • Adjudicates disputes on matters covered by EU Treaties.

Court of First Instance	
Members	Judges appointed by member states for 6-year renewable terms.
Powers	<ul style="list-style-type: none"> • Improves judicial protection of individuals. • Enables Court of Justice to concentrate on the task of uniform interpretation.

As becomes clear from the descriptions of the five principal EU institutions, the institutions are interrelated. This means that there is some form of checks and balances in existence. As a result of these checks and balances, the institutions are connected and therefore influenced by one another, which avoids the possibility of one institution being the most dominant one with a monopoly and exclusive rights. In a scheme, this interrelation can be shown as follows:



Figure 2.4 Institutional structure of the European Union
(Source: <http://europa.eu>)

2.3.2 Aims and Objectives

Before making statements on the position of the EU, its objectives in relation to its development cooperation policy must be explored.

In the beginning of the 1970s, the European Commission was confronted with the need to formulate policies with regard to four aims; the need to find a successor to the Yaoundé Convention; the need to deal with the commodities question; the need to create a new relationship with Britain’s Commonwealth; and the need to respond to the demands of the ‘Third World’. The formulation of this policy can be found through a series of documents from 1971 to 1973. In relation to the ‘Third World’, it was the Commission’s aim to widen the relationships between the Community and the ‘Third World’ at a general level, by extending its policy of creating ‘managed relationships’ with different regions of the Third World. The Community maintained the traditional colonial link supported by France and Britain. However, the Community did make some shifts towards reforming its relations with its former colonies as a result of the demands of the ‘Third World’ to reform their positions in

the international system. In 1971, the Community for the first time shifted towards defining a global common development policy. This shift was largely influenced by the post-colonial policy of France. Hereby, the Community recognised the need to move from simple tariff arrangements to the development of aid, commodities and regional co-operation (CEC-DG VIII 1971).

2.3.3 European Position

“Developing countries have to have the courage to insist that all reasonable doubt as to the economic effects of a proposed agreement be removed before they allow a decision to be approved.”

J. Michael Finger, 2001

The greatest competency of the European Union is its trade policy, which has developed over almost 50 years. The EU has negotiated and has signed numerous bilateral and multilateral trade agreements worldwide. As a result of this long period of developing its trade policy, an advantage of repeated experience has arisen in comparison with countries that are not as experienced in negotiating trade agreements as the EU. Secondly, the EU is operating under a developed and sophisticated institutional safeguard system, which makes them an expert and, therefore also to a certain extent, feared, negotiation partner.

The institutional system of the EU is powerful and characterized by a cleverly planned management. The Council of Ministers approves a tight mandate which leaves little margin for flexibility on the part of the Commission. Consequently, negotiations within the Commission start, since the several departments of the Commission represent various reflections of powerful vested interests. The negotiation team of the Commission also has the task to negotiate with the Council of Ministers and the other substructures that form an influencing part of the EU. During this internal process, personalities of the negotiating individuals play a significant role. From a political safe distance, the Council of Europe, which consists of the Heads of State and of Government and does not form a formal institution of the EU, observes this process. After the internal negotiating process of the EU, a unilateral proposal or offer is drafted and ‘negotiations’ with the other party can start.

Why did I put the word negotiations in quotation marks? An example of the external negotiation process might clarify this;

In March 1995, the EU made a unilateral offer to South Africa with regard to a free trade agreement (FTA). At the same time, South Africa was to become a full member to the Lomé Convention, which is characterized by non-reciprocity. Full accession to the Lomé Convention would have been positive for South Africa, since, in this case, it would not have been obliged to open up its market to European producers. Unfortunately, the EU offer relating to a FTA changed this positive future perspective for South Africa. As a result of the limited time that was set by the EU for South Africa to approve the FTA offer, South Africa did not have enough time for a detailed investigation on the content and possible consequences of the offer. South Africa was, however, able to improve the agricultural coverage of the Agreement. As a result, South Africa had to engage with the EU. Eventually, the positive aspect of this engagement was a further development of South Africa's external relations; both with the EU and SADC at the same time (Smalberger, 2000).

To conclude, the preparations of the offer within the EU had, undoubtedly, taken a long while. Before the FTA offer was actually made, examination by different EU institutions and teams had taken place. When the offer was finally made, limited time was offered and South Africa had to decide without prior in-depth investigation. This is an example of the way the EU 'negotiates' with developing countries, namely, by making use of inequitable tactics.

The EU is aware of the fact that developing countries, just like almost every other country, are to a certain extent in need of and dependent on international trade. The unfortunate difference in relation to trade between two developed countries, and trade between a developed and a developing country, is that developing countries often lack the ability, both in economic power and in knowhow, to negotiate at an equal level with groupings of developed countries, such as the EU. Having said this, it becomes clear why the EU did not provide South Africa with sufficient time to explore the objectives and consequences of the agreement and the European intentions. The EU simply did not have to; South Africa needed international trade agreements to develop economically and was not in the position to negotiate better terms and conditions at that moment.

Another example to illustrate the negotiation tactics of the EU; during the negotiations between the EU and South Africa on the accession to the Lomé

Convention in 1997, Spain became a stumbling block. Spain was planning to block the South African accession if South Africa was not willing to grant Spanish fishing boats access to the South African waters. Fortunately, South Africa did not give in to Spanish demands and only made vague commitments to resolve the fishing issue in parallel with the FTA negotiations. South Africa officially became the 71st member of the Lomé Convention on 24 April 1997 (*Business Day*, 1997).

Smalberger works for the Department of Trade and Industry of South Africa and was one of the negotiators of the EU-SA Agreement. In 2000, he stated:

'I once listened to an interview with the champion tennis player Steffi Graf, who made the point that she learned more during matches that she lost than those where she was on the winning side. Some of the lessons to be derived from the negotiations we shall only learn as we implement the Agreement. [...] We should bear in mind that the outcomes of any of the processes we are engaged in are not predetermined. There are both opportunities and threats. We have to work together to make these work in our interest.' (Smalberger, 2000, p. 47-51)

In a few words Smalberger made clear that, on the first hand, South Africa has the responsibility towards itself to make the Agreement work, regardless of the content of the Agreement. Secondly, he pointed out that, whatever the outcome of the implementation of the Agreement is, the most important aspect is to learn from this Agreement and its creation. In the future, South Africa should be able to negotiate on a higher level and in a more professional manner with the EU and other powerful parties.

In conclusion, developing countries are in need of international trade agreements in order to circumvent protectionist regulations that are applicable at the external border of the EU. Without specific trade agreements, it is difficult for developing countries to access the European market on the basis of profitable terms. Consequently, the EU negotiates trade agreements by making use of inequitable, and sometimes unfair, tactics, such as time restraints and far-reaching demands.

In the next chapter I will explore whether the EU made use of such negotiation tactics during the current EPA-negotiations and in which way the participating African countries reacted to possible unfair provisions.

Chapter 3 The Negotiations on an EPA

3.1 The Cotonou Agreement

The negotiations on EPAs between the EU and the ACP countries began in Brussels on 27 September 2002. The Cotonou Agreement contains provisions on the procedure of these negotiations. The Agreement also includes that the EPAs should have entered into force by 1 January 2008 the latest. This date was set because on 31 December 2007 the waiver, that was granted by the World Trade Organisation (WTO) for the Cotonou Agreement to allow for the continuation of the non-preferential trade arrangements of the Agreement, would have expired. At this time, it is expected that the ACP countries will have conducted the FTA component of the EPA negotiations with the EU (Munalula, Cheelo, Kamocha & Shimwandwe, 2006).

3.1.1 Objectives

As mentioned before, the Cotonou Partnership Agreement was signed on 23 June 2000 by 77 ACP countries and the fifteen EU states and was concluded for a twenty-year period from March 2000 to February 2020. This Agreement is considered an important change in EU-ACP cooperation. The central objectives of this Agreement are included in article 1, which states that this Agreement focuses on the aim of building a partnership between the EU and the ACP states in order to promote and expedite the economic, cultural and social development of the ACP states. Secondly, this Agreement is concluded with a view to contribute to peace and security and to promote a stable and democratic political environment. Lastly, it states specifically that *'this Partnership shall be centred on the objective of reducing and eventually eradicating poverty'*.

The objectives of the ACP-EC cooperation are included in article 19. It is also the objective of the cooperation to reduce and ultimately eradicate poverty. Furthermore, the objectives are sustainable development and progressive integration of the ACP countries into the world economy. In this context, cooperation frameworks and orientations shall be tailored to the individual circumstances of each ACP country, shall promote local ownership of economic and social reforms and shall promote the integration of the private sector and civil society actors into the

development process. The Agreement is based on five interdependent pillars of which the underlying objectives are the fight against poverty, enhanced political dimension, increased participation, improved financial cooperation and new economic and trade partnerships. Article 95 of the Agreement provides for a revision clause, which foresees that the Agreement is adapted every five years. The first negotiations on the revision started in May 2004 and were concluded on the 23rd of February 2005. In addition, a financial protocol will be drafted for every five-year period and if necessary, some components of the Agreement can be reviewed every year. The ACP-EC Council of Ministers will meet every year and are responsible for these adaptations. The underlying reason for this revision clause is that it allows for more flexibility and that it gives the states the opportunity to adapt the cooperation system to changing realities (<http://ec.europa.eu/development/>).

3.1.2 Five Pillars

As stated before, the Cotonou Partnership Agreement is based on a combination of trade, politics and development. The five interdependent pillars include:

1. A comprehensive political dimension;
2. Participatory approaches;
3. Development strategies with a strengthened focus on poverty reduction;
4. A new framework for economic and trade cooperation; and
5. A reform of financial cooperation.

- 3.1.2.1 Political Dimension

During the negotiating process on the Cotonou Agreement, the EU stated clearly that it wanted an explicit joint agreement on political principles (CEC-DG VIII 1997d: 11). As a result, a political pillar was included in Part 1, Title II, Article 8 to 13 of the new Cotonou Partnership Agreement. The political dialogue is conducted in a flexible manner; at national, regional or ACP level, within and outside the institutional framework of the Agreement. This dialogue allows the ACP and EU to address all issues of mutual concern. Consistency and an increased impact of development cooperation are ensured in this way. Especially subjects such as peace-building policies and conflict prevention are dealt with during these dialogues.

Essential elements of the Cotonou Agreement are the democratic principles, the rule of law and respect for human rights. The dialogues have the task to ensure these principles. In case of violations of these principles by one or more of the countries, measures can be taken immediately and the countries must be notified of these measures. By referring to good governance, the signatory states bind themselves to the dialogues on a regular basis. Measures can also be taken against cases of corruption, especially when corruption constitutes an obstacle to development and when money out of the European Development Fund is involved (http://ec.europa.eu/development/geographical/cotonou/cotonou2000_4_en.cfm).

- *3.1.2.2 Participatory Approach*

The Agreement also includes innovative provisions to promote participatory approaches. Economic and social actors, such as companies and NGOs, should be provided with information on the ACP-EC Agreement, in order to ensure their involvement. The non-state actors' involvement in the implementation of projects and programmes should be facilitated. Furthermore, non-state actors should be provided with adequate support for capacity-building, encouraging networking and links between ACP and EU actors. In addition, the involvement of the civil society, represented by politicians, should be ensured by the consultation of civil society on economic, social and institutional reforms and policies (<http://ec.europa.eu/>).

- *3.1.2.3 Development Strategies*

As becomes clear from the general provisions of the Agreement (article 1 and 19), poverty reduction and eradication of poverty are the central objectives of the Agreement. These objectives guide the development strategies which are included in Part 3, Title I of the Agreement.

The Agreement contains a global strategy, which requires the EU and the ACP countries to work together to create an effective strategic framework. The Agreement also includes a model to measure the progress of the framework. In order to achieve positive results, integration of the private sector and civil society actors are promoted. The development strategies are created and adapted to each individual state separately.

Poverty in a country does not only affect practically every aspects of life of the citizens, but also affects the country as a whole. Therefore, the reduction of poverty requires an interaction between the economic, social, cultural, gender, institutional and environmental dimensions of strategies and policies of a state. This multidimensional nature of poverty is reflected in the Agreement and in this respect, three areas are highlighted. Firstly, the Agreement contains provisions on economic development by concentrating on the development and investment in the private sector, and on the macro-economic and structural policies and reforms of the participating countries. Secondly, the Agreement focuses on social and human development, by concentrating on youth issues, cultural development and social sector policies. The final area of the highlighted dimensions of poverty is the promotion of regional cooperation and integration. Environmental sustainability, gender equality, and institutional development and capacity building are the three themes that are most important in this area.

It is, however, impossible for the EU to be active in all the aforementioned areas in all 77 ACP countries. Therefore, priorities are established within these areas for every single state. As a result, the development pillar is a flexible one, characterized by differentiation (<http://ec.europa.eu/development/>).

- *3.1.2.4 Economic and Trade Cooperation*

The provisions of the Cotonou Agreement on economic and trade cooperation are of great importance, since it contains rules on the negotiation procedures and on the establishment of Economic Partnership Agreements. With this Agreement, the EU and ACP countries have agreed on a process to establish new trading arrangements that will lead to more trade liberalization. According to article 34 sub 2 of the Agreement, the ultimate objective of economic and trade cooperation is to enable the ACP states to play a full part in international trade. It is the aim of the cooperation to foster the smooth and gradual integration of the ACP states into the global economy. This will be done with due regard of the political choices and development priorities of a country. As a result, sustainable development should be achieved and the cooperation should contribute to poverty eradication.

Furthermore, it is the objective of economic and trade cooperation:

1. To enhance production, supply and trading capacities;

2. To create new trade dynamics and foster investment; and
3. To ensure full conformity with WTO provisions.

Article 37 of the Cotonou Agreement contains provisions on the procedures that are used to achieve the objectives. It declares that:

'Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.'

In order to ensure that the negotiations were successfully concluded within this period, all necessary measures can be taken (article 37(1)). The negotiations on EPAs were undertaken with ACP countries which considered themselves in a position to do so. The ACP countries were free to decide at what level they wanted to negotiate. It is the aim of the negotiations on EPAs to establish a timetable for the progressive removal of barriers of trade between the signatory states, in conformity with WTO rules. Consequently, the EU is obliged to review its rules of origin requirement and to improve the market access for the ACP countries. The negotiations on EPAs are as flexible as possible, since the ACP countries differ from each other in terms of their level of development and capacity to adapt and adjust their economies to the liberalization process (article 37(7)).

The EPAs must be fully compatible with the rules of the WTO. This leads not only to a certain minimum standard of international trade, but most probably also to more investment in the ACP countries. As a result, it is expected that the domestic and foreign investment will grow and more know-how and technology will be transferred. In order to make the new EPAs compatible with the rules of the WTO, the ACP membership is divided into two subgroups – least developed countries (LDCs) and non-least developed countries (non-LDCs). The classification of the countries is based on WTO criteria and problems in relation to this classification have arisen. For example, the human development index, which is based on income levels, education and life expectancy, of Lesotho, Samoa and the Solomon Islands is higher than the index of Cameroon, Kenya and Nigeria (<http://stats.unctad.org/handbook/>). However, the former countries are declared LDCs

and the latter are not. The LDCs will continue to receive non-reciprocal trade preferences, which means that, although trade preferences are offered to these countries, the EU does not demand trade preferences in return.

The non-LDCs on the other hand, will be offered reciprocal EPAs. These reciprocal EPAs have to be negotiated with the EU at an individual country or regional level. Another option for the non-LDCs is to become a member of EU Generalized System of Preferences (GSP). This system, as described in Chapter 1, is less advantageous for ACP countries since they must adhere to the rules of origin requirement. Secondly, the GSP is unilaterally offered and negotiations on trading provisions are impossible, which makes the GSP unsuitable for ACP countries with specific developmental needs. The ACP Group was created to establish a stronger and unified negotiating body. However, during the negotiations on EPAs, the EU prefers to negotiate on a regional basis. This causes problems, since various regional groups have underdeveloped institutional structures. The groups often contain weak negotiators and a history of disappointing regional integration efforts will most probably lead to disadvantageous EPAs (Alam, 2008, p. 140-144). In my opinion, the European preference for regional negotiation groups and consequently the disadvantaged position of the African, Caribbean and Pacific negotiation boards might have been the underlying objective of the EU. In line with this statement, Prévost mentioned the following in my interview with her (**Appendix 3**):

"[...] The EU uses the EPAs to push through agreements with weaker negotiating partners on issues that it pursued unsuccessfully in WTO negotiations. [...] I strongly doubt whether the EPAs are motivated by a desire to provide opportunities for developing countries, as is evinced by the fact that it is DG Trade and not DG Development that is most actively involved in these negotiations. The provisions in the EPAs on technical assistance are weak and inadequate."

From an economic nationalist perspective, the EU, as an actor, uses its powerful position to its own benefit. In doing so, the EU mainly protects its own interest, at the expense of other countries.

I discussed the opinion of Bhagwati on free trade in Chapter 1. He argues that free trade, in combination with a specific domestic policy, will maximize the gains from international trade. Accordingly, the rationale behind the approach of the EU

within the economic and trade cooperation pillar is also based on the idea that open trade policies combined with social development policies will lead to economic growth with poverty reduction. This approach will only have profitable consequences for developing countries if the agreement does not contain unfair provisions. In this regard, Khumalo mentions correctly that mutually beneficial EPAs with poverty reduction as a result are possible, but only when both actors negotiate in good faith (Khumalo, 2007).

- 3.1.2.5 Financial Cooperation

The guiding principles of the fifth and last pillar on financial cooperation are:

1. Coherence, flexibility and efficiency in Community assistance to each ACP state and region.
2. Evolution in the nature of aid towards budgetary assistance, in the sense that each ACP country must be accountable for its own policies.
3. Good performance of the ACP countries will be rewarded by the EU.
4. Involvement of non-state actors in the formulation of support strategies and during the implementation phase.
5. Dialogues at a local level between the EU and ACP countries are of importance.

The totality of the resources that is available for ACP countries is channelled through two instruments. The first one is to provide grants and the second one is to provide risk capital and loans to the private sector. Each country is allocated a lump sum. A range of different types of operations can be financed with this money. None of the resources are locked for a specific purpose, which leads to the flexibility of the system. The objective of the financial aid is to help develop businesses in the ACP countries. The available resources are allocated on the basis of an evaluation of needs and performances. The needs criteria include population size, economic and social development indicators, per capita income, level of indebtedness and dependence export earnings. The performance criteria include progress in implementing institutional reforms, country performance in the use of resources, poverty alleviation or reduction, sustainable development measures and macroeconomic performance (<http://ec.europa.eu/>).

3.2 The Current Trade Issue

“Seldom before in the history of EU-ACP relations, has a measure held out as a mechanism to enhance access to the EU market and strengthen development cooperation between the EU and the ACP, become so controversial and so divisive.”

Rob Davies, Deputy Trade Minister South Africa, 2008

In October 2003, the first phase of the negotiations ended and the Eastern and Southern Africa (ESA) group and the EU agreed that the overall objectives of the ESA-EC EPA will be the sustainable development of ESA countries, their gradual and smooth integration into the global economy, and the eradication of poverty and disease. The specific objectives of the ESA-EC EPA were to promote sustained growth, to increase the production and supply capacity of the ESA countries, to foster the structural transformation of the ESA economies and their diversification, and to support regional integration initiatives in the ESA region.

A Joint Report on the all-ACP – EC phase of EPA negotiations was adopted by the ACP Council of Ministers and the EC Commissioners for Trade and Development. This Report provides guidance during the negotiations and serves as a point of reference (Munalula, Cheelo, Kamocha & Shimwandwe, 2006). The main principles of this Joint Report include:

1. The EPA will support regional integration among the ESA group and will be coherent and consistent with the New Partnership for Africa’s Development;
2. The EPA will be an instrument for sustainable development; accordingly, the development dimension will be reflected in all areas of negotiations;
3. The EPA will be compatible with the rules of the World Trade Organisation;
4. Economic and trade cooperation shall take account of the different needs and levels of development of ESA countries. Special and differential treatment should be provided to all ESA countries in a way that takes due account of the vulnerabilities of small, landlocked and island countries; and
5. In accordance with Article 36(4) of the Cotonou Agreement, the ESA EPA will maintain and improve the current level of preferential market access into the EU, with particular regard to the special and differential needs of least developed countries and preservation of the benefits of the Everything But Arms (EBA) initiative and existing preferential arrangements. The EBA

initiative started in 2001 and declares that the Least Developed Countries may export to the EU without being bound by tariffs or quotas. The LDCs may export everything, except weapons and munitions (www.vrijhandelvoorbij.nl).

3.2.1 The Interim EPA

In order to be able to determine the reasons of this international conflict, the content of the current interim EPA should be explored firstly. As already mentioned, the EU does not want to negotiate an EPA with the ACP as a whole, nor does it want to negotiate with every country separately. The EU-ACP negotiations on EPAs have been divided in different groups; Central Africa, Pacific, West Africa, ESA and SADC. All the SACU countries are participating within the SADC EPA configuration.

On the 23rd of November 2007, senior negotiators from the European Commission and SADC initialled an interim EPA, which included a WTO-compatible market access schedule and provisions on development cooperation. As for SADC, this agreement only applies initially to Botswana, Lesotho, Swaziland and Mozambique. Subsequently, Namibia initialled the agreement on December, 11 2007. Both the EU and SADC confirmed that the IEPA was open to other parties to join. Negotiations on a full EPA are still pending and it is the objective to conclude the negotiations in 2008 (www.acp-eu-trade.org). The European Commission described the provisions on the goods covered in the interim EPA as follows:

“The agreement allows for 100% liberalization by value as of 1 January 2008 (with transition periods for rice and sugar) and 86% liberalization by value by Botswana, Lesotho, Namibia and Swaziland. For 44 sensitive tariff lines liberalization is envisaged by 2015. Three further lines will not be liberalized by 2018”.

In addition, the European Commission described the provisions on goods excluded as follows:

“Exclusions focus on agricultural goods and some processed agricultural goods and are based chiefly on the need to protect infant industries or sensitive products in these countries”.

(http://trade.ec.europa.eu/doclib/docs/2007/november/tradoc_13695_9.pdf).

The descriptions of the European Commission on covered and excluded goods within the interim EPA are rather vague. Therefore it is important to study the authentic legal text of the interim EPA (accessible at www.bilaterals.org/IMG/pdf/531-03-07.pdf). The interim EPA opens with a statement of the chief negotiations, in which they declare the following:

“We agree to continue negotiations on all outstanding issues for a full EPA to be concluded no later than 31 December 2008.”

The objectives of the EPA are given in article 1 and include:

1. Contributing to the reduction and eventual eradication of poverty through the establishment of a trade partnership;
2. Promoting regional integration, economic cooperation and good governance;
3. Promoting the gradual integration of the SADC EPA States into the world economy, in conformity with their political choices and development priorities;
4. Improving the SADC EPA States' capacity in trade policy and trade related issues;
5. Supporting the conditions for increasing investment and private sector initiative and enhancing supply capacity, competitiveness and economic growth in the SADC EPA States;
6. Strengthening the existing relations between the Parties on the basis of solidarity and mutual interest.

In the field of the promotion of regional integration (sub 2), article 4(2) refers to SACU. In this article, the signatory states of the interim EPA declared that regional integration is an integral element to their partnership and reaffirmed the importance of regional and sub-regional integration to achieve greater economic opportunities. Article 4(3) even explains the aim of regional processes:

“[...] They aim at building and deepening their partnership on the basis of those processes and at implementing the present Economic Partnership Agreement in a mutually supportive manner with those instruments, as well as with the TDCA, taking into account the respective levels of development, needs, geographical realities and sustainable development strategies.”

In comparison, the Treaty establishing the European Community and the Treaty on the European Union only mention solidarity towards member states and the strengthening of the unity of the economies of the member states. These statements are included in the preambles of the treaties, and not in specific articles (<http://eur-lex.europa.eu>). Although it is one of the objectives of the interim EPA to promote regional integration; a specific article on this objective seems inappropriate. It means that, when one country decides to step out of SACU or SADC, it might act in breach of the EPA. Any dispute concerning the application of the EPA can be brought before an arbitration panel and appropriate measures might be taken as well (article 68 - 79). On the other hand, article 49 of the 2002 SACU Agreement does give the possibility of withdrawal. So, while acting in conformity with the 2002 SACU Agreement, a violation of the EPA might arise and measures can be taken.

According to article 19, a free trade area will be established between the European Community and the SADC EPA States. The free trade area only applies to goods originated in the European Community or in the SADC EPA States. In essence this means that the rules of origin requirement is in force. If South Africa decides to initial the interim agreement, several products will be subject to specific provisions on cumulation (article 21(3)).

In terms of trade in goods within the free trade area, internal charges, imposed consistently with article III of the GATT 1994, will be allowed. Fees and charges imposed for consular services and other means will be limited in amount to the approximate cost of the services rendered and shall not represent indirect protection for domestic products. Furthermore, the European Community and SADC EPA states are not allowed to introduce new customs duties and existing customs duties may not be increased (article 23 jō 24).

In 1999, South Africa signed the Trade Development and Cooperation Agreement (TDCA) with the EU. Due to the characteristics of SACU (a customs union), this Agreement was extended *de facto* to Botswana, Lesotho, Namibia and Swaziland. The negotiations on an SADC- EU EPA focus on building on and adapting the TDCA. As a result of the negotiations on reciprocal liberalization of trade in goods, article 25 was drafted. According to this article, the European Commission shall provide duty free, quota free treatment for all products falling within the scope of the Agreement and originating in the BLNS countries. Rice and sugar do not fall within this scope. Customs duties on imports of products originating in South Africa

shall be reduced or eliminated in accordance with Annex 1. This means that South Africa will receive some improved access for products that were not favourably treated under the TDCA. In return, SACU would have improved access for EU products in 500 tariff lines over the arrangements agreed in the TDCA (Davies, 2008).

As mentioned before, both the preamble and article 4 of the interim agreement recognise the importance of regional integration. Regional integration can be seen as an integral element and a powerful instrument to achieve the objectives of the Agreement. By taking into account the text of the 2002 SACU Agreement, the focus on regional integration was definitely included in the interim agreement as a result of European demand. The less favourable provisions for South Africa, in comparison with the provisions for the BLNS countries, were also included due to European dominance. It is, in my opinion, surprising that, although the EU favours development orientated regional integration, it is the EU itself that creates disparities within one region. In this way, the proposed situation will lead to less regional integration, which will infringe on one of the key objectives of the interim agreement, namely regional integration.

Another major problem has arisen in the field of economic governance. South Africa's deputy trade minister Davies described the problem as follows:

"The legal text forming the basis of the interim EPA, also saw the insertion at the last moment of a series of legal obligations that would allow the European Union to extend its influence into several other issues of economic governance in ACP countries." (Davies, 2008)

Especially these obligations and the technical provisions in the text relating to the definition of parties, protection of infant industries, a More Favoured Nation Clause and export taxes, with which I will deal in Chapter 3.2.2, have led to disagreement during the negotiations. As a result, Commissioner Mandelson, in combination with the SADC EPA Ministers, 'resolved' the issue by providing the SADC countries a two track work process; the countries that have initialled, will proceed with signing, ratifying and implementing the interim EPA; and those countries that have not initialled and have concerns on the legal text, will have the possibility to address their concerns (Davies, 2008).

3.2.2 The Negotiations Deadlock

“The EU’s goal remains using trade to promote economic development, build regional markets and help lift people out of poverty.”

Peter Mandelson, EU Trade Commissioner, 2008

“Ministers deplore the enormous pressure that has been brought to bear on the ACP States by the European Commission to initial the interim trade arrangements.”

Council of ACP Trade Ministers, 2007

Economic Trade Agreements with developing countries can be a source of development and shared prosperity if the rules are fair and the parties negotiate in good faith. If the rules are unfair, such an agreement can lead to increased poverty and exclusion (Khumalo, 2007). Therefore, it is very important to determine what the consequences of the provisions of the IEPA are.

Firstly, the EU created a problem of disparities by offering the BLNS countries duty free, quota free treatment without extending this offer to South Africa. As a result, the EPA will create problems for the customs union, since different trade regimes coupled with complex rules of origin require border administration which is contrary to the aim of the customs union (Interview Prévost). If the EU decides to uphold the current proposal, SACU will be influenced negatively and preservation of SACU will become problematic. Either South Africa has to step out of the customs union, or extensive border administration will be required. Since the BLNS countries are largely dependent on South Africa in terms of trade, ultimately, they will suffer from the EPA. Besides the practical problem of this different treatment within one region, the disparities created by the EU are clearly in breach of the objectives of the agreement on regional integration.

Secondly, the standstill clause of article 23 that prohibits the introduction of new customs duties, leads to the impossibility for African governments to diversify economically. Since the SADC countries are not allowed to raise new tariffs, the EPA does not support the development of new industries. This, again, is in breach of the objectives of the EPA itself, since it is the desire of the EPA to create new employment opportunities (preamble). Fortunately, most industries, and therefore most customs duties, are already developed by SACU. The standstill clause will not

be applicable to these industries, regardless of the developmental status of these industries. The strict intellectual property rules which are included in the EPA undermine access to knowledge and fail to support innovation.

Thirdly, at the last moment, the EU inserted the Most Favoured Nation clause (MFN). This clause means that the SADC countries are obliged to extend the benefits, which they will offer to other countries in trade agreements in the future, to the EU. The EU is planning to include this clause in all the EPAs with the ACP countries that will come into being. Brazil, which is not an ACP country but is trading with ACP countries, has raised its concerns about this clause at the WTO by stating that the clause will negatively affect South-South trade (Dièye & Hanson, 2008).

Furthermore, tariffs imposed on imports generated a substantial percentage of government revenue in many African countries. As much as 7-10 percent of government revenues are generated as a result of import tariffs imposed by Africa. The IEPA, which includes removal of import duties, will have a damaging impact on these revenues, especially given the fact that the EU is the largest trading partner of most African countries. The United Nations Economic Commission for Africa (UNECA) estimated the revenue losses in Sub-Saharan African countries at US \$1,951.3 million per year if the countries fully implement the EPAs. Notwithstanding the fact that poverty reduction is a key objective of the interim EPA; the income losses connected to this revenue decrease are almost equal to the total annual EU aid disbursement in Africa (Cheru, 2008).

The development cooperation chapter of the IEPA covers trade in services and includes serious commitment in areas such as investment, government procurement and competition policy (Davies, 2008). Although the EU has offered the SACU countries lower import tariffs on products, the interim agreement did not provide significant services opening. Secondly, the lower import taxes are only temporary, since the EU is set to open up to the competitors of the ACP. The restrictive rules of origin requirement makes it even more difficult for the SACU countries to access the European market (Jones & Perez, 2008, p. 3). In relation to trade in services, it is important to note that in Africa one in four people is employed in the services sector. Until now, the Caribbean is the only region that has completed EPA negotiations on services. All other ACP countries, including the BLNS countries, that initialled EPAs, have committed to negotiate on services liberalization during 2008. With regard to the agriculture sector, services liberalization might have a

positive impact on the African productivity. Namely, the current productivity decline in African agriculture is to a large extent attributed to the lack of infrastructure and support services. The lack of improved seed, fertilizers and other inputs, insufficient training and ineffective marketing outlets caused by poor roads have all had a negative influence on the productivity of African farmers. By providing the African farmers with better infrastructure; agricultural productivity might increase. Given the fact that the majority of the African countries is highly dependent on agriculture, services liberalization might seem like a favourable inclusion in the EPA (Cheru, 2008). However, EPAs are able to hinder the ability of national governments to provide quality and affordable essential services. For example, some Caribbean countries have given European countries the right to provide medical and dentist services, primary, secondary and tertiary education and wastewater and sanitation services. The danger of giving rights to foreign companies on essential aspects of life is that the national government loses power and becomes dependent on European companies. Another danger can be found in the fact that foreign companies are not obliged to participate in accordance with national development objectives. When a European company decides to reject the poorest children in their schools, the national government will be unable to change the situation since the EPA provisions make it very difficult for countries to alter conditions of foreign providers (Oxfam International, 2008).

In relation to the creation of an EPA, negotiations had to take place during a limited period of time. Negotiations on such an agreement normally take years; however, due to the WTO deadline, an extensive negotiation period was not present. By 31 December 2007, interim EPAs should have been created. In February 2007, it became clear that, due to fundamental differences in the positions of the actors, it would be impossible to complete the negotiations in time. Instead of providing the countries with more time to prepare negotiations within their parliaments or other institutional bodies, the EU used its economic and political powers to coerce the ACP countries into concluding an agreement. By using the WTO deadline as its objective, the EU 'threatened' with the unfavourable GSP-scheme, that would automatically enter into force on trade between the EU and the ACP countries that did not initial an EPA by 31 December 2007 and that were not classified as LDCs (Bilal, 2007). Despite this pressure, the ACP countries with the lowest incomes could still sell to the EU through the Everything But Arms (EBA) initiative, which allows almost all products

duty free and quota free from LDCs into Europe. South Africa still exports in accordance with the bilateral, pre-existing TDCA. Major concerns arose in the non-LDC countries as a result of the possibility of higher tariffs under the GSP-scheme. The pressure led to a burden for most governments and due to extensive requests by European investors in ACP countries, 18 African governments¹ initialled the agreement by the end of 2007. The countries that initialled the agreement are those that would have suffered the most if tariffs against them went up (Oxfam International, 2008).

To illustrate this; West-Africa, one of the regional negotiation parties of the EU, asked for a two-year extension of the deadline in October 2007. The EU ignored the regional request and started bilateral negotiations with Ghana and Côte d'Ivoire. Subsequently, an EPA, drafted by the EU, was signed by Côte d'Ivoire within two weeks. No national or regional consultation took place within these weeks and even the key officials of the Trade Ministry of Côte d'Ivoire were not involved (Rampa, 2007). One might say that it is the responsibility of a country itself to regulate its internal matters, but, in my opinion, it is also the responsibility of the EU, which claims to promote development and regional integration for the ACP countries, to propose a fair agreement, drafted in good faith, and to give the negotiation partner reasonable time to consider the agreement.

Several non-governmental organisations (NGOs) have criticized the establishment and content of EPAs and are campaigning under the slogan '*stopepa.org*'. They call the EU attitude neo-liberal and argue the following:

'We demand that EU-ACP trade cooperation should be founded on an approach that:

- *Is based on a principle of non-reciprocity, as instituted in GSPs and special and differential treatment in the WTO*
- *protects ACP producers domestic and regional markets.*
- *reverses the pressure for trade and investment liberalization*
- *allows the necessary policy space and supports ACP countries to pursue their own development strategies' (www.stopepa.org).*

¹ Fifteen of the eighteen countries that initialed EPAs also fall within a regional framework; SADC (Botswana, Lesotho, Namibia, Swaziland and Mozambique), ESA (Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe), EAC (Burundi, Kenya, Rwanda, Tanzania and Uganda). The three remaining countries, Cameroon, Côte d'Ivoire and Ghana, individually initialed IEPAs with the EU. Zambia initialed an IEPA in October 2008.

Together with Oxfam and many other NGOs, Stopepa.org considers the EPAs to be too focussed on opening up the ACP markets to European goods and services and on liberalization (Gibb, 2008).

Until now, I have described several problems that might occur in general when the interim EPA enters into force. Renegotiations on several provisions are necessary in order to prevent an unfavourable agreement for the BLNS countries with possibly only more poverty as a result. However, problematic is that EU Trade Commissioner Mandelson told members of the European Parliament on 18 April 2008 that *“in the context of the negotiations for a full EPA any issue can be discussed”*, but noted that *“any suggestion of renegotiating the [interim] agreement”* shall not be discussed. Mandelson underlined that new discussions on provisions of the interim agreement would constitute *“a new threat of legal uncertainty and risk unravelling everything we have achieved (www.europarl.europa.eu)*. He ruled out any renegotiation of the interim EPA and said the implementation should go ahead. He stated that *“I am prepared to be flexible, on the basis that we move forwards and not backwards. [...] There is no way of reopening the process that has already been negotiated”* (Hanson & Julian, 2008, p. 14). These statements of Mandelson can be explained from an economic nationalist perspective. The WTO deadline was used by the EU to force the African countries into quick negotiations and a fast completion of the negotiations. As a result, several provisions of the initialled interim EPA are clearly disadvantageous for the Southern African states. The fact that the 25 EU countries have a combined GDP of US \$13.300 billion and the SADC EPA group have a combined GDP of US \$66 billion, demonstrates the probability that the EPA mainly serves the interests of Europe (Isike, Okeke-Uzodike & Gilbert, 2007, p. 30). Mandelson refuses to open the negotiations on the interim EPA. Namely, he knows that if the negotiations will be opened again, the WTO deadline will not be of use anymore, which means that part of their powerful negotiation tactic would be absent. Indeed, by renegotiating the interim agreement, everything the EU has achieved, might be unravelled. By stating that renegotiations will constitute a new threat of legal uncertainty and risk, Mandelson concentrates only on the uncertainties and risks that would be posed on the EU. In conclusion, Mandelson states that renegotiations on the interim agreement are impossible and would create uncertainty and risks. The uncertainties and risks involved would only negatively affect the EU, since renegotiations shall, to a lesser extent, be influenced by pressure and deadlines.

Fortunately, the legal service of the European Parliament has claimed that EPAs may be revised. The legal service stated that the ACP countries have the right to renegotiate interim EPAs. Consequently, Mandelson made clear that the European Commission will present all the agreements, whether full or interim, to the European Parliament under the assent procedure (www.europeanvoice.com).

In summary, in my first Chapter, I introduced the negotiations deadlock that emerged during the negotiations on an EPA. In doing so, I referred to South Africa, threatening to break up SACU and opting out of the interim EPA. As such, without any background information or knowledge on the content of the interim EPA, South Africa seemed to act unreasonable by putting its dependent neighbouring states at danger. However, after reading the interim EPA, it becomes clear that South Africa did have sufficient reason to opt out. Furthermore, it is remarkable that the BLNS countries initialled the interim EPA. In the case of South Africa, the interim agreement contains numerous instances of South Africa, being treated differently and unfavourably from the BLNS countries. Duty free, quota free treatment was offered to the BLNS countries, without extending this offer to South Africa. The different treatment offered by the EU to South Africa can be explained in the context of the existing TDCA, which provides for the creation of a free trade area between the EU and South Africa over a 12-year period. This regional distinction does lead to problems within the customs union since border administration will be required, which will be contrary to the objectives of a customs union. Another way of acting in accordance with the difference in treatment will be by withdrawing SACU. As such, by offering this interim EPA, with regional integration being one of the main objectives, the EU in fact infringes on the main characteristic of regional integration.

Furthermore, the standstill clause does not support the development of new industries. This is problematic, since the discussion of the separate countries in Chapter 2.1.4 made clear that most of the countries are in need of economic diversification. The Most Favoured Nation clause (MFN) leads to disadvantages in the sense that the SACU countries are not free to create trade agreements in the way they prefer anymore, since they will be obliged to extend the benefits to the EU. The clause contradicts the spirit of regional trade agreements being used as building blocks for WTO multilateral liberalization (Ulmer, 2008). The inclusion of trade in services in the interim EPA might lead to a disadvantage for African governments as

well, since they will lose control over essential services sectors. On the other hand, African companies are not provided with significant services openings to access the EU.

Lastly, the EU used the WTO deadline as the objective to complete interim EPAs before 31 December 2007. A risk of being subject to higher import taxes, as a result of the GSP-scheme, arose for the countries that did not initial before this date. Consequently, 18 African countries, including the BLNS countries, initialled the EPA, obviously, under disadvantageous provisions. Subsequently, Commissioner Mandelson refused to renegotiate the provisions of the interim EPAs. Although renegotiation of these provisions is still difficult for the African countries, the European Parliament acknowledged that the interim agreements do not contain provisions on the prohibition of renegotiating certain elements already agreed upon in the interim EPA, which implies that renegotiation is indeed possible. Still, from a legal perspective, an agreement was signed before and reconsidering promises that were made before, remains a difficult matter.

Chapter 4 Comparable Cases and Potential Resolutions

It is my objective to describe the current trade issue including the reasons and background, the current situation and the possible consequences of this issue. In line with this objective is the study of comparable cases. By analysing comparable cases, a certain pattern might be discovered and eventually, an adequate and reasonable resolution of this specific issue might be available. After the discussion of the provisions and the general consequences of the EPA in Chapter 3, I will discuss some comparable cases in this chapter. Furthermore, I will deal with the specific consequences of the interim EPA on the BLNS countries and South Africa, in order to be able to focus on potential resolutions for the negotiations deadlock.

4.1 Developing Countries within the EU

Several times, I have referred to the North and the South, meaning the Western states and Africa. However, also within the European Union, a North-South split is in existence, especially since the expansion in 2007. Among others, the northern European countries include Germany, Denmark, The Netherlands, Finland, the United Kingdom and Sweden. The South contains countries such as Greece, Cyprus, Spain, Italy, Portugal Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and the Czech Republic. The northern countries have great power over the southern countries.

The split between the stronger northern European countries and relatively weaker southern European countries is evident from the setting of standards and the implementation of these standards in numerous fields. For instance, the environmental standards of the countries within the EU differ. The richer and greener states such as Germany, Denmark and The Netherlands have strong and stringent environmental standards. On the other hand, states like Greece, Portugal and Spain do not have these high standards in environmental issues (Schaper, 2004). It is obvious that the European environmental rules therefore have had their origin in the national environmental norms and rules of the powerful northern states (Alam, 2008, p. 135-137).

The following examples illustrate the domination of northern states over the southern states. During the negotiations on auto emission standards, Germany

forced the other member states to raise their standards. In doing so, Germany threatened to close its market to other states' automobiles if they did not comply. As a result, the other states complied with the stringent environmental rules. Secondly, during the negotiations on the content of the *Maastricht Treaty* and the *Single European Act*, Germany, once again, used its powerful bargaining power. Germany was in favour of a strict interpretation of the environmental rules of the treaties. If the other European countries were willing to accept higher environmental standards within the treaties, Germany would further open its markets. Consequently, the environmental provisions were interpreted very strictly, which resulted in a high level of protection of the environment (Steinberg, 1997).

The aforementioned cases are examples of dominant behaviour of the northern states over the southern states. However, as can be seen in table 4.1, the import and export rates of all the EU countries that became member states of the EU in 2004, respectively 2007, grew tremendously. In certain countries, such as Latvia and Lithuania, the export rate tripled within three years.

Subjects	Import			Export		
	2001	2004	2007	2001	2004	2007
Countries	1 000 euro					
EU	119 269 794	128 772 536	173 460 897	187 313 681	196 404 644	262 028 094
Malta	.	9 853	14 176	.	85 017	157 449
Slovenia	.	81 455	245 736	.	271 508	631 520
Estonia	.	153 123	227 418	.	156 109	423 905
Latvia	.	69 513	175 720	.	113 205	355 197
Lithuania	.	149 254	247 791	.	185 652	583 465
Poland	1 548 609	1 967 912	3 534 461	2 587 261	3 228 796	6 237 661
Czech R.	930 448	1 578 218	2 219 347	1 294 573	2 374 092	4 840 153
Slovakia	.	430 615	1 268 096	.	311 095	824 635
Hungary	1 264 046	1 332 490	1 750 599	1 177 991	1 927 382	2 824 708
Romania	.	.	509 465	.	.	1 409 892
Bulgaria	.	.	147 975	.	.	488 259

Table 4.1 Import and export rates since 2001 of the new EU Member States (excluding Cyprus) in 1000 euro (Source: <http://statline.cbs.nl>)

Poland, Czech Republic and Hungary all became member states of the EU in 2004. Although it is widely assumed that the former EU countries govern over the new, more often than not less developed, countries since the expansion of the EU; the new member states clearly benefited from the free movement of capital, goods, persons (including the freedom of establishment and the free movement of workers)

and services within the EU. As a result, their export rates grew and European trade led to more international (European) trade and hereby to development.

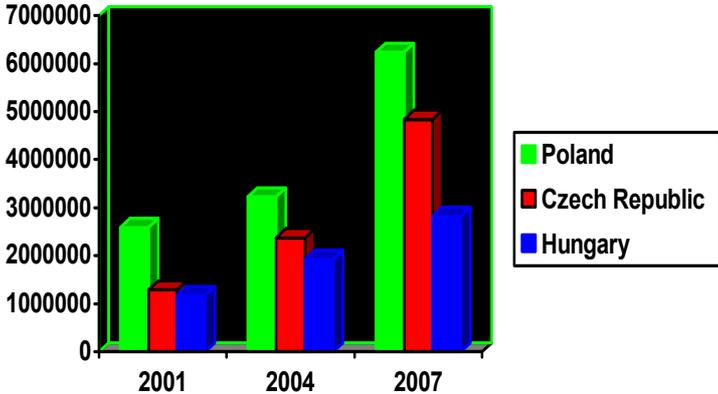


Table 4.2 Export rate since 2001 of Poland, Czech Republic and Hungary in 1000 euro (Source: <http://statline.cbs.nl>)

To conclude, becoming a member state of the EU entailed, among others, higher environmental, democratic and human rights standards. These requirements might have imposed challenges on the governments. It also might have led to a demanding and negative impression among the citizens of the new member states towards the EU. However, ultimately international trade increased and the countries could develop further, which affected the people in a positive way.

4.2 Developing Countries outside the EU

“Recent trends in the Mexican economy provide a convincing example of what other countries or regions can expect if they reach similar agreements with this economic block.”

Rodolfo Aguirre Reveles, Mexican Action Network on Free Trade, 2007

In March 2000, the European Council adopted a new strategy for the future of the EU. It is the objective of the EU to become the most competitive and dynamic economy of the world, and to achieve sustainable and economic growth with more jobs and a stronger social connection (Hardy, 2003). Against this background, the way of negotiating of the EU might be explained. I will illustrate the importance of fair and equal negotiations and agreements by explaining the process and the outcome of the Agreement between the EU and Mexico. This explanation is interesting in the

sense that the SADC countries should not only focus on the establishment of a profitable EPA, but also on the inclusion of performance requirements and provisions on non-fulfilment.

At this moment, the EU has bilateral trade agreements with 37 individual countries. One of these countries is Mexico, which signed the Economic Partnership, Political Coordination and Cooperation Agreement (hereafter the Global Agreement) with the EU on 20 March 2000. The Global Agreement entered into force in July 2000. This Agreement was completed within a year, which demonstrates that it was negotiated within a strict timeframe. For example, no meaningful consultation with Mexican or European civil society organisations took place and the Mexican Congress showed little involvement. This Agreement was the first trans-Atlantic FTA signed by the EU and former EU Trade Commissioner Pascal Lamy called the Global Agreement "*the first, the fastest and the best*". Aguirre Reveles stated that this Agreement was indeed the first, but was a result of negotiations that "*seek the greatest possible deregulation of the economies of the developing countries to facilitate penetration by European capital through chapters on trade in goods and services, investments, public procurement and rules for competition, seeking total reciprocity in the shortest possible time*" (Aguirre Reveles & Pérez Rocha, 2007, p. 6).

As becomes clear from the title of the Agreement, it contains provisions on cooperation as well. However, eight years after the entering into force, it is evident that cooperation has been minimal. European companies have made huge profits in strategic sectors of the Mexican economy. The European companies have also made extensive use of cheap labour and of the non-renewable resources of Mexico. It is remarkable that the EU has stated that this cooperation pillar sets the Global Agreement apart from NAFTA, while the cooperation remains so minimal.

The Global Agreement contains numerous provisions, in which several promises are included. As of now, one can take a look at the Agreement and determine whether the promises that were made, have been kept. Unfortunately, the Agreement has only worsened the political, economic and social situation in Mexico. For example, it was the objective of the Global Agreement to support economic growth and job creation. However, in 2003, the GDP growth was on an average of only 1 percent. In addition, since the Global Agreement has been in effect, the trade deficit of Mexico with the EU has risen from US \$9.4 billion in 2000 to US \$16.9

billion in 2006, which constitutes an increase of 79.6 per cent (<http://stats.unctad.org/handbook/>). Furthermore, the lack of quality and well-paid jobs constitutes a problem, as well as the fact that some European companies have weakened the rights of the workers. **Appendix 5** shows a figure of promises that were included in the Global Agreement and the actual outcome after almost eight years of being into force. It becomes clear that both the Mexican and the European governments have not kept their promises, which left Mexico in an even more disadvantaged position than before. Although the Mexican government refrained with regard to the preservation and improvement of human rights, it is the EU offended the Agreement most prominently and clearly. Unfortunately, the Global Agreement did not contain specific provisions on non-fulfilment, nor did it contain any performance requirements. With regard to the infringements, Reveles warned the governments of the countries that negotiate on FTAs with the EU:

“The presentation of these realities should serve as a wake-up call both to civil society and to governments of the countries with which the EU is currently negotiating FTAs. FTAs that are negotiated under similar conditions and promising to these countries same benefits that the Mexico-EU FTA agreement promised seven years ago” (Aguirre Reveles & Pérez Rocha, 2007, p. 31).

4.3 Potential Resolutions

In a global political economy, there are dominant countries and weaker countries over which the dominant countries rule. Even within Europe, where there is a split between the powerful northern European countries and the weaker southern countries, such a distinction can be found. Although dominance is present in numerous fields of study within the EU, especially these powerful countries helped and motivated the weaker countries to build up their economies. However, applying this positive economic outcome to the future EPAs will imply a comparison between the northern member states of the European Union and the African developing countries. Such a comparison is inappropriate to make.

With regard to the Global Agreement between Mexico and the EU, the following can be said: Within a short period of time, the Global Agreement was signed, which led to disadvantageous provisions for Mexico and far-reaching

European access into the Mexican market. In the end, the EU breached the Agreement in several ways and on numerous fields. As a result, Mexico was found in an even more disadvantaged position than before, where the political and economic situation was worsened and human rights were violated. I discussed the agreement between the EU and Mexico, in order to illustrate the importance of fair and equal negotiations which might result in fair agreements between Southern Africa and the EU. Free Trade Agreements can lead to negative outcomes if the provisions are unfair, the participating countries do not act in accordance with the Agreement and performance requirements are absent. Fast negotiations within a limited period of time are often the reason for these unfair agreements.

An unfair agreement that will result in an even worse social, political and economic situation must be avoided in Africa. But as Kruger mentioned: *“Can it get any worse in Africa”*. It can always get worse, but for now, the interim EPA offers opportunities to the BLNS countries. These countries need these opportunities to develop. It is very difficult for them to attract African investors, let alone to develop without foreign aid and trade. Before dealing with the potential resolutions, I will discuss the positions towards the interim EPA of the BLNS countries on the one hand and South Africa on the other hand.

4.3.1 The BLNS Countries

“A fair deal makes sense for all parties. ACP countries would gain a fairer share of the wealth generated from their interaction with the global economy. Europe would gain too – by supporting ACP countries through fair deals rather than free trade”.

Oxfam International, 2008

The EU offered the BLNS countries duty free, quota free access into the EU, which might be very profitable for these countries. Besides the fact that they will be able to export their products to the EU in an easier and cheaper way, they will also attract European investors. When European companies start establishing in the BLNS countries, not only the economy will grow, but also the infrastructure will improve. Furthermore, more jobs would be created which will lead to more employment and less poverty.

Contrary to South Africa, the BLNS countries will most probably not be affected negatively by the Most Favoured Nation Clause. This clause only applies when the countries start negotiations with other countries or regions. As for now, it is not probable that the BLNS countries will start negotiations with other countries in the near future. In addition, when they do so, a comparable agreement is not likely in the sense that the EU is offering some profitable provisions to these countries and countries like Brazil, India and China will most probably not offer these kinds of provisions (Interview Kruger).

With regard to the standstill clause, problems might arise in the future. However, there are over 8000 customs duties in existence, which means that it is very difficult to find and produce a product that does not fall under one of these 8000 duties. If a country produces a product to which no customs duty is applicable, article 24(2) gives an exception to this general rule:

“In exceptional circumstances, where the SADC EPA States with the exception of South Africa, can justify specific revenue needs, protection of infant industries, or protection of the environment, these SADC EPA States may introduce, after consultation with the EC Party, temporary export taxes or charges having equivalent effect on a limited number of additional products.”

So when a BLNS country is able to demonstrate that a new customs duty must be created in order to protect a new, upcoming industry, and after the consultation with the EU, a new customs duty might be created. The disadvantage of this article is that the duty can only be temporary. This is understandable when you take into account the objective behind this provision, which is the protection of an infant industry. When the industry grows over the years, it is not an infant industry anymore and the duty will become void.

During the negotiations, the EU insisted on the inclusion of a provision on services liberalization. South Africa is the main supplier of services in the BLNS countries, which explains why South Africa did not initial the agreement and tried to convince the BLNS countries, by sending diplomatic missions, not to initial as well. Unfortunately for South Africa, its actions were not successful; the BLNS countries did not follow South Africa's advice and instead initialled the interim EPA (Interview Kruger). As I described in Chapter 3.2.2, the BLNS countries will lose part of its power if services are liberalized. As a result, flexibility in legislating will be lost and

regulations will obtain a rigid character. On the other hand, Southern Africa is in need of better services; mobile reception in Swaziland is difficult to get, the condition of the roads in Lesotho heading to the east is dramatic and Mozambique stores more car wrecks along the roads than the number of cars that are actually driving. With a better industry and more European companies entering the services market of the BLNS countries, services will improve eventually, leading to better education, infrastructure and more job opportunities.

The fact that sufficient access into the European services market was not given, does not really influence the BLNS countries negatively. For now, there is little request from the BLNS countries to enter this market in Europe. When the services market of the BLNS countries is on track, it might be possible that they want to access the European services market. However, this situation will only possibly arise years from now, and in that case, an access to the EU market is possible. The negative element of this process is that less-advantaged conditions will be applicable to the access.

To conclude, the EPA offered to the BLNS countries does not lead to an overall disadvantaged situation. The duty free, quota free treatment offered to the countries can definitely lead to more investment, job opportunities and an overall growth of the economy. However, the government revenues will decrease by 7-10 percent as a result of the removal of import tariffs. The Most Favoured Nation clause and the standstill clause will most probably not have a negative impact on the BLNS countries. Furthermore, the inclusion of services liberalization in the interim EPA will not have tremendous damaging effects in the near future. The EU did, however, include several provisions that were not needed in order to make the Agreement WTO compatible. Some of these provisions can be considered unfair. On the other hand, at this moment the BLNS countries can only gain from the EPA. Falling back to the GSP-scheme was seen as a risk that had to be prevented. Therefore there was no other option than to initial the EPA.

4.3.2 South Africa

The statement or warning made by the Mexican trade specialist Reveles is applicable to the situation of South Africa. Although South Africa is formally a developing state and a member of the ACP, the country is far more developed than its neighbouring states and is therefore more vulnerable to unfair trade agreements.

The duty free, quota free access is not offered to South Africa. This situation can be explained from several perspectives. The difference in treatment infringes on the regional cooperation and, according to South Africa, leads to an unfair agreement towards South Africa. If the EU would have decided to offer this treatment to the BLNS countries, as well as to South Africa, no regional diversification would have arisen. On the other hand, due to the applicability of the TDCA, an unfair agreement towards the BLNS countries would have been the result. Secondly, if South Africa would also benefit from the duty free, quota free access, European companies might prefer to trade with the more developed South Africa, leaving the BLNS countries in a disadvantaged position. So, by not offering the beneficial treatment to South Africa, the BLNS countries were given opportunities to grow economically and politically; but from a South African point of view, the negotiations deadlock was an understandable consequence of the proposed EPA.

The EU used the WTO deadline in their own benefit in order to force the ACP countries to initial EPAs. This negotiation tactic did not intimidate South Africa, because of the fact that the bilateral TDCA is applicable to trade between the EU and South Africa. But, as I mentioned before, 18 African countries did initial the interim agreement in order to prevent the negative consequences of the GSP-scheme. Because of the deadline, the EU had a strong negotiation position, but this position was ineffective towards South Africa. In fact, while using this position in relation to the other African countries, a general interim EPA was offered as a result of this position. Consequently, this EPA profits the African states and the EU, but is not specified to the needs of South Africa.

South Africa entered the negotiations years after they started. After entering, South Africa demanded far-reaching requests, which made the country less popular among the other African states. For example, one of its demands was the exclusion of the Most Favoured Nation clause. This clause, to a certain extent, prevents South Africa from freely agreeing trade arrangements with other states, such as Brazil and

China. Furthermore, South Africa desired a wider access into the services market of the EU and did not want to give away its own services market as a result of liberalization. South Africa did not succeed in convincing the BLNS states not to initial the agreement. This led to the situation of South Africa, standing alone within SACU (Gibb, 2008).

At this moment, the TDCA is still applicable to trade between South Africa and the EU. If South Africa after all decides to initial the interim EPA, the TDCA will coexist next to the EPA. The relation between the EPA and the TDCA is described in article 103(2),(3):

“2. With the exception of development cooperation, in case of any inconsistency between the provisions of this Agreement and the provisions of Titles II, III, IV and VIII of the TDCA, the provisions of this Agreement shall prevail to the extent of such inconsistency.

3. Any Decision adopted by the EU-SA Joint Cooperation Council, established under the Agreement on Trade Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, shall be applicable unless explicitly repealed or amended by this Agreement, or Decisions adopted by the Joint Council established by this Agreement.”

This article makes clear that the EPA prevails over the TDCA. Secondly, decisions made within the context of the TDCA shall be applicable, unless the EPA repealed or amended this decision.

4.3.3 Cost-Benefit Analysis

On the basis of the legal text of the interim EPA signed by Botswana, Lesotho, Namibia and Swaziland, I designed a cost-benefit analysis of the interests of the actors involved. Although cost-benefit analyses are primarily used to assess the value for money of public and private sector projects, this cost-benefit analysis will focus on the consequences of the future EPA, on the basis of a non-monetary analysis, assuming that South Africa signs the current IEPA. Once again, I made a distinction between the BLNS countries and South Africa in order to be able to specifically identify the costs and benefits for the individual SACU countries.

BLNS countries	South Africa	EU
<p>Most-Favoured Nation Clause Although this clause is able to impact the BLNS countries negatively, it is not probable that this disadvantage will occur in the near future since the BLNS countries are currently not focussing on further trade arrangements.</p>	<p>Most-Favoured Nation Clause The MFN clause is only applicable to the African signatory states and will not negatively affect the EU. South Africa is interested in trade arrangements with Brazil and China. However, this clause will prevent South Africa from negotiating freely.</p>	<p>Most-Favoured Nation Clause The EU will profit from this provision in the sense that the signatory SADC states will be obliged to extend the same preferential treatment, which they will offer to other countries in trade agreements in the future, to the EU.</p>
<p>Duty free, quota free access The duty free, quota free access into the EU might be very profitable for the BLNS countries, since they will be able to export their products to the EU more easily and cheaper, and they will also attract more European investment. Unfortunately for the BLNS countries, sugar and rice are still excluded from this provision. Government revenues will decrease as a result of the removal of import tariffs, which leads to income losses and accentuates poverty.</p>	<p>Duty free, quota free access No duty free, quota free access was offered to SA because of the pre-existing TDCA. As a result, SA exports under higher prices and will experience increased competition in the region from BLNS exports. Difference in treatment does not promote regional integration.</p>	<p>Duty free, quota free access By offering duty free, quota free access to the BLNS countries, European producers might be disadvantaged due to the probable higher import rate of African products against lower prices. Consequently, customers will benefit from lower prices.</p>
<p>Standstill Clause The standstill clause prevents the BLNS countries from diversifying economically and developing new industries. Only in the case of an infant industry, a new customs duty might be introduced temporarily.</p>	<p>Standstill Clause The standstill clause leads to the impossibility for the South African government to introduce new customs duties or raise existing customs duties.</p>	<p>Standstill Clause The standstill clause prohibits the introduction of new customs duties. The EU might profit from this clause when a country starts to develop a new industry for which no customs duties are in existence yet.</p>
<p>Intellectual Property The strict intellectual property rules of the interim EPA undermine access to knowledge and hereby fail to support innovation.</p>	<p>Intellectual Property The strict intellectual property rules of the interim EPA undermine access to knowledge and hereby fail to support innovation.</p>	<p>Intellectual Property Technical knowledge and experience within the EU is worth a lot and the release of this benefit will lead to a decrease of value. Upholding the value of its intellectual property was more important for the EU, than the promotion of innovation in African countries.</p>
<p>Services Liberalization Liberalization of the services sector might lead to more foreign investment in the BLNS countries. With more European companies entering the services market of the BLNS countries, the quality of services will improve, leading to better education, infrastructure and more job opportunities. The downside of the services liberalization is that foreign companies will gain power, at the expense of African governments and companies.</p>	<p>Services Liberalization South Africa is the main supplier of services in the BLNS countries. Liberalization of the services sector will lead to a decrease of the South African supply of services. The European services market can only be accessed under less-advantageous conditions, which leads to a burden for South Africa.</p>	<p>Services Liberalization Although the precise design of the provisions on services liberalization is not negotiated yet, European companies will definitely gain from any form of liberalization. Since insufficient market access is offered to the SADC group, European companies will most probably not be affected negatively from African investment in Europe.</p>

Table 4.3 Cost-Benefit Analysis (Favourable provisions are stated in green, unfavourable provisions in red, and discussable provisions and provisions of which the consequences are still unclear in orange)

4.3.4 A Potential Resolution?

This international trade issue has been in existence for quite a long period now. Already in March 2007, when South Africa entered the negotiations, the first problems arose. From this moment onwards, it became clear that the negotiations were going to be complicated.

The EU has forced the BLNS to initial the agreement by making use of the WTO deadline. In doing so, there was a risk upon the BLNS countries to fall back to the GSP-scheme. As a result of this pressure on the BLNS-countries, the EU included several provisions that were not needed for WTO compatibility, such as the Most Favoured Nation Clause and provisions on the liberalization of services (Interview Kruger). South Africa did not initial the interim EPA due to some clearly disadvantageous provisions, and because it had the possibility to trade on the basis of the TDCA.

The fact that Trade Commissioner Mandelson refused to renegotiate the IEPA after initialling, illustrates that the EU used the WTO deadline in its benefit during the negotiations. The objective of his refusal was to prevent risk and uncertainty. Clearly, without the deadline hanging above the BLNS countries as a sword of Damocles, the countries would never have agreed on all the provisions, and real negotiations might have taken place. Unfortunately, the initialled EPA will most probably not be renegotiated. Therefore, a resolution for this international issue should be found within the context of the initialled EPA.

The interim EPA, initialled by the BLNS countries, will have to be transformed into a full EPA. According to the interim Agreement, the negotiations on this full EPA have to be continued and completed in 2008. These negotiations have the objective to extend the scope of the current interim EPA. Article 67 on the second stage of the negotiations, contains recognitions on the trade in services and investment:

“The Parties recognize the growing importance of trade in services for the development of their economies and reaffirm their respective rights and obligations under the General Agreement on Trade in Services (GATS). [...] The Parties recognize that trade capacity building can support the development of economic activities, in particular in services sectors. To this end, the EC Party agrees to support capacity building aimed at strengthening the regulatory framework of the participating SADC EPA States. The Parties

agree to negotiate an Investment chapter. [...] The EC Party agrees to provide adequate technical assistance to facilitate negotiations and implementation of the Investment chapter.”

The negotiations towards a comprehensive EPA are indeed taking place at this moment. These negotiations include South Africa. In August 2008, the chief negotiator of Namibia declared that the negotiation climate had improved. Furthermore, he mentioned that the EU appeared to have a better understanding of the concerns of South Africa, Namibia and Angola. These concerns include issues on agriculture, the Most Favoured Nation Clause, the standstill clause and the emergency safeguard mechanism. Discussions on these concerns took place at the level of chief negotiators (Le Roux, 2007).

During the senior official negotiations from 30 June to 4 July 2008, the EU presented a draft text on services and investment. Negotiations on this area have not taken place yet and the SADC EPA group is still preparing its reaction. The proposal of the group will most probably be to liberalize one services sector per country. SADC will identify and present to the EU the sector of each country that will be liberalized. Within this context it is important to note that the SADC Free Trade Area was launched at the SADC top conference of 17 August 2008 (ECDPM 2008).

The fact that the proposal and preparations originate from SADC, indicates that both South Africa and the BLNS countries participate in this field. The provisions on services liberalization and investment are being discussed. Unfortunately, it is unlikely that South Africa will ever reach an agreement within the SADC EPA group on a proposal on these subjects. As a result, a split in SACU, negotiating as part of the SADC group, might be expected. As mentioned before, South Africa is keen on getting a split in SACU, since SACU holds South Africa back from further development and costs South Africa a lot of money each year as a result of the revenue pool. Since the TDCA is applicable on trade between the EU and South Africa, South Africa had no fear to be obliged to trade within the GSP-scheme, nor was the country affected by deadlines imposed by the EU. South Africa really has the ability and willingness to negotiate with the EU on an equal level, which can be seen as an exception in Africa. South Africa is aware of this and acts accordingly, which is understandable from a South African perspective. Unfortunately, as a result of the South African position, negotiations with the other Southern African countries are

delayed and postponed. This can be seen as unfair towards these African countries, more specifically the BLNS countries. In this sense, a split in SACU might be a potential resolution for the negotiations deadlock. A disadvantage of this split would be that the BLNS countries would not benefit from the revenue pool anymore. On the other hand, the comprehensive EPA would focus specifically on the aims of the BLNS countries. If a split in SACU becomes reality, the BLNS countries will be forced to concentrate on the SADC region in order to promote and gain from regional cooperation. South Africa seems to be interested in the SADC region as well; however, this interest is likely to be based only on self-centredness (Interview Kruger).

So, a split in SACU might be desirable due to the aforementioned reasons. Namely, at this moment, the developmental and economic stages of the SACU countries are too diverse to be able to form a strong region with equal powers for all the countries. In this way, a comprehensive EPA can be signed before the 31st of December 2008 between the EU and the SADC EPA group, excluding South Africa.

To conclude, a real resolution for the negotiations deadlock, in the sense that all the countries and institutions involved will reach an agreement, seems impossible to reach, since all the specific countries and institutions have their own contradictory interests. Only after realizing that such a resolution is impossible to reach, the search for another possible outcome can be started.

Chapter 5 Conclusion

Europe and Africa share a long history that is characterized both by oppression and development. The relationship between Africa and Europe is deeply rooted in its common history and developed during the painful colonial period. The EU acknowledges the importance of relationships with the ACP countries. This relationship is a particularly important aspect of EU development cooperation policy. It is the objective of Europe to transform the former colonial connections into an equal and strong partnership based on accountability, mutual recognition and common interests. In 2005, the European Commission stated the following:

“As a long-standing partner and close neighbor of Africa, the EU is well placed to assume a leading role in this process. Europe and Africa are bound together by common history, interlocking cultures and shared objectives. Sustainable social, economic and political development in Africa is therefore our common concern.”

Southern Africa is the region that leads the continent. It has the greatest industrial base, the most urbanized population and the wealthiest population per capita of Africa. On the other hand, this region is faced with various challenges, such as poverty and HIV/AIDS, which affect the stability of the region. Furthermore, although the Southern African states share a common colonial and post-colonial history, enormous contradictions in terms of the status of development exist within this region nowadays.

In order to develop cooperation on an economic level through regional coordination of trade, SACU was established in 1910. Its membership consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. The 2002 SACU Agreement governs the (economic) relationships between the member states, and between the member states and third parties by promoting the integration into the global economy through enhanced trade and investment.

An overlapping membership exists between SACU and SADC, which has fourteen member states. The key objective of SADC is to create a Southern African common market. SADC focuses on the ideals of free trade, a single currency, free movement of persons, democracy and respect for human rights. SADC integration is based on principles of development and cooperation.

During the EPA negotiations, the EU preferred to negotiate on a regional basis instead of negotiating with the ACP as a whole or with individual countries. Consequently, Sub-Saharan Africa formed two negotiation groups; the SADC EPA group and the ESA EPA group. The five SACU countries are represented in the SADC EPA group, together with Mozambique and Angola.

Former and Existing Trade Agreements

The Yaoundé Conventions of 1963 and 1969, which were association agreements between 18 associated African states and the 6 EEC countries, are considered to be the start of the developmental history between the EU and the African continent. These conventions were replaced by the Lomé Convention between 46 ACP countries and the EEC, that was first signed in 1975 and renewed three times. The Convention contained arrangements governing the relations between Europe and Africa, and its creation was based on a moral obligation to compensate the former colonial countries to a certain extent. South Africa was admitted to the Lomé Convention in 1997 on extremely restricted conditions. The Convention gave the states of the South more favourable terms for commodity price-stabilization plans and preferential access to the European markets. However, no Common Fund was established, it did not constitute a common market, free trade area or political alliance, and Europe refused to negotiate concessions on a regular basis. Unfortunately, the favourable terms and preferential access under the Lomé Convention have had limited success in generating export growth and improving the problematic situations of the ACP countries. Renewal of the post-colonial provisions of the Lomé Convention was desired and upon expiry in 2000, Lomé was replaced by the Cotonou Partnership Agreement (CPA).

On 23 June 2000, the CPA was signed by the 77 ACP countries and the fifteen EU member states. The CPA has five pillars; a comprehensive political dimension; participatory approaches; development strategies with a strengthened focus on poverty reduction; a new framework for economic and trade cooperation; and a reform of financial cooperation. Among others, it is the objective of the CPA to build a partnership between the EU and the ACP countries (article 1) and to reduce poverty (article 19). The Cotonou Agreement is set to last for 20 years and will be reviewed every five years. The first pillar on trade preferences states that, although

discriminatory towards developing countries that were not members of the CPA, the non-reciprocal trade preferences, which were previously enjoyed under the Lomé Convention, would continue until December 2007 as a result of a WTO waiver obtained by the EU. The Cotonou Agreement points out that these trade preferences will be replaced by joint WTO-compatible Economic Partnership Agreements (EPAs). The Cotonou Agreement foresees in negotiations on these new trade arrangements.

Problems arose during the negotiations on WTO compatible EPAs between the EU and the ACP countries. In my thesis, I focussed specifically on the negotiations, and the subsequent issues that arose between SACU, negotiating as a part of the SADC EPA group, and the EU.

The Participating Countries and Institutions

In describing the individual SACU countries, a distinction should be made between South Africa on the one hand and the BLNS countries (Botswana, Lesotho, Namibia, and Swaziland) on the other. South Africa leads the region in terms of economy, services, development and trade. Within SACU, South Africa is by far the largest provider of money in the revenue pool. Under the former SACU Agreements, South Africa played a dominant role, which led to an imbalanced union. The 2002 SACU Agreement brought some changes in this situation, but South Africa remains the main player within SACU. One of the objectives of this Agreement is the promotion of the integration of member states into the global economy through enhanced trade and investment. Due to the economic diversity within the region, this objective forms a major challenge.

The differences between the developmental status of the BLNS countries and of South Africa obviously lead to contradictory interests. This is exactly what made the negotiations on an EPA between SADC and the EU so complicated. As a result of the WTO waiver and the provisions in the Cotonou Agreement, an EPA had to be initialed before 31 December 2007. Not signing the proposed EPA meant falling back to the GSP-scheme for the BLNS countries. This scheme is clearly disadvantageous in comparison with the proposed EPA. Due to the pressure of the deadline, the BLNS countries initialed the interim EPA. In contrast, South Africa was not affected by the deadline to initial the EPA, since the Trade, Development and Cooperation Agreement (TDCA) is applicable to trade between South Africa and the EU.

Therefore, South Africa simply did not feel the pressure of having to trade under the GSP scheme. As a result, South Africa was able to start real negotiations on specific provisions and terms of the proposed EPA. The problem was, however, that South Africa negotiated in a self-interested manner, which led to the fact that other African countries opposed the South African position. According to the South African Deputy Trade Minister Davies, Africa first had to integrate regionally, before entering into negotiations with non-African countries. However, with South Africa clearly disagreeing, 18 African countries initialed the interim EPAs.

The statement of Davies on regional African integration is in contradiction with the actions of South Africa. South Africa only formally entered the negotiations in 2007, while the other countries were already in negotiations with the EU since 2002. Upon entering, South Africa started to influence the negotiations from its own national perspective. In doing so, South Africa did not take into account the international interests of the SACU countries in general nor did it take into account the importance of regional cooperation.

The EU has had the opportunity to develop its trade policy over almost 50 years. The European Commission, responsible for international trade relations, has built up extensive experience and concluded several agreements with African countries and regions so far. Besides the fact that the EU has the advantage of repeated experience; the EU also gains from a powerful institutional system, characterized by safeguards and cleverly planned management. The EU is aware of the fact that developing countries, such as the ACP countries, are in need of international trade. These countries are forced to source from abroad. The maintenance of a favourable long-term trading relationship with the EU is of great importance to the economic and political well-being of SADC, since the EU is the main trading partner of most African countries. Because of this awareness, the EU proposes trade agreements that can be beneficial for developing countries, but are mainly even more beneficial for the EU itself. Due to the system of checks and balances within the European institutional structure, it is almost impossible for the European Commission to propose trade agreements to developing countries that are clearly weakening the developing countries and leading to more poverty. However, this does not prevent the EC from proposing agreements that contain obvious benefits for the EU that are not

necessary for WTO compatibility, in sectors or fields currently less important for developing countries (excluding South Africa).

This is exactly what happened during the negotiations on the new EPA. After a long internal process, the EU proposed a draft EPA to the SADC EPA group. This draft contained several provisions on developmental aid, the promotion of development, duty free and quota free access into the EU and the reduction of poverty. Furthermore, provisions on services liberalization, investment, a standstill clause and the Most Favoured Nation Clause were included in the proposed EPA. Within this context, problems arose due to the different developmental and economic status of the participating SACU countries.

The interim EPA

Negotiations on the creation of an EPA started in 2002. At the beginning of these negotiations, the EU made clear that it did not want to negotiate an EPA with the ACP as a whole, nor did it want to negotiate with every country separately. As a result, regional groups were formed in Africa. According to the EU, the consequence of this negotiation method will be that EPAs will be created with provisions that specifically focus on the challenges different regions face. The downside of this European preference was, however, that the new established regional groups in general lacked knowledge and an institutional structure. SACU is negotiating an EPA within the SADC configuration and is seen as an exception to this general statement, since it has been in existence for almost 100 years now and has a clear institutional structure.

On the 23rd of November 2007, senior negotiators from the European Commission and SADC initialled an interim EPA, which included a WTO-compatible market access schedule and provisions on development cooperation. As for the SADC EPA group, this agreement only applies initially to Botswana, Lesotho, Swaziland and Mozambique. Subsequently, Namibia initialled the agreement on 11 December 2007. Both the EU and SADC confirmed that the interim EPA was open to other parties to join. Negotiations on a full EPA are still pending and it is the objective to conclude these negotiations in 2008.

Among others, it is the objective of the interim EPA to reduce poverty, to promote regional integration, economic cooperation and good governance, to support

conditions for increasing investment and to strengthen the existing relations between the parties on the basis of solidarity and mutual interest. A free trade area will be established between the EU and the SADC EPA states. The free trade area only applies to goods originated in the European Community or in the SADC EPA States. In essence, this means that the 'rules of origin' requirement is in force. If South Africa decides to initial the interim agreement, several products will be subject to specific provisions on cumulation.

Disagreement emerged between within SACU, which resulted in a negotiations deadlock with regard to the content of the proposed EPA. Firstly, problems arose in relation to the disparities created by the EU by offering the BLNS duty free, quota free access. This offer was not extended to South Africa because of the developmental status of the country and the pre-existing TDCA that contains a 12-year period towards the creation of a free-trade area. Consequently, South Africa will be required to export under higher prices and will experience increased competition in the region. The downside of the removal of import tariffs for the BLNS countries is that government revenues will decrease, which might lead to income losses and will accentuate poverty. SACU will be negatively influenced by this provision and preservation of this customs union can become problematic. Besides the practical problem of this difference in treatment, the disparities that the EU will create clearly infringe on the objectives of the agreement on regional integration.

Secondly, the standstill clause of the IEPA might prevent the SACU countries from diversifying economically and from developing new industries. Fortunately, most industries are already developed within the SACU countries. The customs duties that are applicable to these industries are therefore already introduced. The standstill clause is not applicable to these industries, regardless of the developmental status of these industries.

The Most-Favoured Nation clause primarily impacts negatively on South Africa, since it prevents South Africa from negotiating freely with other countries such as Brazil and China. Furthermore, the strict intellectual property rules of the IEPA undermine access to knowledge and hereby fail to support innovation.

The content of a chapter on services liberalization that will be included in the full EPA is still being negotiated. Liberalization of services might lead to more foreign investment in the BLNS countries, as a result of which the quality of services will increase, leading to better education, infrastructure and more job opportunities.

However, foreign companies will gain power at the expense of African governments. South Africa is the main supplier of services in the BLNS countries and will therefore be confronted with economic losses if the services sector is liberalized. Alternatively, the European services market can only be accessed under less-advantageous conditions, which leads to a burden for South Africa.

In summary, the BLNS countries are highly dependent on trade agreements with the EU. As a result of this dependence, the EU proposed an EPA that included several provisions that were not needed for WTO compatibility. Due to the expiry of the WTO waiver, the BLNS countries did not have much choice but to initial the agreement. From an economic nationalist perspective, this position is understandable; the EU proposed provisions that were in its own interest by making use of its influential negotiation tactics. South Africa, also out of its own interests, was to a lesser extent intimidated by the powerful negotiation tactics of the EU and opposed the provisions of the IEPA which led to the negotiations deadlock. The interests of the individual countries of the SADC EPA group are extremely contradictory, which makes it difficult, if not impossible, to find a resolution within this configuration. Only after realizing that such a resolution is impossible to reach, the search for another possible outcome can be started.

Because of the economic power and negotiating tactics of the EU, and the self-interested attitude of South Africa in this respect, regional integration is undermined and the poorest countries are once again the worst off. The partnership-pillar of the future Economic Partnership Agreement is, in my opinion, hard to find. What remains is asymmetry.

Appendix

Appendix 1

Interview Bert Plusquin 28 September 2008

Consul General of Gambia

Dutch Embassy

De Europese Unie is op dit moment in onderhandeling met de ACP landen over Economic Partnership Agreements (EPAs). Hierbij zijn ze, naar Europees zeggen, gebonden aan de WTO deadline die op 31 december 2007 stond. Wanneer landen niet akkoord gingen met de voorgestelde EPAs voor deze datum, dan dreigde de EU hogere import belastingen te gaan hanteren. Onder deze druk heeft bijvoorbeeld Namibië al een interim EPA getekend. Daarnaast heeft de EU gesteld dat zij noch met individuele landen, noch met de ACP in het geheel wil onderhandelen. De ACP was juist opgericht om een sterk onderhandelingsboard te vormen tegenover de machtige westelijke staten. De landen zijn nu verplicht om vanuit regionale groepen te onderhandelen. Deze groepen ontbreekt het vaak aan organisatie en kennis.

1. In relatie tot Gambia en West Afrika in het algemeen, bent u van mening dat de EU haar machtspositie 'misbruikt' door nadelige EPAs voor te stellen (daarbij deadlines te stellen, te dreigen met hoge belastingen en voorkeur te geven aan regionale groepen)?

Ik ben me er van bewust dat u, als vertegenwoordiger van Nederland, bepaalde meningen niet kunt uiten. Als u beslist om geen antwoord op deze vraag te kunnen geven, begrijp ik dat volkomen.

"Het feit dat u zelf reeds het woord 'dreigen' gebruikt geeft aan dat u waarschijnlijk wel degelijk bewust bent van de niet gelijke voorstellen in deze. Internationale handel kan inderdaad een middel zijn tot economische groei, echter als uitgangspunt aannemende dat efficiency zowel op het gebied van communicatie als productie in de Westerse wereld beter ontwikkeld zijn. Derhalve ontwikkelingslanden reeds uitgaan van een nadelige positie. Er kan in deze geen sprake zijn van een

open internationaal handelssysteem, gezien het Europese subsidiebeleid ten aanzien van eigen agricultuur productie kunnen Afrikaanse landen hier nooit mee concurreren zonder specifieke overeenkomsten. Dus open internationaal handelssysteem: niet mogelijk.”

Er zijn verschillende manieren om handel te doen in een global political economy. Volgens verschillende specialisten is economische groei voor een groot deel afhankelijk van internationale handel.

2. Wat is volgens u de invloed van internationale handel op economische groei in ontwikkelingslanden?

“Het antwoord op vraag 2 is reeds gedeeltelijk gegeven bij vraag 1. We dienen te spreken over grondstoffen die momenteel geëxporteerd worden vanuit Afrika naar de Westerse wereld. Afrika moet zoeken naar ‘added value’, met andere woorden dient deze grondstoffen zelf een meerwaarde te geven en niet te verhandelen ‘as is’.”

Enkele Zuid-Afrikaanse economen en specialisten zijn van mening dat de EU te veel waarde hecht aan het koloniale verleden dat de Europese landen met Afrika hebben. Zij zijn van mening dat de EU enkel zegt dit verleden ‘goed te willen maken’. Ondertussen herhaalt de geschiedenis zich, en handelt de EU uit eigen belang. Op papier lijken de bepalingen uit de verdragen namelijk voordelig voor de Afrikaanse landen, maar in werkelijkheid leiden de bepalingen enkel tot een (goedkope) toegang voor de EU tot de Afrikaanse markt. Andersom is de Europese markt moeilijk te betreden door de hoge competitiviteit.

3. Kunt u hier, als Honorair Consul, op reageren?

“De stelling ondertussen herhaalt de geschiedenis zich is niet juist. Het is niet anders geweest! De stelling dat ‘wij’ iets goed willen maken gaat te ver. Men zou eerder een streep dienen te trekken onder het verleden: in plaats van omkijken, vooruit kijken.”

Appendix 2

Interview Paul Kruger 25 September 2008

Trade Law Centre Southern Africa

TRALAC

1. With regard to the EU, the WTO waiver that expired on 31/12/2007 functioned as a deadline during the EPA negotiations. The BLNS countries initialled the interim EPA, but SA opted out. Can you react on this?

“The big problem in the beginning was that one of the members, South Africa, was not involved in the configuration. That was something that they tried to rectify from the start. They kind of got that right, but in the end South Africa did not initial the agreement which made the problem that they tried to rectify from the beginning just more difficult.

We must be very careful with the waiver. It was not really a deadline imposed by the EC. It was a deadline that was imposed by the international and WTO rules. I think it started in 1994 with the Banana dispute. There the WTO decided that the treatment that the EU countries were giving to the ACP countries was discriminating against the other developing countries in the world. So the WTO told the EU in 1995 and 1996 that they had to rectify their way of trading with the rest of the world because it was discriminating and they had to bring that in line with the WTO rules. So what they suggested is the following: Until you get your trade rules in line, we suggest you get a waiver from WTO. The way a waiver worked in the early world, under the old WTO rules, was that only 2/3rd of the countries had to agree to it. In the end of 1995, the WTO rules changed and the EU needed another waiver. However, now they needed the permission of all the countries, which meant that all the countries had a veto right. In doing so, the EU had a problem with getting permission from a lot of Latin-American and Central-American countries. So they had to pay a lot of money and concessions to get those countries to agree. It took the EU 18 months to conclude the waiver. So, the same thing was going to happen at the end of this waiver, maybe not immediately, but within 2008 some of the countries stated that the waiver came to an end, but the EU was still continuing with their trade regime.”

2. In your opinion, did the EU use this deadline as a powerful negotiation tactic?

“It was the objective of the EU to reach an agreement before the end of the waiver. The EU wanted to reach an agreement that was compatible with the WTO rules. This was the objective, but I think the EC in a way used it to leverage to get the countries initial. When the waiver came to an end, automatically, there was a switch to the GSP- scheme.”

3. The Most Favoured Nation clause, the standstill clause and the fact that the EU offered the BLNS countries duty free, quota free treatment, but did not extend this offer to South Africa, gave me the feeling that, especially towards South Africa, this EPA is disadvantageous. What is your opinion on the initialled EPA?

“It is the first time that African countries really negotiate an agreement with a developed country or region. It is going to be the first and the last time that they are actually getting a developed component and that they are actually getting money for what they are doing. It is something that the African countries have to do. Even if it is a bit unfair and there are some problems with the agreement, they are not really going to lose. They can only benefit from what is happening now, because they will get duty free and quota free treatment. South Africa has got all the industries in Africa. There might be EU companies coming into Africa and bringing the price down. It will be very beneficial for the African countries, other than South Africa.

What is very concerning is that the EU is getting so much critique from the rest of the world on the EPA, that they do not want to push the African countries anymore. The EU is focussing on China and India right now.

Can it get worse in Africa? No, it can only get better. It might look as if Africa is losing out and it might seem as an unfair agreement, but Africa will never get such an agreement again. If Africa is going to negotiate with Brazil or India, they are going to tear us apart and it will be the most unfair agreement ever seen.

With regard to the treatment towards South Africa; it wanted to become an ACP

country and become part of the Lomé Convention. The EU reacted by saying that South Africa is not really a developing country, but more a country in the middle. The EU wanted to negotiate the TDCA Agreement. Under the old SACU Agreement it was still possible to negotiate without the other member states. In the end, all the products going out from South Africa to the EU was done under the TDCA duties. On the other hand, all the products going out from the BLNS countries, was done under the Cotonou Agreement. The problem was the products coming into SACU. Most of the products coming into SACU were imported via South Africa, and therefore subject to the TDCA rules. There was no differentiation between products coming in via BLNS or via South Africa. So, de facto all the other SACU members were also part of the TDCA because it was all coming in under South African duty and then distributed to the rest of SACU. The idea behind the customs union is that the duty should be the same for all the countries because once a product is inside, they are on their borders and the products can float freely.

The proposed different treatment with regard to duty free, quota free treatment will not be a problem when one of the SACU countries exports a product. The idea behind the customs union is that every SACU country will have to have the same duties towards third parties when they want to import products into SACU.

The Most Favoured Nation clause is a clause that the USA also usually puts in their agreements. South Africa has the biggest problem with this clause, since it would only affect the country that is a bit more developed. It would not affect the smaller countries. Maybe the EU put it in the agreement just to have an obligation on South Africa, because they know that South Africa is going to negotiate with Brazil and China.”

4. South Africa has stated that the demands of the EU were too onerous. The fact that duty free, quota free access was not extended to South Africa led to South Africa opting out of the Agreement and threatening to break up SACU. Was this reaction, in your opinion, understandable or unreasonable?

“South Africa came in the negotiation process long after. South Africa formally applied to be included in the negotiations in March 2006 and eventually, exactly a year later they became a party. So South Africa was not really running the process,

but inside the negotiations and inside the rooms where the EPA was made, South Africa was dominating. The rest of the countries did not like what South Africa was doing, since they came into the negotiations later and they tried to change the whole purpose. And for the rest of Africa, it was always about what to get from the EU for themselves and how to get an agreement to develop the industries. But South Africa had a whole other agenda. The negotiations just did not work, since South Africa had so many problems and did not want to lose anything as a result of the EPA. South Africa is already too developed to think in the direction of the BLNS countries.

South Africa did not initial the agreement, but in fact, it also wanted the other countries not to initial the agreement. Consequently, they sent diplomatic missions to all the other countries in order to convince the countries not to sign the EPA. Secondly, the South African missions advised the African countries to focus on SADC instead. The underlying idea was that Africa can only negotiate with the rest of the world, when the region is harmonized first. So, against this background, the fact that South Africa opted out and threatened to break up SACU was a selfish move and really angered the rest of the world. Namely, South Africa entered the negotiations in 2006, while the other countries were already in negotiations with the EU since 2002. From that moment onwards, South Africa was telling other countries what to do, which gave these countries the feeling that South Africa was of the opinion that they could not think for themselves. South Africa is keen on getting a split in SACU, because SACU only costs South Africa a lot of money. At the moment, South Africa seems to be interested in SADC region but maybe more for the benefit of itself. South Africa first wants to become a close region, before negotiating with the rest of the world. But it will take many years before there is unity in SADC, if it is ever going to work.”

5. What is, in your opinion, the influence of free trade on the economic growth of developing countries?

“Everybody thought that free trade was a good idea and the answer to a lot of problems. But now people are realizing that it is a very slow process that they are initially making and the gains were not as good as everybody expected. So, the agenda of today is looking more towards new issues, such as services, investment

and competition. That is where there might be bigger gains than in the normal free trade of goods, because for example, more industries are being affected by services than by goods. So, at the moment people are shifting their agenda towards the newer issues because free trade is not working as well as they thought.”

6. Lastly, by taking into account the clauses, the treatment, the other provisions and the way of negotiating, do you think an unfair agreement has arisen?

“The EU is treating South Africa stricter than any of the other countries, since this country is to a certain extent developed. The EU cannot really sign this agreement and give South Africa the same rights as the developing countries. South Africa entered the negotiations years later and started to make some sort of ridiculous demands. I think many things South Africa tried to put in, was only to take a big chance. The country wanted to see if they were going to get it; see how far they could go. Now they see that the EU is not going to allow this way of negotiating. As a result, the problem was that a lot of negotiation took place between the EU and South Africa, unfortunately more than the negotiations between the other African developing countries and the EU.

Also unfortunately, the EU used its leverage and these practices are kind of exposed in the international media now. There is a lot of pressure from the Dutch, the Danish, the French and the Germans on the European Commission. They say that certain clauses do not have to be in the EPA and provisions on services and other issues are not needed to make the agreement WTO compatible. They only need an agreement on goods. The actions of the EU are exposed now, and that is maybe why they are backing off a bit.

Unfortunately, the agreement is unfair, but it is all we have. The African countries will gain from the experience of negotiating and trading. They have to give it away sometime, so why not give it away to someone who actually wants to help them developing. But if this EPA does not succeed, the African region is going to be very protectionism with an inwards looking approach instead of an outwards looking approach.

It is the people that you want to liberate from poverty. The only way how that is going to happen is when foreign companies come to Africa and start manufacturing

products or supplying services while creating jobs.”

7. Also when cheap labour and breaches of human rights are the results of European companies entering the African markets?

“One thing that the African governments want to renew, are the labour laws. Labour legislation will be build into new agreements, so at least on this part, Africa is safe.”

Appendix 3

Interview Denise Prévost 3 September 2008

Institute for Globalisation and International Regulation

Maastricht University

De Europese Unie is op dit moment in onderhandeling met de Southern African Customs Union (SACU) over een Economic Partnership Agreement (EPA). Er zijn verschillende opvattingen over de wijze waarop deze onderhandelingen worden gevoerd. Zo stelt Zuid-Afrika dat de eisen van de EU te vergaand zijn. De EU heeft bijvoorbeeld een duty free, quota free market access voorgesteld aan de BLNS landen (Botswana, Lesotho, Namibië, Swaziland). Echter, dit aanbod is niet aan Zuid-Afrika voorgesteld. Zuid-Afrika is vervolgens uit de onderhandelingen gestapt en heeft gedreigd de SACU op te breken. Na uitvoerig overleg is Zuid-Afrika weer terug aan de onderhandelingstafel en heeft het land het dreigement teruggetrokken.

1. Vindt u de voorgestelde EPA van de EU teveeleisend?

“The existing TDCA covers only goods (including agriculture), and excludes obligations relating to the ‘new issues’ of services, investment, competition and government procurement. The proposed ‘full’ EPA intends to include new issues such as services, investment, competition and procurement. The prohibition on export taxes has implications for SA’s minerals beneficiation strategy, and Namibia’s industrial diversification strategy (which relies on export taxes to encourage value adding through processing). In addition, Most Favoured Nation treatment will apply, obliging South Africa and other SACU members to offer the EU the best conditions of market access they offer to any other countries (such as China, India and Brazil) in future bilateral agreements. As a result, the full EPAs are likely to create a great implementation burden for SACU countries.”

2. Wat is uw mening over de reactie van Zuid-Afrika om de SACU op te schorten en uit de onderhandelingen te stappen?

“Under Article 31 of the SACU Agreement, member states may not enter into new preferential trade agreements with third parties without the consent of other members. However, I do not think that SA will in fact step out of the SACU Agreement. Nevertheless, the EPA will create problems for the customs union, since different trade regimes coupled with complex rules of origin require border administration that is contrary to the aim of the customs union.”

Er zijn verschillende manieren om handel te doen in een global political economy. Volgens verschillende specialisten is economische groei voor een groot deel afhankelijk van internationale handel. Zo is Alam van mening dat een open internationaal handelssysteem een fundamenteel economisch instrument is voor ontwikkelingslanden.

3. Wat is volgens u de invloed van internationale handel op economische groei in ontwikkelingslanden?

“In principle, trade liberalization leads to foreign revenue earnings and economic growth for developing countries. However, to achieve this objective, liberalization must provide market access in sectors of importance to developing country exporters. It must take full account of the fact that trade is occurring between unequal partners. The EPAs require SACU signatories to undertake far-ranging market access commitments, including in new areas (see above) and to extend MFN treatment to the EU. In contrast, the EU maintains restrictions (import tariffs and quotas) on ‘sensitive products’ in order to protect certain EU industries (eg beef) where SACU members would have a competitive advantage. Important issues, such as the agricultural subsidies of the EU, are not addressed in the EPA. In this way, the EU is using the EPAs to push through agreements with weaker negotiating partners on issues that it pursued unsuccessfully in WTO negotiations.”

De Zuid-Afrikaanse economen en specialisten waarmee ik hier in Zuid-Afrika gesproken heb, zijn van mening dat de EU veel waarde hecht aan het koloniale verleden dat de Europese landen met Afrika hebben. Zij zijn van mening dat de EU enkel zegt dit verleden 'goed te willen maken'. Ondertussen herhaalt de geschiedenis zich, en handelt de EU uit eigen belang. Op papier lijken de bepalingen uit de verdragen namelijk voordelig voor de Afrikaanse landen, maar in werkelijkheid leiden de bepalingen enkel tot een (goedkope) toegang voor de EU tot de Afrikaanse markt. Andersom is de Europese markt moeilijk te betreden door de hoge competitiviteit.

4. Kunt u hier, als Europese specialist, op reageren? (Deelt u deze mening, of bent u van mening dat de EU niet naar het verleden handelt en enkel mogelijkheden wil geven aan de Afrikaanse landen?)

"I am not European, unlike Prof Van den Bossche. I strongly doubt whether the EPAs are motivated by a desire to provide opportunities for developing countries, as is evinced by the fact that it is DG Trade and not DG Development that is most actively involved in these negotiations. The provisions in the EPAs on technical assistance are weak and inadequate."

Appendix 4

Composition of European Parliament

Member States	Seats	Member States	Seats
Germany	99	Poland	50
France	72	Romania	33
United Kingdom	72	Czech Republic	20
Italy	72	Hungary	20
Spain	50	Bulgaria	17
The Netherlands	25	Slovakia	13
Belgium	22	Lithuania	12
Greece	22	Latvia	8
Portugal	22	Slovenia	7
Sweden	18	Estonia	6
Austria	17	Cyprus	6
Denmark	13	Malta	5
Finland	13		
Ireland	12		
Luxembourg	6		

(Source: <http://europa.eu>)

Appendix 5

The original promises in accordance with the Global Agreement in practice

PROMISE	REALITY
The Mexico-EU FTA will support economic growth and job creation	GDP growth in Mexico during the first three years that the agreement was in effect was a mediocre 1 per cent. Even though there was a relative recovery in the years since, as economic growth in Mexico is closely tied to growth of the United States economy and its cycles, the Mexico-EU FTA has not brought dynamism to the economy during economic slumps. On the other hand, lack of quality and well-paid jobs is one of the major structural problems of the Mexican economy that has worsened precisely because of the FTA. There are several cases where European companies have weakened workers' rights and unfairly laid off workers, such as in the case of Continental Tyres.
The Mexico-EU FTA will promote an increase and diversification of Mexican exports to the EU.	Foreign trade and direct investments are concentrated with the United States and the Mexico-EU FTA has done nothing to revert this situation. European companies have seen the country as a platform to lower costs and export to the United States. The trade balance deficit has risen 80 per cent since the EU-Mexico FTA went into effect. On the other hand, there are no performance requirements in the Agreement, and European investments remain concentrated both sectorally and regionally in enclaves that contribute little to the internal development of the country. A significant portion of Mexican 'exports' to Europe are transactions within transnational companies and the main Mexican product sold to the EU is oil.
The Mexico-EU FTA, including the APPRI (Reciprocal Promotion and	These agreements have not only failed to contribute to overcoming inequalities in Mexico, they have aggravated them by de-nationalization and deregulation of the national economy. The reason behind this is that the

<p>Protection Agreement), will contribute to overcoming inequalities in Mexico.</p>	<p>FTA's prime objective is to create ideal conditions for large transnational companies to maximize their profits to the detriment of the capacity of States to direct public policies that promote sustainable economic and social development.</p>
<p>The Mexico-EU FTA will promote greater quality and the arrival of new agents will provide the population with higher quality, lower cost services.</p>	<p>The presence of European companies in strategic sectors such as water, electricity and banks has not promoted enhanced quality, rather, on the contrary, an oligarchic market with high prices and widespread abuse of consumers. These practices, together with the lack of government regulations, have allowed them to acquire large utilities, thereby supporting their global businesses. Nonetheless, they continue pressing for increased openness, despite not having demonstrated to date that their presence has enhanced market conditions as originally promised.</p>
<p>The Mexico-EU FTA will support economic growth and job creation</p>	<p>The inclusion of the Singapore issues (investment protection, competition policy, transparency in government procurement and trade facilitation) in the Mexico-EU FTA and APPRI (which have been rejected within the WTO framework by developing countries) has had a strong negative impact of the State's capacity to conduct social and economic policies and measures favoring domestic growth and distribution of wealth, particularly in the financial and services sectors.</p>
<p>Signing the Global Agreement is an instrument for protecting human rights through the inclusion of a Democratic Clause that provides for sanctions to any country where these types of</p>	<p>Authorities of the European Union have shown themselves to be indifferent in relation to the constant charges of human rights violations, both by the Mexican State as well as by European companies. The Democratic Clause is merely a decorative element In the Agreement.</p>

violations exist.	
Political dialogue enables participation of civil society organizations and sectors	European and Mexican authorities have ignored the demands of civil society raised in the Dialogue Venues. Practical proposals to institutionalize dialogue and to provide a positive sense to the Democratic Clause have not been addressed after Five years!!
The cooperation chapter enables the channeling of funds for developing the country.	European cooperation fails to recognize the asymmetries and is tepid in light of the inequalities caused by the Mexico-EU FTA and the exorbitant profits earned by European companies (particularly Banks and the Financial Sector). Furthermore, projects resulting from cooperation have been designed with no real consultation with the communities in which they are to be conducted.

(Source: Aguirre Reveles & Pérez Rocha 2007)

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