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Regional integration and EPA configurations in southern and eastern Africa – what are the feasible alternatives?

Mareike Meyn

1 Introduction

Four main regional integration frameworks exist in southern and eastern Africa and most countries belong to two or more of them. While the Southern African Customs Union (SACU) and (partially) the East African Community (EAC) have established a common external tariff regime, the Common Market of Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) have not yet created a free trade area for all their members. One reason for the lack of progress in economic integration is the issue of overlapping memberships to which only insufficient attention was given in the past. This has changed, however, since 2002 when southern and eastern African countries started negotiating the so-called Economic Partnership Agreements (EPAs) with their main trading partner, the European Union (EU), in order to maintain their preferential market access under the Cotonou Agreement. EPAs are supposed to be asymmetrical North-South Free Trade Areas (FTAs) combining trade and development in order to help integrating African, Caribbean and Pacific (ACP) countries into the world economy. By negotiating with regional blocks of ACP countries, the EU intends to limit the biased negotiation power and to promote deeper economic integration among ACP regional groupings.

The southern and eastern African region is the only one within the group of ACP countries that does not negotiate in its original regional integration frameworks but in newly created regional bodies, only designed for EPA negotiations. The ESA EPA and the SADC EPA encompass all members of the existing four integration schemes, hardly mirroring countries' economic and strategic interests and the consequences for deeper regional integration.¹ Since negotiations for EPAs have to be finalised by

¹ See Meyn (*MRISAYB*, vol. 5/2005).

December 2007,² there is the urgent need for some countries to revise their decision on EPA configuration in order to make it coherent with the regional integration framework and the regional obligations they entered into.

How the issue of overlapping memberships could be addressed and made consistent with EPA negotiations has already been discussed and different scenarios were drawn (e.g. Jacobeit et al., 2005; Hess and Hess, 2005 and SAIIA, 2005). These scenarios have in common that they focus on the perspective of regional integration; i.e. how EPA configurations could be revised to work best for regional integration. This paper tries to adopt a more pragmatic approach by asking which regional frameworks are likely to enter into a joint EPA and what the costs and benefits for regional integration would be. In this respect, special attention is paid to the recent proposal of the SADC EPA, arguing that it is likely to form the basis for ongoing EPA negotiations and would have implications for the whole region.

The paper is structured as follows: After the introduction, in section 2, the status quo of regional integration schemes and EPA configurations in southern and eastern Africa is presented. Section 3 discusses the progress and problems of negotiations for the ESA EPA and the SADC EPA. Section 4 analyses to what extent feasible alternatives exist and their implications for regional integration. Section 5 summarises the findings and gives policy recommendations.

2. Regional integration and EPA Configuration in southern and eastern Africa – what is the status quo?

There are four economic integration frameworks in southern and eastern Africa. The Eastern African Community (EAC) comprises Kenya, Tanzania and Uganda. Its history dates back to the 1960s when the countries first entered into a Customs Union (CU). Its failure in 1977 was a result of Kenya's economic dominance in the region, resulting in trade diversion without offering trade creative options for Tanzania

² There is ongoing speculation whether ACP countries' nonreciprocal trade relationship with the EU can be extended beyond 2008. However, to date the EU has made clear that it is not ready to apply for a new WTO waiver (Falkenberg, 2006).

and Uganda (Venables, 1999).³ Though the different production structure of the three countries still remains, Kenya, Tanzania and Uganda established a new CU without yet having been able to agree on a compensatory mechanism.⁴

The Southern African Customs Union (SACU) between South Africa and Botswana, Lesotho, Namibia and Swaziland (BLNS) is still the only fully implemented CU in Africa. SACU has existed in its current form since 1969 but dates back to 1889. SACU provides duty-free movement of goods and services within its territory and shows a CET as well as common excise and sales duties, common rebates, refunds and drawbacks against third countries. Member countries have agreed on a revenue-sharing formula to address the different development degrees between South Africa and the BLNS countries.⁵ Intra-SACU trade is comparably high, though South Africa's intra-regional exports are highly dominating. Within SACU, South Africa, Lesotho, Namibia and Swaziland form the Common Monetary Area (CMA), which can be classified a currency board with parity exchange, supposed to reduce transactions and information costs. The implementation of the SACU 2002 Agreement also aims to harmonise member countries' trade-related policies so that SACU moves towards a Common Market. SACU has already adopted elements of an Economic Union, such as the coordination of monetary and fiscal policies.⁶

All SACU members are members of the Southern African Development Community (SADC), which comprises 14 countries. SADC intends to establish an FTA by 2008 and to move towards a CU by 2010 as stated in its Regional Indicative Strategic Development Plan and confirmed by SADC Head of States in August 2006.

³ Kenya, the winning country of the regional integration scheme, moved its production structure in the opposite direction from what it would have done under free market conditions. Only under the protection of the CU Kenya was able to expand its manufacturing production – at the expense of the poorer countries which had to shift their manufacturing imports from the Rest of the World (RoW) towards Kenya. The losing countries Tanzania and Uganda could not benefit from trade creation since their limited product range was also produced by Kenyan producers in a more competitive way (Venables, 1999).

⁴ The EAC CET was established on 1 January, 2005 but still lacks implementation. Intra-EAC trade is only partially liberalised and will only flow free by 1 January, 2010. Prior the EAC CU taking effect, the countries liberalised intra-regional trade according to the COMESA Trade Protocol (Stahl, 2005). The establishment of a CU before intra-regional trade has been liberalised is uncommon, stresses border controls and contradicts the original idea of a CU according to which intraregional trade is supposed to flow free.

⁵ Originally, the formula should compensate weaker member countries from trade displacement, loss of fiscal sovereignty and highly polarised development in favour of South Africa. With the new 2002 SACU Agreement, which has democratised SACU's decision structure, the revenue formula was also revised taking challenges, like trade liberalisation and increased importance of excise duties, more strongly into account (see McCarthy in *MRISAYB*, vol. 4/2004).

⁶ See McCarthy in *MRISAYB*, vol. 4/2004.

However, to date the progress of implementing the SADC Trade Protocol, leading to an FTA, is limited and observers do not expect the FTA being fully implemented in time (Kalenga, 2005; Keck and Piermartini, 2005:13).

SACU countries' SADC membership does not infringe on the SACU Agreement since all SACU countries are SADC members and have agreed on a common liberalisation schedule in the context of the SADC FTA. However, Tanzania's SADC membership infringes on its membership in EAC since Kenya and Uganda are not SADC members and will not join the SADC CU. Kenya and Uganda are part of the Common Market of Eastern and Southern Africa (COMESA), which Tanzania left in 2000. COMESA, the former Eastern and Southern African Preferential Trade Area (PTA) encompasses 20 heterogeneous countries in southern, eastern and northern Africa. COMESA launched its FTA in 2000, which, however, only nine of the 20 members joined.⁷ A CU originally scheduled for 2004 has been postponed to 2008.

Both SADC and COMESA show only a low level of intraregional trade due to internal and external trade constraints, such as a noncomplementary production structure and low industrialisation degree, low purchasing power and low macroeconomic convergence of member countries, protectionist trade regimes and various supply-side constraints.⁸ Moreover, overlapping memberships and the inconsistency of countries' regional integration strategy have contributed to the low level of intraregional trade. As can be observed from Table 1, South Africa, Botswana, Lesotho, Mozambique and Namibia are the only countries in the region that have a consistent regional integration strategy. They either belong to one integration scheme that intends to form a CU (Mozambique) or have jointly entered into the obligation of forming an expanded CU (SACU members).⁹ As can also be drawn from Table 1, the problem of overlapping memberships has partly been addressed hitherto. Thus, Lesotho, Mozambique and Namibia withdrew from their COMESA membership since it was not consistent with their SACU/SADC obligations, and Seychelles withdrew from SADC and opted for regional integration in a COMESA framework. On the other hand, the 'spaghetti bowl nightmare' (Bilal, 2006) increased: Madagascar's accession

⁷ Namely Djibouti, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe. Burundi and Rwanda joined the FTA in 2004.

⁸ See contribution of Meyn in *MRISAYB*, vol. 5/2005.

⁹ Except Swaziland which still holds its COMESA membership.

to SADC last year is not consistent with its obligations in COMESA, and Tanzania's withdrawal from COMESA is problematic since the other two EAC countries Kenya and Uganda are COMESA members. As a response, Tanzania announced its rejoining of COMESA while keeping its SADC membership (tralac news, 29/07/06). Moreover, the COMESA member Rwanda seeks to join SADC and Seychelles wants to rejoin SADC while staying in COMESA (ECDPM, 2006:6). Currently, there are nine countries in southern and eastern Africa with rivalry memberships to regional integration frameworks.¹⁰

Table 1: Rivalry memberships in regional integration schemes in southern and eastern Africa

	EAC	SACU	SADC	COMESA	Signatory to SADC Trade Protocol	Signatory to COMESA Trade Protocol	Withdrawal from SADC/COMESA
Angola			X	X			
Botswana		X	X		X		
DR Congo			X	X			
Kenya	X			X		X	
Lesotho		X	X		X		X
Madagascar			X	X	X	X	
Malawi			X	X	X	X	
Mauritius			X	X	X	X	
Mozambique			X		X		X
Namibia		X	X		X		X
Seychelles				X			X
South Africa		X	X		X		
Swaziland		X	X	X	X		
	EAC	SACU	SADC	COMESA	Signatory to SADC Trade Protocol	Signatory to COMESA Trade Protocol	Withdrawal from SADC/COMESA
Tanzania	X		X		X		X
Uganda	X			X			
Zambia			X	X	X	X	
Zimbabwe			X	X	X	X	

Source: Author's presentation.

Multiple memberships to regional integration bodies do not only stress countries' scarce financial, institutional and human resources but also constrain deeper economic integration. With the negotiation start of the Economic Partnership Agreements (EPAs) in 2002 the issue to solve the problem of overlapping

¹⁰ Namely Angola, DR Congo, Madagascar, Malawi, Mauritius, Swaziland, Zambia and Zimbabwe (SADC and COMESA members) and Tanzania (EAC and SADC member).

memberships has become more urgent since economic integration in form of a CU would be best to enter into an EPA with the EU.

EPAs are supposed to replace the hitherto nonreciprocal trade relationship with the EU as stipulated in the Cotonou Agreement (2000). By the end of 2007, six regional groupings of ACP countries¹¹ and the EU must have signed an asymmetrical, development-oriented WTO-compatible trade deal, which means that about 90% of bilateral trade has to be liberalised within 10 years.¹² However, since regional integration in southern and eastern Africa is still in its infancy and overlapping memberships to competing regional bodies are the rule and not the exception, the EU concept to negotiate EPAs with regional CUs or FTAs was not applicable. After months of debate and speculation, southern and eastern African countries finally decided on two EPA configurations,¹³ neither of them mirroring the original regional integration formation in SADC and COMESA. The SADC EPA comprised the Southern African Customs Union members Botswana, Lesotho, Namibia and Swaziland plus the three LDCs Angola, Mozambique and Tanzania. South Africa, which has already had an FTA with the EU since 2000, was supposed to act as observer. The other SADC countries, namely DR Congo, Malawi, Mauritius, Zambia and Zimbabwe opted to negotiate in the Eastern Southern Africa (ESA) EPA.¹⁴ Like the SADC EPA, the ESA EPA was a newly developed political construct for EPA negotiations, comprising all COMESA members but Egypt, Libya¹⁵ and Swaziland. Currently, the ESA EPA encompasses 15 countries, namely Burundi, Comoros, Djibouti, Ethiopia, Eritrea, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe. DR Congo left the ESA EPA at the end of 2005 to join the CEMAC EPA (Bilal, 2006:18).¹⁶

As can be observed from Table 2, the EPA configurations have added to the inconsistency of countries' regional integration strategies. Thus, the obligations of the

¹¹ Namely the Caribbean region (CARIFORUM), the Pacific region, the Central African region (CEMAC), the Western African region (ECOWAS), the Eastern and Southern African Region (ESA), and the SADC region.

¹² According to Annex 1A, GATT on the 'Understanding on the Interpretation of Art. XXIV' (WTO 1994).

¹³ Negotiations for the ESA EPA were formally launched on 7 February 2004 in Mauritius and for the SADC EPA on 8 July, 2004 in Namibia. On these dates, the countries adopted an official roadmap for negotiations.

¹⁴ Madagascar joined SADC only in 2005 and opted for the ESA EPA in early 2004.

¹⁵ Libya joined COMESA in 2006. Egypt had already entered into the Euro-Mediterranean Free Trade Agreement with the EU in 2001.

¹⁶ However, DR Congo has not become a member of the Economic and Monetary Community of Central Africa (CEMAC) yet: see http://www.delcaf.cec.eu.int/fr/ue_et_afrique_centrale/cemac.htm, (24/07/2006).

ESA members Malawi, Mauritius, Zambia and Zimbabwe are not consistent with their obligations under the SADC Trade Protocol, which foresees the establishment of a SADC CU by 2010.¹⁷ For the EAC members Kenya, Uganda and Tanzania, which established a CU by January 2005, the problem of rivalry regional memberships is even more pressing. Tanzania opted for the SADC EPA to bind itself close to South Africa, its most important trading and investment partner in the region.¹⁸ However, the pressure on Tanzania to rethink its EPA configuration decision increases (*The East African*, 06/03/06; tralac news 21/01/05). Since EAC cooperates with COMESA on the implementation of its integration and trade liberalisation agenda and is regarded as fast-track initiative for the COMESA CU it would make sense if Tanzania joins COMESA and leaves SADC.¹⁹

¹⁷ DR Congo is not a signatory of the SADC Trade Protocol.

¹⁸ Tanzania's imports from South Africa accounted for 10% and its exports for 2.2% of total trade in 2003 (IMF, 2004 as cited in Stahl, 2005:15-6).

¹⁹ Tanzania's intention to rejoin COMESA while keeping its SADC membership would, however, only contribute to the inconsistency of its trade strategy.

Table 2: Southern and eastern African countries' memberships to regional integration bodies and EPA configurations

	SADC	COMESA	SADC EPA	ESA EPA	LDC	EPA ≠ RI obligation
Angola	X	X	X		X	X
Botswana	X		X			
Burundi		X		X	X	
Comoros		X		X	X	
Djibouti		X		X	X	
DR Congo	X	X			X	X
Eritrea		X		X	X	
Ethiopia		X		X	X	
Kenya		X		X		
Lesotho	X		X		X	
Madagascar	X	X		X	X	X
Malawi	X	X		X	X	X
Mauritius	X	X		X		X
Mozambique	X		X		X	
Namibia	X		X			
Rwanda		X		X	X	
Seychelles		X		X		
Sudan		X		X	X	
Swaziland	X	X	X			(X)
Tanzania	X		X		X	X
Uganda		X		X	X	
Zambia	X	X		X	X	X
Zimbabwe *	X	X		X		X
(South Africa)	X		Observer			

* Zimbabwe is classified as low-income country (< US\$ 825) by the World Bank but is not classified as an LDC by the United Nations. Also, Zimbabwe does not have an LDC status in the Cotonou Agreement so it can be expected that it will not be allowed to trade under the non-reciprocal EBA initiative.

Source: Author's presentation.

Angola and Swaziland, which are no signatories of the COMESA Trade Protocol but COMESA members, have opted for the SADC EPA. Consequently, they would have to leave COMESA, which, however, has not been the case yet.

That the membership in a regional integration framework does not necessarily mirror a country's economic and strategic interests has been recently highlighted by DR Congo, a SADC and COMESA member, which left the ESA EPA to join the Central African EPA configuration, though it has not become a CEMAC member yet. This 'free choice' of joining regional integration schemes has surely contributed to the fact that southern and eastern African countries are those with the highest number of member countries in regional integration schemes in the world while at the same time being those countries with the lowest level of intraregional trade (WTO, 2002).

An issue that is often raised when discussing the end of multiple memberships and how EPA configurations and regional integration bodies could match is the one of an 'associate membership' (Jacobeit et al., 2005; Hess and Hess, 2005). The authors argue that countries with multiple memberships in regional integration frameworks only have to opt for one CU but could keep their preferential trade arrangement with the other regional integration block by negotiating an FTA with it or by becoming an 'associate member'. However, it has to be considered that the negotiation of an individual FTA is only possible if all members of the CU agree. The SACU member Swaziland, for instance, can only join the COMESA FTA once it gets the concurrence from its CU members.²⁰ The same applies to the EAC member Tanzania, which can only negotiate an FTA (like the EPA) together with Kenya and Uganda.²¹ A country does therefore need to undertake a detailed examination of its economic, political and strategic interests in regional integration before finally opting for a regional integration scheme that establishes a common external tariff regime vis-à-vis the EU.

Also, the idea that countries become 'associate members' of regional integration bodies does not seem to be a feasible alternative. What would be the motivation of members to grant an 'outsider' free market access if the country does not have to open its market in return? Again, the example of the SACU and COMESA member Swaziland can be pointed out. Though Swaziland is not member of the COMESA FTA (and is very unlikely to become one due to the missing concurrence of its SACU member countries), it enjoys free market access to COMESA. The question, however, is how long this will be accepted by the other COMESA countries and whether such a scenario would be conceivable for a larger country that is more involved in intraregional trade, such as Kenya.

In fact, only two integration blocks, EAC and SACU, have reached a certain level of economic integration and would be in a position to jointly negotiate an EPA with the

²⁰ Since COMESA pressured its member Swaziland to join the FTA, the country requested the concurrence of the other SACU members under the condition that COMESA imports would be restricted to SACU countries other than Swaziland. The issue of concurrence is still pending. However, Swazi authorities are not able to guarantee the supervision of origin of products properly so that South Africa's concurrence is regarded as doubtful. The logical consequence of Swaziland's inability to join the COMESA FTA would therefore be its withdrawal from the organisation. (Meyn, 2006:100).

²¹ Kenya has already entered into a PTA with South Africa, and Kenya and Tanzania have strong trade ties with South Africa which is by far their biggest trading partner on the continent. For South Africa again, the EAC region is of vital interest as export and investment destination. South Africa's trade surplus with EAC countries was R 5.83 billion in 2005 (DTI, 2006).

EU. However, neither an EAC nor a SACU EPA was on the agenda. Still, the formation of a CET towards the EU is regarded as baseline for discussion (EC DG Trade 2006 a, b). From a technical and legal point of view, each country can only belong to one CU. This implies either that

- a) The ESA and SADC EPA configurations change so that one EPA comprises all members of the existing CUs. EAC and SACU would then have to align their CET towards the enlarged CU; or
- b) The ESA EPA and the SADC EPA agree on the same CET, which again would be likely to follow the CET of the TDCA²² since the SACU region has already locked in its CET towards the EU.

The latter would be the scenario of 'one happy family' (Hess and Hess, 2005) and is unlikely to be achieved in the short- to medium-term considering countries' low level of intraregional trade, protectionist trade regimes, divergent economic interest and the little progress on regional integration hitherto. The case of 'one happy family' would require that the SADC EPA and the ESA EPA harmonise their positions vis-à-vis the EU, most of all with respect to tariff liberalisation. This was originally envisaged by the COMESA and SADC Secretariat but to date no progress of harmonised positions of the two EPA configurations has been reported (INSAT, 2006:4). Therefore, the rethinking of EPA configurations and their improved matching with regional integration schemes is indispensable if regional integration in southern and eastern Africa should not be further disrupted. If EPA configurations match countries' strategic, economic and political interests in regional integration, EU pressure to negotiate EPAs as regional blocks might even help to effectively address the problem of overlapping memberships to rivalry integration schemes. However, if EPAs push too much, the fragile integration schemes might be destroyed.

Since all parties emphasise that the chosen EPA configuration can still be changed, the final decision only has to be made once a regional external tariff towards the EU is locked in. On the other hand, the opt-in clause of EPA configurations also bears the risk of 'raisin picking'. If the SADC EPA and the ESA EPA agree on very different

²² The Trade, Development and Co-operation Agreement (TDCA) between the EU and South Africa was signed in 2000 and will liberalise about 90% of bilateral trade by 2012.

trade deals with the EU, some countries might change the EPA configuration at the last minute, which would not only have negative implications on regional integration but might also result in political tensions (Bilal, 2006:20).

3 Progress and Problems of EPA Negotiations

3.1 The ESA EPA

Though all ESA EPA countries are members of COMESA, the regional configuration is confronted with the lack of mandate and overlapping memberships to SADC and EAC. Since the ESA EPA is not a regional integration scheme with a supranational body, the COMESA Secretariat has functioned as an ESA institution, taking the lead and coordinating role of negotiations.²³ This, again, has resulted in reservations by some countries that are also SADC members and wanted to avoid a mixture of ESA and COMESA (Munyuki, 2006:5-6). However, which other institution should act as regional body in charge if not the COMESA Secretariat? Though it does not have a mandate to negotiate an FTA with the EU it is, however, the only regional institution in place.

The ESA EPA is more on track than the SADC EPA if one considers the progress on negotiations of the single chapters and the fact that it already presented a public draft EPA in August 2006. However, to what extent the countries have identified their interests in EPA negotiations and harmonised them in a regional context is questionable. By the end of 2005, only two of the 15 ESA countries submitted a 'development matrix' indicating national development and export constraints and specifying technical and financial support needed. Consequently, the draft EPA submitted by the COMESA Secretariat comprised only the input of few ESA countries while most of them have not made a contribution yet. Apart from the human and institutional deficiencies on the country level, it is also the lack of resources on the regional level that has caused this insufficient involvement. Still, the ESA draft EPA

²³ The national states are represented by public and private actors from each ESA country that forms the Regional Negotiating Forum (RNF) preparing the ESA negotiating agenda towards the EU. The RNF also comprises Brussels-based Ambassadors and NGOs from the ESA region (Bilal, 2006:19-20).

can be considered as progress in negotiation and as expression of ownership of the ESA group (Bilal, 2006; Munyuki, 2006:1-9).

As can be observed from Table 3, the EU and the ESA EPA were only able to reach consensus on a few points of the negotiation agenda such as the general perception that import liberalisation has to be highly asymmetrical in both time frame and content. Key negotiation areas such as agriculture, fisheries, trade in services, trade-related issues, and additional financial resources are however still disputed.

Table 3: State of Play of ESA EPA Negotiations (status quo October 2006)

ESA EPA: Focus on	Position ESA EPA / Position EU	State of Play
Regional integration	<ul style="list-style-type: none"> • Coordinated approach with the SADC EPA to avoid regional frictions (ESA EPA) • Establishment of an ESA CET as baseline for discussion (EU). 	Implementation of EDF Regional support programme (total of €302 million) to enhance capacity of regional bodies and member states and to harmonise the EAC and COMESA integration agenda. The parties agreed that an ESA CET is envisaged but not a prerequisite to conclude an EPA.
Agriculture, marine, fisheries	<ul style="list-style-type: none"> • The situation of food net importing countries, SPS, EU subsidies, Commodity Protocols, and increased value addition are key negotiation areas. A development-oriented regional fisheries agreement should be negotiated (ESA EPA) • Variable geometries, special preferences and export refunds are not envisaged. Abolition of Commodity Protocols. Perpetuation of the existing bilateral Fisheries Agreements (EU). 	All issues: no agreement reached yet, further discussion on technical level.
Import liberalisation	<ul style="list-style-type: none"> • Gradual market opening, room for protection, special safeguard clauses, and establishment of ESA CET are envisaged (ESA EPA and EU). 	<ul style="list-style-type: none"> • Draft paper submitted by the EC proposes that 80% of all trade should be liberalised whereby the EU liberalises 100% within 10 years and

ESA EPA: Focus on	Position ESA EPA / Position EU	State of Play
	<ul style="list-style-type: none"> Removal of intra-regional constraints to trade and addressing supply-side constraints are superior to liberalising towards the EU. Financial support for revenue losses, preference erosion and economic transformation are necessary (ESA EPA). Income losses shall be compensated by the introduction of new revenue sources (e.g. VAT), economic prosperity and more effective revenue collection. No compensation payments (EU). 	<p>the ESA region 60% within 20 years.²⁴ Agreement on pre-emptive safeguard clauses.</p> <ul style="list-style-type: none"> ESA countries have agreed on CET target rates for capital good and raw materials; agreement on intermediate, finished and sensitive goods is outstanding. Variable geometry of liberalisation is requested to ensure SDT of countries according to their development degree.
Market access	<ul style="list-style-type: none"> Immediate duty and quota-free market access, more generous RoO and support to comply with SPS and technical regulations (ESA EPA) Duty- and quota-free market access within 10 years. Support to comply with import regulations will be provided (EU) 	Market access and RoO: no agreement reached yet.
Trade in services	<ul style="list-style-type: none"> COMESA regional framework on trade in services should form the basis of negotiations. Offensive interests: improved market access mainly for tourism-related services, improved movement of labour (ESA EPA). WTO <i>plus</i> regulations: To improve the efficiency of service provisions services should be integrated into EPAs considering the development degree of the ESA region. (EU). 	No agreement reported. COMESA framework on trade in service is analysed by EU.
Trade related issues (investment, competition, government procurement, trade facilitation)	<ul style="list-style-type: none"> Should be excluded from EPA negotiations and dealt with on a COMESA basis (ESA EPA). WTO <i>plus</i> regulations: The address of trade-related issues improves transparency and reduces red tape. Like this, effective market access and regional market integration are improved (EU) 	No agreement reported.

²⁴ It needs to be considered, however, that such a provision would only insignificantly improve ESA countries market access since already more than 95% of all ACP exports enjoy free market access to the EU (Davenport et al., 1995:1)

ESA EPA: Focus on	Position ESA EPA / Position EU	State of Play
Development Chapter: Financial and technical support for EPA negotiations/ implementation	<ul style="list-style-type: none"> • Links between trade and development need to be improved. Additional funds are necessary to comply with the implementation of EPAs, fiscal and institutional reforms, industrial and structural adjustment, and support to address supply-side constraints (ESA EPA). • No additional funds will be provided. EDF Funds shall be better allocated towards aid for trade. Regulatory framework reforms do not always require more funds but better economic policies. Additional trade-related assistance is and will be provided with focus on trade capacity building and regional programmes.²⁵ (EU) 	<p>No agreement reported.</p> <p>Introduction of a Trade Negotiation Facility to assist with the preparation of the Roadmap, the set up of negotiation structure and the organisation of preparatory meetings have been implemented.</p>

Sources: Agritrade, 2006a; Bilal, 2006; EC, 2005; EC DG Trade, 2006a, b; ESA Draft (2006); Tekere (2006).

While African countries complain that the development component of EPAs is neglected, the EU sees EPAs itself as tools for development, aiming to assist ACP countries to overcome trade-related constraints not only in the framework of development cooperation but by market liberalisation, regional integration and by addressing NTBs and 'new trade issues' (competition, investment, government procurement, trade facilitation).²⁶ Representatives of the ESA and SADC EPA, however, argue that there is no automatism between market liberalisation and economic development. Therefore an asymmetric liberalisation schedule would be necessary that leaves room for infant industry protection as well as additional financial and technical resources to comply with the implementation of EPAs and the structural transformation of the economy. The 'aid for trade' provisions in EPAs would be meaningless without sufficient resources, appropriate programmes and effective implementation. Moreover, the countries refuse to address provisions for trade-related issues such as protection of intellectual property rights or government

²⁵ See the EC DG Trade web page for a comprehensive overview:

http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/tra_esa_en.htm (26/04/06).

²⁶ The EU emphasises that it is not the primary goal of EPAs to liberalise these policy fields but to increase their transparency and to establish compulsory regional regulations (e.g. with respect to competition policy and government procurement). Like this, regional integration would be promoted and the reliability of countries' trade policy framework would be increased, thus promoting employment and investment (Falkenberg, 2006).

procurement in EPA negotiations arguing that valid WTO provisions exist and that bilateral agreements would reduce their policy space for development and regional integration.

Considering the lack of economic integration in the ESA region and countries' different defensive interests as well as the lack of national capacities and the nonexistent mandate of the COMESA Secretariat, it is doubtful that the 15 members of the ESA EPA will be able to form a CET towards the EU. According to the understanding of the ESA EPA, the COMESA Secretariat is only a facilitative forum under which the ESA EPA countries negotiate but would enter individually into an EPA with the EU (Munyuki, 2006:6). However, this is not the understanding of the EU, which aims to enter into EPAs with 'regional groups' of ACP countries. Meanwhile the EU seems to have accepted the ESA EPA proposal of 'variable geometries', which would imply negotiations of individual liberalisation schedules. Thus, the parties agreed in early 2006 that an ESA CET is envisaged but not a prerequisite to enter into an EPA (EC DG Trade, 2006a).

3.2 The SADC EPA

In 2004 the seven members of the SADC EPA elected Botswana through the Ministry of Trade and Industry to coordinate the overall process of EPA negotiations. Moreover, each member was assigned a negotiation subject or issues to coordinate. Thus, Angola, Namibia and South Africa were in a working group that would make sure that the TDCA review process and SADC EPA negotiations were effectively coordinated (SADC Secretariat, 2005).

It is not easy to identify substantive progress in negotiations of the SADC EPA due to the lack of transparency in reporting progress. However, one has to keep in mind that it is particularly difficult for the SADC EPA to find common positions. The greatest commonality the BLNS countries share with Angola, Mozambique and Tanzania is their interest in the South African market. Intraregional trade and cooperation among

SADC EPA countries is minimal.²⁷ Since South Africa was originally excluded from EPA negotiations and only supposed to act as observer BLNS countries were not even entitled to negotiate an EPA. According to Art. 31, the SACU Agreement foresees that no member country will be able to enter into external trade obligations without the concession of all other member countries. This implies that either the SADC EPA looks like the EU-South Africa FTA or that South Africa agrees to an amended trade relationship with the EU.

Table 4: State of Play of SADC EPA Negotiations (status quo October 2006)

SADC EPA: Focus on	Position SADC EPA / Position EU	State of Play
Integrate the region (TDCA review/SACU consolidation)	<ul style="list-style-type: none"> • Coordinated approach with the ESA EPA and South Africa to avoid regional frictions. Gradual market opening, room for protection, special safeguard clauses (SADC EPA). • The establishment of a SADC EPA CET is the baseline for discussions (EU). 	The South African/ SADC EPA offer is analysed by the EU. An official response is only expected by the end of 2006.
Import liberalisation	<ul style="list-style-type: none"> • SACU countries liberalise their trade regime according to the provisions of the TDCA with some modifications on sensitive products such as sugar-containing products. MAT countries will not have to liberalise their export regimes. EU should establish specific compensation programmes to compensate for revenue losses (SADC EPA). • All EPA countries need to liberalise their import regimes. Revenue losses shall be compensated by the introduction of new revenue sources (e.g. VAT), economic prosperity and more effective revenue collection. No compensation payments (EU). 	No agreement reported. EU discusses the proposal with its member states.
Market access (agriculture, non-agriculture, fisheries)	<ul style="list-style-type: none"> • Immediate duty- and quota-free market access, more generous RoO and support to comply with SPS and technical regulations; maintenance of the Commodity Protocols (SADC EPA). Not willed to contractualise EBA market access and to expand it to non-LDCs. Abolition of Commodity Protocols (EU). 	No agreement reported. The SADC EPA handed in recommendations how to tackle SPS and technical barriers to trade by the end of 2005.

²⁷ With the exception of Angola and Namibia, which share common trade interests, e.g. regarding fisheries products and beer (see national trade performance charts of the International Trade Centre: <http://www.intracen.org>).

SADC EPA: Focus on	Position SADC EPA / Position EU	State of Play
Trade in services	<ul style="list-style-type: none"> • Would like to exclude services from negotiations and highlights difficulties to engage in those areas where common SADC policies are not yet in place (SADC EPA). • WTO <i>plus</i> regulations: To improve the efficiency of service provisions services should be integrated into EPAs considering the development degree of ACP regions (EU). 	No agreement reported.
Trade-related issues (investment, competition, government procurement, trade facilitation)	<ul style="list-style-type: none"> • Cooperation on trade-related issues but exclusion from EPAs to give countries policy space (SADC EPA). • WTO <i>plus</i> regulations: The address of trade-related issues improves transparency and reduces red tape. Like this, effective market access and regional market integration are improved (EU). 	No agreement reported.
Development Chapter: Technical support for EPA negotiations/ implementation	<ul style="list-style-type: none"> • Links between trade and development need to be improved. Longer time frame and additional funds are necessary to comply with the implementation of EPAs, revenue losses, increased competition, structural adjustment and supply-side constraints (SADC EPA). • No additional funds will be provided. EDF Funds shall be better allocated towards aid for trade. Regulatory framework reforms do not always require more funds but better economic policies. Additional trade-related assistance is already provided with focus on trade capacity building and regional programmes.²⁸ (EU) 	<p>No agreement reported.</p> <p>Funds under the SADC-14 Regional Indicative Programme account for € 66.25 for capacity building, support to comply with SPS, customs training and modernisation, support of the SADC Finance and Investment Protocol, infrastructure support.²⁹</p>

Sources: Agritrade, 2006b; Bilal 2006; EC, 2005, EC DG Trade, 2006a and 2006b; SADC Secretariat, 2005.

Since the TDCA is a specific trade deal between the EU and South Africa and does not foresee the accession of countries there is hardly an option to include Angola, Mozambique and Tanzania. Additionally, EU market access is for most products less

²⁸ See the EC DG Trade web page for a comprehensive overview: http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/tra_sadc_en.htm (26/04/06).

²⁹ Altogether €1.7 billion is available under the 9th EDF for SADC-14 in the period 2002-07 (EC DG Trade, 2006c).

favourable than the existing provision of the Cotonou Agreement which would hardly be attractive for the LDCs Angola, Mozambique and Tanzania. Also, the countries would have to adopt South Africa's import liberalisation schedule implying that they open their markets to 86% of EU imports by 2012.

The other option, compatible with Art 31 of the SACU Agreement, would be to include the BLNS countries, which are, as part of SACU, already affected by the TDCA, into a new trade deal with the EU. Though it seems to be consensus that no SADC EPA can exist without having South Africa on board, it far from clear what happens to Angola, Mozambique and Tanzania as part of the SADC EPA as well as to the other SADC member countries.

4. Feasibility of alternative EPA configurations and their implications for regional integration

In March 2006, South Africa together with the other SADC EPA members requested the EU for a single trade deal combining the TDCA review with the creation of a SADC EPA (*Business Day*, 24/03/06). As the economic and political power of SADC, South Africa is interested to align its trade agreement with the EU with regional trade relations in a SADC framework. Also the EU prefers a trade deal with SADC, which would significantly reduce the inconsistency of EPA configuration with regional integration bodies in southern Africa. Thus, Angola, DR Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe have to leave COMESA once they establish a common external tariff regime vis-à-vis the EU in a SADC framework.³⁰

The proposal of the SADC EPA foresees that

- a) South Africa and the BLNS countries form a common EPA. EPA negotiations would be aligned with the ongoing TDCA mid-term review by accommodating BLNS interests (e.g. with respect to the Protocol products or rules of origin³¹).

³⁰ Though the example of Swaziland, which is as part of SACU not in a position to join the COMESA FTA but still maintains its COMESA membership, shows that exceptions can still exist.

³¹ The provision of full cumulation (i.e. any value added in BLNS can be added to the value added in South Africa and jointly the countries meet the origin specification) was already envisaged under the TDCA (Council of the EU 1999, Protocol 1). However, the provision has never entered into force. The provision of full

Like in the TDCA, services and trade-related issues would only be subject to cooperation on a nonbinding basis.

- b) The rest-SADC countries would become associated members of the SACU EPA but do not share SACU's CET vis-à-vis the EU. They negotiate either an individual liberalisation schedule with the EU³² or, in case they are LDCs, can maintain a non-reciprocal trade relationship under the EBA initiative.³³
- c) SACU and the associated SADC members form a CU according to the SADC Trade Protocol by 2010. In a mid-term review, the SACU EPA could be expanded to a SADC EPA. The EU has generally agreed to this proposal and sees it as a basis for negotiations. It is, however, regarded as difficult to grant South Africa the same (EBA) market access as the BLNS countries due to its different development degree. Moreover, the proposal of the SADC EPA to contractualise the EBA initiative is regarded as problematic since LDCs might escape from this status.³⁴ Another dispute is the exclusion of the 'new trade issues' which were kept out of the TDCA and which SACU made clear it would first have to agree on in a regional context before negotiating towards the EU (Falkenberg, 2006).

In the proposal of the SADC EPA, SACU would be the 'building block' for SADC's deeper regional integration. South Africa's position vis-à-vis the EU and the rest-SADC members would be strengthened because SACU's trade relationships with its major trading partner would be harmonised. Also, the proposal offers a potential

cumulation is very important for the BLNS countries, as it would allow them to diversify their export base by sourcing inputs from South Africa.

³² Alternatively, the non-LDC countries could also trade with the EU under the Generalised System of Preferences (GSP), which is currently regarded as the only WTO compatible alternative to EPAs for non-LDCs (See Bilal and Rampa, 2006, for an extensive discussion on alternatives to EPAs). A major problem for the EU to proposing alternatives to EPAs as envisaged in Art. 37.6 of the Cotonou Agreement is the insufficient linkage of EPA negotiations to negotiations under the WTO Doha Development Round. To date no solution has been found as to how the provision of Special and Differential Treatment (SDT) for developing countries will be interpreted in future (Art. XVIII, WTO). Therefore EPA negotiations focus on the status quo which allows non-reciprocal trade relations only for LDCs. It must, however, be kept in mind that Art. XXIV WTO, under which EPAs are currently negotiated, was not envisaged to rule North-South FTAs but only to regulate the conditions of FTAs and CUs vis-à-vis the multilateral trading regime.

³³ Though the EBA initiative has the disadvantage that it is a non-contractual agreement that can be withdrawn unilaterally at any time, it might be a practicable alternative for those LDCs that are hardly involved in regional integration, overextended with EPA negotiations, and do not see themselves as capable to deal with the adjustment costs of reciprocal trade. More generous rules of origin and the tackling of technical barriers to trade by according funding under the EDF could help LDCs to take greater advantage of the (hitherto hardly used) EBA initiative. It is argued that it is not in compliance with WTO rules if some LDCs (such as Lesotho) offer reciprocity and others continue to enjoy unilateral preferences since this would discriminate among LDCs (Kruger, 2006). One can, however, also argue that some LDCs open up voluntarily.

³⁴ However, until now Botswana has been the only country in the world that was able to escape the LDC classification.

solution to escape the drama of overlapping memberships. Moreover, trade in services and trade-related issues might be excluded from EPA negotiations, which would be in the interest of all SADC member countries.

What is unclear is whether all SADC members would opt for a SADC-14 EPA. To remember: the TDCA and the fact that SACU countries' CET is locked-in vis-à-vis the EU was a major reason for DR Congo, Malawi, Mauritius, Zambia and Zimbabwe to negotiate in an ESA framework. Also, the level of economic integration of SADC members is problematic: the implementation of the SADC Trade Protocol lacks progress and some countries are hardly involved in intraregional trade. Moreover, the problem of Tanzania's incompatible regional memberships in EAC and SADC, the chaotic regional strategy of DR Congo and the issue of the new SADC member Madagascar, which also belongs to COMESA and the ESA EPA, would need to be addressed.

Apart from the insecurity of the number of SADC members on board, it is important to note that flexibility of external tariffs is crucial to make this scheme work. First of all, SACU's and rest-SADC members' external tariffs have to be aligned by 2010 when entering into the SADC CU. Secondly, the SACU EPA would need to be revised when accommodating the interests of the non-SACU SADC members according to what has been agreed in the SADC CU. Moreover, the negotiation of a EU-SACU EPA and of individual EPAs with non-LDC, non-SACU SADC members now and the integration of these individual EPAs into a SADC EPA would imply a tremendous workload for all parties involved.

It also needs to be considered that there is no guarantee that SADC-EU trade relations will be harmonised by 2010. Some non-SACU SADC members might still opt for the ESA EPA configuration, which would make deeper economic integration in the current SADC framework impossible.

Another implication of the realisation of the SADC EPA proposal would be the split of COMESA, with some members finally opting for regional integration in SADC (Malawi, Madagascar, Mauritius, Zambia, Zimbabwe...?), some CU members

(Kenya, Tanzania, Uganda...?) and the rest being either part of the COMESA FTA or being associate COMESA members that are hardly involved in intraregional trade.

However, considering that any EPA comprising the BLNS countries needs to get the consent of South Africa according to Art 31 of the SACU Agreement, it is assumed that the SADC proposal will be the basis for entering into an EPA with the EU. To what extent the proposal is feasible with respect to aligning the SACU EPA with other SADC member states depends to a large extent on countries' ability and willingness to implement the SADC CU. In fact, the SADC-EPA proposal offers SADC members the option to postpone their decision of a consistent regional integration strategy. At the moment they can stay either with the ESA EPA, negotiate individual EPAs or, if they have the LDC status, maintain a nonreciprocal trade relationship with the EU. Only by 2010, when the SADC CU is going to be established, do they have to decide whether to become part of the SADC EPA or not. However, such a postponement of decision would come at a price. The more different trade regimes exist in the region, the more economic integration will be complicated. Also, the risk of trade diversion by unrecorded EU imports increases. Furthermore, countries that enter into an EPA in a regional body have the option to accommodate their interests while single latecomers might have to accept what they get.³⁵

Since the EU postponed its urgently awaited response to the SADC proposal from October 2006 to December 2006, SADC EPA negotiations are stalled and less than a year will be left to finalise the SADC EPA negotiations.

5. Policy recommendations and outlook

Considering that the EU intends to negotiate comprehensive trade agreements with southern and eastern African countries, comprising trade in goods, trade in services, SPS and technical regulations as well as obligatory conditions for intellectual property rights, investment, public procurement and competition policy, the negotiation of a regional EPA would only be possible once the regional integration

³⁵ The example of Great Britain, which refused to be a founding member of the European Community in 1958 and had to accept the *acquis communautaire* when becoming a member in 1973, can be mentioned in this respect.

framework has agreed on a CET and common trade-related policies, formulated a common negotiating position, and established a regional body that has the mandate to negotiate these issues accordingly. Not even SACU, by far the most advanced regional integration body in Africa, has been able to harmonise its trade-related policies yet and to form a common negotiation body. SADC and COMESA again are still in the infancy of economic integration and have not even established an FTA for all their members. Though the SADC and the COMESA Secretariats are the coordinating institutions for the SADC EPA and the ESA EPA respectively, they do not have the mandate of their members to grant tariff concessions. This can only be done by the single countries that are part of the respective EPA configurations. Because of the lack of economic integration and regional harmonisation, the countries face major problems to agree on a common defensive position in accordance with WTO provisions. If, however, the national exclusion basket within a regional integration framework differs, disruptions of regional integration occur.

Once the countries have locked-in their external tariff vis-à-vis the EU without having harmonised it on a SADC/COMESA level, deeper regional integration becomes almost impossible. If, for instance, Zimbabwe has locked-in an external tariff towards the EU that highly differentiates from the one locked-in by Malawi (which seems to be likely considering the different production structure of the two countries) it will be very difficult to agree on a CET in a SADC framework and to form a SADC CET towards the EU. This will be even more the case if one takes into account that the SADC CET is likely to be influenced by the SACU CET.

Apart from the difficulties to align tariffs it has to be clarified whether countries that negotiate an individual liberalisation schedule with the EU now will be able to reverse their decision when joining the SADC CU or the COMESA CU later. In other words: will the decision for a regional CET in a SADC CU and a COMESA CU be superior to bilateral obligations entered into before the CU has been established?³⁶

³⁶ The draft ESA EPA paper suggests that the EU does not take its originally announced obligations to give regional integration the right of way seriously. Art. 6.1 states that 'This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas or other arrangements ... insofar as they do not alter the rights and obligations provided for in this Agreement'. This clause would make it de facto impossible for ESA countries to reverse their CET locked in towards the EU when entering into a COMESA or SADC CU.

These questions need to be clarified as soon as possible to allow the countries a well informed decision on how to act in ongoing EPA negotiations.

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