



SOUTHERN
AFRICA
TRUST



Economic Partnership Agreement: South Africa

Southern Africa Trust 2017

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Acronyms

BLNS	Botswana, Lesotho, Namibia and Swaziland
COSATU	Congress of South African Trade Unions
CSO	Civil Society Organisations
DAFF	Department of Agriculture, Fisheries and Forestry
DSP	Dispute Settlement Procedures
DTI	Department of Trade and Industry
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
ITAC	International Trade Administration Commission
NEDLAC	National Economic Development Council
NSA	Non-State Actors
NTB	Non-Trade Barriers
NTM	Non-Tariff Measures
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
SARS	South African Revenue Services
SP	Strategic Partnership
TDCA	Trade, Development and Cooperation Agreement
WTO	World Trade Organisation

1. Contextual Background – The Negotiation Process and its Pitfalls

The Economic Partnership Agreement (EPA) negotiation between the Southern Africa Development Community and the European Union (EU) took almost a decade, with the year 2017 clearly marking a shift from negotiations to implementation. The concluded EPA was signed in June 2017, between the EU and six (Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland) of the 16 SADC Member States. For South Africa, prior to the SADC-EPA, the Trade, Development and Co-operation Agreement (TDCA) governed trade and between SA and the EU. It also acted as a strategic partnership between the EU and South Africa (which was consolidated in 2007), covering development, economic cooperation and political dialogue. When the EPA provisionally came into force in October 2017, it replaced the trade provisions of the TDCA pending the ratification of the agreement by all parties.

The path to negotiating the SADC-EPA was not an easy one, with drawn out negotiations, several deadlocks, capacity constraints and varying interest between and among the negotiating Parties. While South Africa was under no obligation to be part of the SADC-EPA, it joined EPA negotiations in 2014. This created new complexities and challenges. There was concern that South Africa had distinctly different interests in the EPA negotiations than those of the region, as it sought to improve its own existing trade agreement with the EU. This created serious contentions within the Southern Africa Customs Union (SACU), with the rest of the SACU countries feeling their interests were being side lined and that they felt left out from some critical negotiation processes as the EU and South Africa seemingly 'renegotiated' the TDCA, with the intention to extend it to the SACU plus configuration. The TDCA was considered one of the worst EU bilateral trade models, when compared to other FTAs the EU had with developing countries and or emerged economies.

In the end, South Africa significantly influenced the EPA negotiation process and the overall outcome, given its position and role in SACU. Although Botswana, Lesotho, Namibia and Swaziland (BLNS) were not officially signatories to the TDCA, the agreement was de facto, a SACU–EU agreement, due to the nature of the customs union. The TDCA formed the basis of the SADC-EPA negotiation, being one of the main reasons why other non-SACU SADC Member States, opted to negotiate EPA agreements with the EU under alternative regional groupings. While the inclusion of South Africa in the SADC-EPA should have had a positive impact in consolidating the customs union and doing away with different levels of market access between South Africa and the BLNS into the EU, it did not manage to do so.

However, while civil society has clearly influenced multilateral trade negotiations in forums like the WTO, its role in regional trade negotiations has yet to be determined. There is some recognition of Non-State Actors (NSA) and their complementary role in the EPA process. This originated from the Cotonou Agreement, resulting from years of engagement between Government and NSAs in global trade negotiations. However, the EPA process limits NSA participation - it determines that NSAs and civil society actors are to be informed about EPAs and involved in their implementation by the Parties of the Agreement. In addition, there are provisions that NSAs be provided with financial resources and capacity development support, as part of their involvement in the implementation of cooperation projects and programmes under the Partnership Agreements.

By far, the loudest critics came from Civil Society Organisations (CSO), international non-governmental organisations and activists, with the launch of the 'Stop EPA Campaign' in 2004, at the European Social Forum in London. The Campaign deeply criticized the EPA negotiations for their lack of consultation, openness and informed debate and for many ACP States, negotiations continued largely in the circles of technical negotiators, based in very fragile regional and national institutions. Like other SADC-EPA countries, civil society participation in the EPA process was weak. At the regional level, while CSO participation and engagement with policy processes within SADC itself were quite minimal, ACP non-state actors had various spaces for engagement with the EU itself. An example is the European Economic and Social Committee.

During the EPA negotiations, the Department of Trade and Industry (DTI) reported that national consultations were mainly done through the intra-governmental national consultations with Department of Agriculture, Fisheries and Forestry (DAFF), the South African Revenue, Authorities (SARS) and the International Trade Administration Commission of South Africa (ITAC). To some extent, consultations with NSAs on EPAs were undertaken with the private sector and labour through the National Economic Development and Labour Council (NEDLAC). The participation of NSAs in the EPA negotiations at national level in South Africa was primarily through South Africa's Chamber of Trade and Industry. While NEDLAC aims to encourage dialogue of mutual interests among representatives of Government, industry and labour (i.e. trade unions), there was little evidence of structured engagement or meaningful consultation on the SADC-EPA. The negotiations were held at department level without or with very limited consultation with parliaments. There is very little if any evidence of specific parliamentary committee inquiries or debates on the EPA negotiations on the public media domain. In addition, NEDLAC's influence and effectiveness in bringing civil society into the dialogue processes, appeared to be limited. While it may be argued that the Congress of South African Trade Unions (COSATU) was largely representative of the civil society movements, it was heavily criticized for what was deemed to be a "close alignment with the ANC", and not substantially critical of the South African governments position on the EPA. It was deemed to be far removed and less informed by civic issues and largely driven by political consideration. It was therefore taken that the participation of the broader NGO and CSO movement's participation in the EPA process was through the "Stop EPA" Campaign. There seems to be a general notion that NEDLAC was involved in the EPA negotiation process far too late, and as such had little if any influence in the EPA negotiations. E.g. the South African Institute for International Affairs (SAIIA) commented on how NEDLAC's oversight role in the EPA negotiation was not as effective as it had been in the establishment of the former TDCA between South Africa and the UK.

During the SADC-EPA negotiations, there was a lot of speculation whether the EPA would be aligned and expanded on the existing TDCA to accommodate the BNLS countries, while reviewing the arrangement to address some of South Africa's past challenges. In the end, it achieved both – to some extent. If it can be agreed that South Africa joining the SADC-EPA was to gain a marginally improved trade arrangement with the EU, despite the much bigger contentious issues that had been pointed out under the EPA Campaign, then indeed South Africa achieved a much-improved trade outcome through the EPA. Although the EPA improves on South Africa's previous deal with the EU, it still falls far short of an ideal EPA. It is well known and accepted that while the SADC-EPA negotiation dragged out, they essentially ran out of time and had to be concluded. This is why there remains room within the Agreement to further negotiate on some provisions, with the option for other SADC Member States, like Angola, to sign on to the SADC-EPA at a much later date and also continued negotiations on some contentious issues such as Trade in Services.

The SADC-EPA negotiations (including SA's decision to negotiate with the EU a separate FTA under the TDCA) also revealed the fragmentation of the region, a lot of this has been blamed on South Africa's foreign policy, or "hegemony". There are some concerns that in the future, SA may continue to act insolation and narrow national interests within the SADC-EPA, as opposed to integrating into the collective. The common narrative of South Africa's political, trade and economic relations within SADC often concludes that its role has shifted from perceiving its neighbouring countries (and Africa in general) as a market, to having their development challenges as critical to its own success. It is argued that SA's political rhetoric of making SADC the "centrepiece of its economic foreign policy" remains unclear how this is practically being realised. The amount of trade between SA and SADC is much less significant than with some EU countries, e.g. in 2016, total trade with Germany is more than double the total trade that South Africa had with 14 SADC countries. South Africa dominates the region economically, accounting for about 60% of SADC total trade and about 70% of SADC GDP. The EU explicitly makes mention of recognizing the special circumstances of BLNS States in the Agreement, and the need of the EPA to consider the effects of trade liberalization under the TDCA on them. To what extent this recognition will pan

out in terms of balancing gains of trade for all SADC Member States who are parties in this agreement, will remain to be seen.

2. Potential impact of EPA's for South Africa

The impact of the SADC-EPA must also be understood within the context that outside the auspices of this Partnership Agreement, SA has a joint Strategic Partnership (SP), launched in 2007. The SP has a Joint Action Plan (JAP), whose interventions can be classified into four key areas: economic (trade and development), politics (foreign policy), security (peacekeeping and peace making) and global governance (multilateralism). As such, the SADC-EPA will replace the trade provisions of the TDCA under the trade and development framework of the SP. Several media reports insinuated that in the recent past, the Strategic Partnership between South Africa and the EU often lacked real political engagement and was shrouded by bureaucracy and ideological differences between the two Parties.

However, like the rest of Africa, South Africa's exports into the EU remain predominantly primary commodities (mineral products, precious metals, iron ore and steel), while its imports are manufactured products. While South Africa is generally considered to be significantly more industrialised than its neighbouring countries, the destination of many of these products is Africa and not the EU – with more than 75% of the SA manufacturing firms exporting to Africa.

2.1 Economic Impact of the SADC-EPA

As when the TDCA was signed, there is huge expectation on the possible developmental impacts of the SADC-EPA by the Government of South Africa. The DTI consistently emphasized that the reasons South Africa joined the SADC region to negotiate an EPA with the EU, was to try and harmonize the trading regime between SACU and the EU, instead of having a separate bilateral trade arrangement between South Africa and the EU. South Africa also intended to secure further market access into the EU (compared to that under the TDCA) and to regain some policy spaces that were lost under the TDCA. However, these expectations must be contextualized by reviewing the current economic performance of SA. At the start of 2017, the South African economy featured its first recession since 2009. The economy shrunk by 0.7% during the first quarter of 2017. This recession was attributed to weakening manufacturing and trade sectors which experienced a 3.7% and 5.9% decline respectively. Although the mining and agricultural sector experienced growth spurts during the first quarter of 2017, the South African economy appears incapable of extricating itself from a rut of suboptimal growth which is projected to be around 3% annually between 2012 and 2017 and is projected to round off at 1.4% by the end of 2017.

The implementation of the EPA remains provincial until the ratification of the Agreement by all Member States from both the EU and the five (5) SADC Member States. Full EU ratification is usually a complex and time-consuming process, and is likely to be more so, as the United Kingdom (UK) negotiates and concludes its own exit from the EU (Brexit). The UK remains a significant trade partner for South Africa – it is 7th largest trade partner in general, accounting for 3.7% of South Africa's global trade; and second, in the EU, accounting for approximately 15% of all South Africa's trade with the EU. Since giving an official notification that the UK will be leaving the EU, the UK reaffirmed that its trade relations with South Africa will largely remain unchanged. It is being assumed that until the UK concludes its negotiations for its exit, it will continue to provisionally apply the EPA as decided by the EU Parliament. By mid-year 2017, South Africa and the UK had reached an "in principle agreement", that an interim arrangement will be put in place once Britain leaves the EU, based on the existing Economic Partnership Agreement between SA and the EU. SACU is also negotiating that this arrangement be extended to the rest of the SACU countries, based on the SADC-EPA.

Given an uncertain negotiated exit outcome for the UK, there is still a real uncertainty of the impact of Brexit on the UK's trade relations with other nations, South Africa included. Of primary concern to

South Africa's interests, especially exports, is the impact of Brexit on the UK economy. The most significant threat of Brexit to South Africa is likely to arise from a reduced export demand, should the UK economy suffer negatively as a result of leaving the EU. Predicting the impact of Brexit on South Africa is further complicated by the need to negotiate a new South Africa-UK trade agreement to replace the existing EU agreements, which would no longer apply to South Africa-UK bilateral trade after Britain leaves the EU. Currently, South Africa and the UK (outside the EU) do not have a free trade agreement. After Brexit, South Africa may need to negotiate a new trade agreement with the UK. There is insufficient information at this time to accurately forecast the possible impact or extent of impact of Brexit on the SADC-EPA, or on South Africa's trade profile – multilaterally with the EU and bilaterally, with the UK. This paper reflects on the possible impact of EPAs on South Africa's economy, holding the impact of Brexit constant.

The negotiations for Botswana, Mozambique, Namibia and Swaziland were primarily to continue and codify free market access, while in the case of South Africa, the aim was to improve on the TDCA. There are some subtle but important differences between the TDCA and the SADC-EPA that need to be explored to determine their possible impact of SA's development objectives under the Partnership Agreement. These are likely to be the variables to be monitored to track impact during the implementation of the SADC-EPA in South Africa. These include:

Trade liberalization and Tariff-Free Quotas: For South Africa, the elimination of duties on trade with the EU under the SADC-EPA covers "substantially all trade". This does not present a major shift for South Africa, as much as it perhaps was for the EU. Under the SADC-EPA, the EU will fully or partially remove customs duties on 98.7% of imports coming from South Africa. In addition to "improved market liberalization" by the EU, there are some products that have increased Tariff-Free Quotas under the SADC-EPA for South Africa, as compared to the TDCA provisions. The most significant is wine. The EPA will more than double SA's tariff-free quota for wine from 50 million under the TDCA to 110 million litres. New market access (i.e. new Tariff-Free Quotas) for South Africa include products such as sugar, ethanol and Cane, amongst others, whereas some of the EU's meat products will now enter the South African Customs Union (SACU) region under new TRQs.

Table 2.1: SADC-EPA Tariff Rate Quotas (TRQs)

New TRQs	TDCA-TRQ	EPA-TRQ	Comments
Cane/Refined Sugar	-	50 000 tons	Under the TDCA, there was a tariff of between 34 and 42 Euros per 100 kilograms. Now, 150 000 tons of sugar will be able to enter the EU market duty free.
Sugar	-	100 000 tons	The trade quota represents roughly only 0.5% of the sugar (18 million tons) SA produces. Swaziland dominates among the SADC-EPA states in the production of sugar (accounting for 60% of its own agricultural production).
Ethanol	-	80 000 tons	There was a duty of between 10 and 19 Euros per hectare litre under the TDCA. Under the SADC-EPA, 80 000 tons of ethanol can enter the EU duty free.
Active Yeast	-	350 tons	These are commodities for which South Africa exports get improved access to the EU market.
White crystalline powder	-	500 tons	

Citrus jams	-	100 tons	More than half of South Africa's total import of dairy products, eggs, honey and edible animal products comes from the EU.
Skimmed Milk Powder	-	500 tons	
Butter	-	500 tons	
Unchanged TRQs	TDCA-TRQ	EPA-TRQ	Comments
Strawberry, frozen	370 tons	370 tons	-
Canned mixtures of tropical fruit	2 960 tons	2 960 tons	-
Expanded TRQs	TDCA-TRQ	EPA-TRQ	
Canned Mixtures of fruit, other than tropical fruit	27 102 tons	57 156 tons	-
Frozen orange juice	1 036 tons	3 602 tons	Spain is the primary orange producer in the EU.
Wine	50 126 000 litres	110 000 000 litres	Quota with zero duty on 110 million litre wine and flexibility on the size of the container.

Source: Adapted from TRALAC, 2016

The production of food and agricultural products in the SADC-EPA Member States is dominated by South Africa. The EPA provides for 80% of South Africa's agricultural products to enter the EU market based on a quota system, with the EU liberalizing their own agriculture. South Africa is the major producer of maize, wheat, sorghum, millet, beef, poultry, dairy, sugar, and horticultural products, and has the potential to grow virtually all its basic foodstuffs and service a highly developed food processing sector.

The expansion of quotas on some citrus products, including EU's further liberalization of its market on some of the citrus products, presents an increased policy focus on the sector under the SADC-EPA. South Africa has a well-established citrus sector and is ranked as the ninth largest producer of soft citrus in the world, comprising a share of 0.9 % for the 2015/2016). SA's citrus industry is the largest single agricultural export sub-sector, generating an average export revenue in excess of ZAR6.2 billion per annum and employs approximately 90 000 workers. Oranges alone constitute 70% of total citrus export output, with the EU being the largest market for SA citrus exports (accounting for 34% of SA's soft citrus exports for 2016). There is an expectation, on paper, that the SADC-EPA citrus producers are bound to benefit from these various trade concessions and as such, boost both exports and incomes – with much larger development implication on employment and welfare gains. However, it is unclear how these citrus concessions will hold. Given that on the eve of the EU Parliament and Council's decision regarding the SADC-EPA, organisations representing the Spanish citrus sector approached the European Parliament and the Government of Spain requesting for tariffs on oranges and slightly more flexible phytosanitary controls on citrus imported from South Africa not to be lifted. In 2014, Spain registered 36% citrus black spot (CBS) strikes (i.e. citrus products that tested positive for CBS), on its total citrus SA imports. This is significantly higher when compared

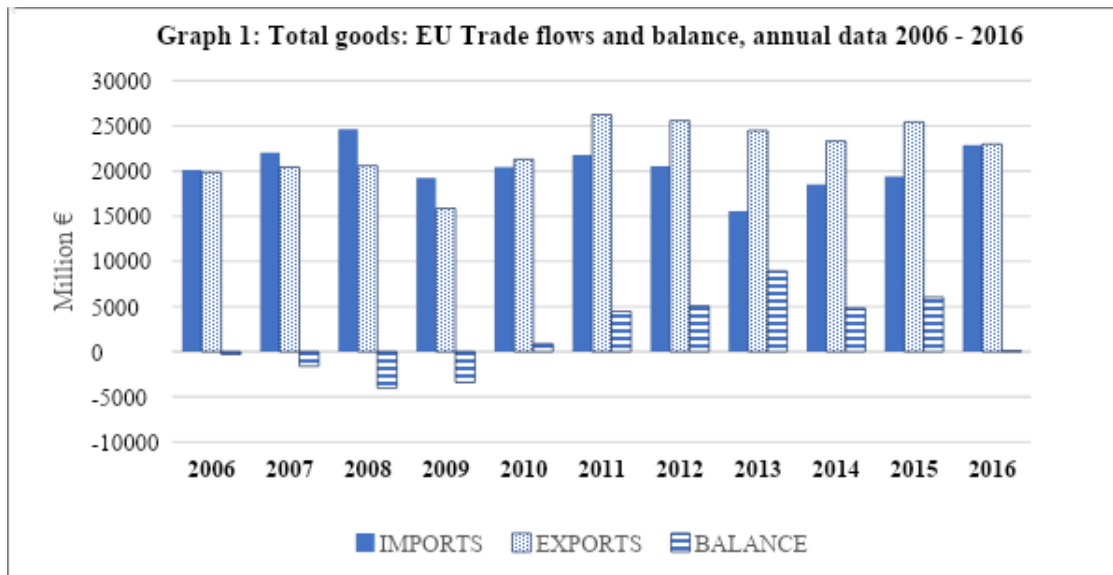
to the UK, which only registered a single strike (i.e. 0,04%) for a total of 2 750 direct SA citrus imports and 5 out of 4 700 in the Netherlands.

The citrus industry is also confronted with several other Non-Trade Barriers (NTBs) / Non-Tariff Measures (NTMs) related challenges. E.g. in 2013, the EU announced much stricter restrictions on the number of allowable citrus black spot (CBS) interceptions, capping them at a maximum of five, against 36 that were found in South African citrus exports in 2012. The adoption of such stringent NTMs presents a formidable challenge for South African citrus exporters, who must comply with higher standards to a great cost. A 2014 report by the Agricultural Business Chamber (Agribiz) which used various simulation models, showed that even if the European Union was to remove non-tariff barriers on the export of citrus products (oranges), this would have a very marginal impact on the current total exports (i.e. an increase of 0.1%). It is no surprise that the SA citrus industry / exporters are exploring alternative markets, as opposed to exploring how to increase exports under the SADC-EPA.

The SADC-EPA is expected to improve market access for 32 agricultural products, especially wine, sugar and ethanol, while phasing out EU in many agricultural products. In this regard, it is highly anticipated that South African exporters will take advantage of this improved market access to increase exports into the EU market. New products for South Africa under the SADC-EPA is fisheries. Based on quotas, 94% of SA fish and/or fish products will now enter the EU market while the rest will be phased in over a specified period. This will be without South Africa having to concede fishing rights in South African waters to EU companies, as had been demanded by the EU under the TDCA. The parties have agreed to mutually liberalize fisheries tariff lines over a period of no longer than 9 years after the implementation of the EPA.

While this presents a seemingly significant market for SA fisheries, the entry of fish products on the EU market is not dependent on tariffs. In addition to stiff global competition (e.g. from Nigeria, Morocco, Egypt, Uganda, Namibia, Tanzania – leading African fishing countries), the SA fish industry has the volatility of commodity prices, unpredictable and an uneven distribution of margins and benefits throughout the fisheries value-chain. In addition, there are severe limitations on the availability of world fish stocks. Managing of fish resources is increasingly a global important policy measure that has been necessitated by dwindling bio-resources that threaten the viability of the fishing industry. Consequently, it can be anticipated that the removal of EU tariffs is likely to improve the profitability in the SA fishing industry, facilitate and or enable the Government to enhance the transfer of ownership in the fishing industry to previously disadvantaged groups.

The South African Government has publicly reported a significant increase in trade inflows between SA and the EU, since the signing of the TDCA. During the period of implementing the TDCA, South African exports to the EU doubled from \$8.7 billion in 2000 to \$17.8 billion in 2014, while imports from the EU increased by 160%. Despite challenges experienced in the turbulent economic and political relationship between these two Parties, the EU as a bloc (28 members), is South Africa's largest trading partner. It is also the largest foreign investor (representing 77% of South Africa's total FDI stock), accounting for the largest share of the SADC's trade with the EU. It is reported that since the signing of the TDCA, trade between the EU and South Africa grew by 257%. It must be understood that the TDCA was one of the first Free Trade Agreements (FTA) South Africa entered into post-apartheid. Today, the trade balance continues to grow wider in favour of the EU.



While the EU's trade balance with South Africa increased from a negative balance of €283 million to a high of €8.9 billion in 2013, and this surplus declined to €91 million for 2016, the fact is that the EU's trade surplus with SA has been steadily rising over the past decade. SA's dependency on manufactured inputs and fuel with the EU has increased. Any substantial negative trade balance can be traced to the fuels and mining products category. There were some increases in machinery, clothing and textile, but SA's exporters increasingly looked to alternative markets, particularly Asia. The EU was the source of approximately 50% of SA imports in 1994. This has significantly declined to just about 30%. To date, China is SA's most important single country export market / destination, absorbing 10% of South African exports, compared to around 2.5% in the mid-2000s. This is comparable to SA's decline of export demands in the EU from more than 20% to 15% during the same period. Of interest, Africa is increasingly becoming an important export destination for South African goods and services, accounting for 19.2% of SA's exports by the end of 2014.

Similarly, an Impact Assessment study by the Regional Trade Facilitation Programme (2005/6) concluded that the supply response from South Africa to duty free access to the EU is likely to be minimal. It argued that the only possible exception would be products where the EU market is highly distorted (notably sugar and to a lesser extent beef). One of the main arguments put forward for this was that under the TDCA, introducing preferential access under the TDCA to date had elicited a very subdued supply response from South African exporters. The study also showed that of the top 87 products exported from SA to the EU (constituting 80% of SADC's exports), less than half had tariffs that were higher under the TDCA, compared to what was being offered to the rest of the African Caribbean Pacific countries under the Cotonou Agreement with a few others considered to have different tariffs to those products under the Everything But Arms (EBA). Thus, under the EPA agreement, South Africa has approximately 15 exports deemed to be "sensitive products". Of these, most are categories of fish, fish products (ranging between 6% for squid to 24% for tuna, compared to 0% tariff under the Cotonou Agreement), agricultural commodities (e.g. beef, flowers, oranges and sugar, ranging between 3.2 to 12.8%), minerals and industrial products (ranging between 2.2% of automobile parts to 10% for vehicles), all compared to 0% tariff under the Cotonou Agreement for the rest of the ACP countries.

Under the TDCA, 95% of South African goods entered the EU market free of customs duties, while the EU offered approximately 86%. In this regard, SA had far exceeded the EU's interpretation of "substantially all trade" of 90%, and what it was negotiating with ACPs (at 80% over a maximum of 15 years – which was 5 years less what the UK government was considering in 2005). South Africa's current national policy orientation (broadly supported by business interests) to diversify South Africa's export destinations, may result in exporters considering new markets through new Free

Trade Agreements (FTAs), such as the BRICS, the European Free Trade Association, Singapore, Kenya, before considering to increase market penetration in the EU.

About a year into the implementation of the EPAs, DTI was reporting that exporters were failing to meet quotas under the Partnership Agreement. For instance, only 44% of the quota on wine had been fulfilled, 11.4% of the ethanol quota and only 7.8% of the sugar quota. There were some quotas that had not even been partially fulfilled. Only a few annual quotas had been fulfilled, such as the one for oranges. In this regard, non-trade barriers (NTBs) remain prohibitive to exporters to take opportunities in utilizing these quotas. Additional and pre-existing strict Sanitary and Phytosanitary (SPS) measures introduced by the EU on products such as meat, citrus products (due to Citrus Black Spot), require comprehensive spraying programmes and additional SPS inspections at high cost to producers. This is also likely to negatively affect the ability of producers to fulfil the duty-free quotas.

It is being largely anticipated by NSAs that the supply response of SA exporters to the elimination of tariffs may be marginal. It is relevant that although many of SA's alternative export markets are characterized by zero or significantly lower duties than the EU (making entry costs onto the EU market higher), commodity prices in the EU are often significantly higher, making it more profitable for SA exporters to consider expanding / intensifying trade with the EU under the EPA. EU imports from South Africa are only about 1.4% of its total imports and only exports around 1.4% of its total to the South African market. It remains highly unlikely that the reciprocal liberalisation of the EU market for SA trade will be significant enough to cause the "flooding" of SA imports in EU's domestic market. This does not rationalize the risk concern by local European producers that trade inflows from the SADC-EPA will create unfair competition. However, there were a significant number of EU countries that did not approve of further liberalizing EU markets (see table 2.2 below).

Table 2.2: EU stakeholders' attitude to liberalisation

Stakeholder	Attitude to liberalization	Reasons
EU Member States: Finland, Sweden, UK Denmark, Netherlands, Estonia	Strongly favourable	Generally open trade policy.
EU user associations (e.g. aluminium and sugar users)	Strongly favourable	See benefits to their members from cheaper raw materials.
EU trader, importer and consumer associations	Favourable	See benefits to their members from greater import competition in general.
European Parliament	Neutral	Many competing interests pulling in various directions, tending to balance each other out.
EU Member States: Germany, Italy, Austria, Ireland, Belgium, Luxembourg, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Malta, Cyprus	Broadly neutral	Willingness to accept some liberalisation, tempered by strong agricultural interests in some sectors. Reaction is therefore often case-by-case.

EU Member States: France, Spain, Portugal, Greece	Strongly opposed	Trade policy strongly based on protection of domestic sectoral interests.
EU producer associations	Strongly opposed	See competitive threats to their members from greater imports.

Source: Olympio j., Robinson P., Cocks M., and Mills L.

Moving forward, it is likely that the EU Member States and the EU trader and producer associations that were adversely against liberalization, are likely to raise concerns during the implementation of the SADC-EPA about SA imports flooding domestic EU markets.

Changes in Duty and trade revenues: There have been some minor changes in the provisions of duty for South Africa (comparing the TDCA and the SADC-EPA). For instance, under the TDCA, South Africa was restricted by the EU to levy export taxes on minerals, even if export taxes were permitted under World Trade Organization (WTO) rules. Under the SADC-EPA, the EU has conceded to South Africa imposing export duties on eight mineral products for a maximum period of 12 years – with the possibility of seeking for an extension or re-instatement, based on specific conditionalities.

The TDCA did not practically allow duties to increase once they had decreased. Similarly, the SADC-EPA contains a general prohibition on the introduction of new or increased customs duties on the export of goods in trade between the parties. However, the SADC-EPA allows for duty increases for some imports from the EU, under certain conditions, to increase after a reduction (i.e. derogations). As such, only in “exceptional cases” will South Africa be expected to justify any new duties or taxes (including any increases) on exports for the non-exempted products. Such justification can be based on extenuating circumstances, like fiscal revenue, environmental protection, protection of infant industry or industrial development, and should be temporary. In terms of the TDCA, South Africa was not allowed to impose any new export taxes on exports to the EU, nor to allow an increase in duties if they had been decreased at some point. Under the EPA, at its behest, South Africa, where it can justify industrial development needs, may introduce temporary customs duties or taxes (up to 10% of the ad valorem export value) on a total number of eight products for a period of up to 12 years.

It is worth noting that while this can be done at any given time, the justification process is through a set of complicated conditions based on historical trade, the length of time the taxes can be kept in place and the level of the export tax. In addition, such export duties can be introduced on a very limited number of products. Article 26 authorizes BLMNS, after consultation with the EU, to introduce temporary export duties in exceptional circumstances for revenue needs, for the protection of infant industries or the environment, or to ensure food security. The contention here was that SADC member states needed to impose export taxes to spur value addition along the value chain and boost domestic and regional industrialization, not necessarily have the imposition of export taxes restricted to ‘exceptional cases’.

Past empirical evidence, supported by various econometric investigations of the factors influencing important South African exports to the EU, indicated that for minerals, only aluminium and iron ore had experienced any significant and consistent increase in exports since 2004, following tariff reductions in the EU under the TDCA. However, neither these trends for aluminium nor iron ore can accurately be attributed to these tariff reductions. For aluminium, the main influence seemed to be the long-term increase in demand in the EU, while iron ore trends were a result of trade facilitation under the TDCA, even though EU’s demand had a negative impact on iron ore exports. In the case of automobiles, there was a long-term decline in SA exports, which could be mainly explained by supply side constraints in South Africa within the sector itself. In the case of auto parts, these same supply-side constraints remained a significant causative factor.

Rules of Origin (RoO)

An important objective of the SADC-EPA negotiations was to ensure that cumulation is allowed with any third world country, provided certain minimum levels of processing are achieved. Both South Africa's DTI and SAI asserted that the EPA had inadvertently undermined regional value chains because the rules of origin differed from country to country. As such, during the negotiations, South Africa was pushing for RoO to support full regional accumulation of origin. This would have meant going beyond the Cotonou Agreement and the TDCA. In this regard, the SADC-EPA did not achieve full regional cumulation of origin as SA had wanted. However, the new RoO for SA allow for extended cumulation. In this regard, the Partnership Agreement will allow for the importation of intermediate products from other ACP countries, to be used in the manufacturing of final products to be exported under the preferential conditions agreed in the EPA. The RoO became less restrictive, albeit more complicated.

For South Africa, agro-processing was largely excluded from the accumulation provisions of the rules of origin. The implication of this is that importing a primary product from another country, processing it there and then further in South Africa, would no longer be possible without paying a higher EU tariff. This is likely to make the product less competitive on the open market. DTI argued that this difference in treatment would reduce the ability of smaller SADC Member States within the Partnership Agreement to harness South Africa's more advanced level of industrialisation. For those countries that would find it difficult to develop supply chains with South Africa, and therefore aid their own industrialisation without forfeiting their preferential duty-free access to the EU, would most likely refrain from harnessing these opportunities. E.g. Swaziland imports pears from South Africa and cans them, before exporting them to the EU, but because South Africa does not have duty free access, Swaziland would need to get regular permission from the EU to continue to export duty free under the rules of origin. This potentially created additional technical procedures for Swaziland, not only creating uncertainties for similarly processed products exported from Swaziland to the EU, on the granting of permission to still export these products duty-free.

Geographical Indications (GI)

Under the SADC-EPA, South Africa also concluded a bilateral Protocol with the EU on the protection of Geographical Indications (GIs). The GI Protocol is deemed to be some form of branding and/or trademark that allows for products that originate in a specific locality and that have a given quality or reputation attributable to its geographical origin, to use the protected name in trade. GIs are a form of branding or trademark protection. South Africa agreed to negotiate a Protocol on GIs, because SA was interested in protecting the names of the many South African wines exported to the EU and has a growing interest in protecting the names of specialised South African agricultural products. The protection covers some wines, spirits and beer names, as well as several agricultural product names. Under the TDC, SA has agreed not to use names like sherry and port in all export markets for an initial 5-year period (except for non-SACU SADC countries). The use of these names was limited to the domestic market, with the intention to phase them out after 12-year transition period.

Under the SADC-EPA, the EU will receive protection for 251 GIs, of these 120 names are for wines, 106 are agricultural product names such as special meats, cheeses and olives, 20 names are for spirits and 5 are for beer names. In turn, South Africa will receive protection for 105 GI names of which 102 are wine names and 3 agricultural product names such as Rooibos, Honeybush, Karoo Lamb, wine names from areas like Paarl and Stellenbosch etc. The EPA makes provision for South Africa to include another 50 South African products as GIs in the future. The Protocol also provides for co-existence of names and therefore ensure that current South African users of specific names like "Feta", will be able to continue to use the name. However, the use of names such as "Port" and "Sherry" which South Africa pushed for under the TDCA, since 2012, remain prohibited under the SADC-EPA.

Wine remains one significant South African export on the EU market, employing approximately 300 000 workers. The International Organization of Vine and Wine (June 2017) ranked South Africa as the seventh largest wine producer, globally. South Africa currently produces 3.9% (1.05 billion litres) of the global wine (26.7 billion litres). According to the International Trade Centre (2016), South Africa exported to the world 490 124 tons of wine, including fortified wines, and grape must whose fermentation has been arrested by the addition of alcohol, but excluding sparkling water: 304 660 tons in containers more than 2 litres (bulk) and 185 464 tons in containers of 2 litres or less (bottled). Of the exported wine, 312 590 tons (67%) went to the European Union: 217 019 tons bulk and 95 571 tons bottled. South African wine has enjoyed preferential market access in the EU market under the TDCA.

Under the EU-SADC-EPA, 110 million litres (77 million litres of bottled wines; 33 million litres of bulk wines) from South Africa will now be permitted to enter the EU market, duty-free in the first year of implementation under the Partnership Agreement. Sparkling wine and wine with alcohol by volume exceeding 18% or less than 13% other than white, and other than bottled are excluded from this duty-free quota but shall continue to enter the EU duty free. After the first year of implementation, the duty-free quota will increase annually by 1 059 000 litres. Of these, 741 300 litres will be for bottled wine, and 317 700 litres will be for bulk wine. The wine quota has been applicable since the 1st of November 2016 and is administered by the Department of Agriculture, Forestry and Fisheries (DAFF) through issuing annual permits to exporters. It is important to note that the out-of-quota wine exports to the EU will be subject to the most-favoured nation (MFN) rate. To date, the principle of the MFN remains one of the most contentious issues under global trade. It is folly to assume that the provided quotas level the playing field between the EU and the SADC-EPA Member States, even if that State is South Africa. It is worth pointing out that SA negotiators had always been adamant about the MFN clause in the SADC-EPA. Thus, while it will not apply to the granted quotas, its application to trade flows exceeding the quota's remains unethical. This is moreso given that there was a strong global policy argument that Parties of an EPA were not obliged to include the MFN Clause in order to make the EPA, WTO compatible Agreement.

The permit is allocated on a preferential market access permit allocation system, which takes into account several variables: broad-based black economic-empowerment status of applicants, which must be corroborated by an accredited verification agency; the market share of applicants, derived from historical data for the past three years; the quota applied for; the number of applicants; and the total quota available for wine. Nonetheless, for South Africa's principal agriculture-based exports to the EU, particularly in non-sparkling wine, the lifting of existing EU import quotas after the agreed period of the TDCA, was deemed to be the negative factor. Under the SADC-EPA currently, the EU has removed all duties on sparkling wine, but is not a major export from South Africa and is therefore unlikely to have significant impacts on outward trade flows and inward trade revenue for SA.

In addition, South Africa exports more bulk than bottled wine to the EU (and the world at large). The export of bulk wine is largely motivated by importers needing to cut packaging and transport costs – it is cheaper to export/transport bulk wine than bottled one. However, the SA government has always contested the export of bulk wine and bottling it in Europe, concerned about loss of profits, jobs and control of the production process or South Africa, among other things. On the other side, the EU wholesalers have supported the importation of bulk wine since they will be able to squeeze pricing from exporters. For instance, most of the UK firms (e.g. Asda) have increased their sourcing of bulk wine from South Africa in recent years.

Thus, the demand for South African bottled wine decreased, resulting in closures and retrenchments within the wine packaging industry, notably in Stellenbosch and Rosberg. In addition, the UK's Waste and Resource Action Programme supports the importation of bulk wine for environmental benefits, cost savings and logistical efficiencies. The EU-SADC EPA has increased the duty-free quota for bottled wine, and this means that the South African wine industry needs to enhance its packaging

capacity to reap the full benefits available for packaged wine under the Agreement. In addition, bottling wine locally will create more jobs, benefit the exporters and the packaging industry.

Therefore, some of the Tariff-Free Quotas and tariff reductions under the SADC EPA, in some of the products for South Africa, may not really lead to anticipated surges in trade, economic growth, sustainable incomes and development. Collectively, SADC EPA countries are more competitive. Despite what would seem to be lucrative business and export opportunities, there are other realities that may undermine these gains or trade improvements for South Africa under the SADC EPA. Many of these have to do with productivity, rules of origin, sanitary and phytosanitary, technical, legal and non-legal requirements stipulated by the EU, that wine producers and exporters are required to comply with. More importantly, wine exported to the EU needs to conform to winemaking (oenological) practices approved by South African rules and accepted by the EU. It is also required to meet labelling, documentation and certification requirements stipulated in Protocol 3 to the EU-SADC EPA.

These EU requirements are generally high and costly to meet for an average South African producer. This process undoubtedly excludes micro-small-scale producers, who without strengthening value chains are not likely to benefit from the SADC EPA. By December 2016, the average return on investment at producer level reduced to below 1%, largely driven by the prolonged drought in certain regions, stagnant wine price and cost inflation. Only 13% of the 3 300 producers accrued sustainable income levels, 44% were operating at breakeven and 40% were making a loss. While the domestic market for wines had increased by 14% over the past two years, 80% of local wine volumes are still sold below R26 per litre and less than 5% of the volume above R65 per litre.

The experience of South Africa with the TDCA and that of the CARIFORUM EPA provide useful lessons and the cautionary note that expected benefits from EPAs are not automatic and have largely not materialized. Most benefits for SADC EPA States will depend on their ability to diversify and produce value added manufactured products. As it stands, if South Africa does not increase its economic diversity, its productivity, new trade stemming from the EPA will not be very extensive. South Africa, like many developing countries, is finding itself - in most goods it exports - at the low value-added part of global value chains, as a supplier of mostly primary products and commodities. Addressing supply-side constraints remains imperative if South Africa's trade flows are to benefit at all from the SADC EPA. As it stands, while the EU remains a major trading partner for South Africa, SA itself, is a small part of the EU's total imports. As such, it is possible that no terms of trade impacts are likely for either the Southern African countries or the EU, even if the EU has expanded its preferences under the SADC-EPA.

While the process of developing the GI list of products and negotiating the GI Protocol was generally considered by some private sector associations, the process itself was not well covered in public media. A Gains Report did an article for which it interviewed various producers and exporters to access their perspective on the GI negotiations and the list. For instance, the SA Milk Processors' Organization (SAMPRO) indicated that the process of negotiating the protection of the proposed GIs was an open transparent process. Some producers expressed that the negotiated GI outcomes were not likely to make any significant impact on current trade flows in the products listed - perhaps, not worse off. However, there is caution by industry stakeholders as it was noted that there are some developed countries such as the United States (US) and New Zealand that had a differing understanding of GIs, and were likely to file objections under the Dispute Settlement Understanding (DSU) of the World Trade Organization (WTO) on the lawfulness of the EU-SA EPA GI Protocol.

Safeguards

Several safeguards (some permanent, others temporary) are included to prevent potentially harmful effects of trade liberalization and to 'protect the policy space' of the SADC Member States. The EU deems these to be sufficient to ensure that while the EPA is asymmetrical, the safeguards will

help to address the societal and economic differences between the EU and the SADC countries, and ensure that when SADC Member States substantially liberalize all their trade (i.e. 86% of tariff lines over a ten-year period for South Africa), their domestic markets are better protected against the potential flooding caused by massive EU manufactured and processed agricultural imports. The EU insists that under the terms of the Agreement, all BNLMS countries will be able to protect what has been mutually agreed to be sensitive products for them, from European competition. This is expected to be realised by either keeping tariffs in place, or if necessary, by imposing safeguard measures. In addition, these are expected to support local agricultural production, while the EU has agreed not to subsidize any of its agricultural exports. A year into the implementation of the EPA, highly subsidized EU chicken imports were flooding the South African market. Therefore, whilst the safeguards are in themselves deemed largely ineffective, it is relevant to note that South Africa considers their inclusion in the SADC EPA to cover all SADC Members States to be a “win”, as the transitional safeguard under the TDCA had lapsed in 2012.

While some stakeholders conclude that the available safeguards for SA under the SADC EPA are much improved and welcomed compared to the provisions of the TDCA, activating a safeguard requires a lengthy process of consultation, which might be unsuitable in some cases, particularly in agriculture. The compliance requirements for any form of safeguard under the EPA are more stringent than under the TDCA, with their effectiveness severely contested. This is also worsened by the current 30-day notification period, which may make applying for a safeguard as a trade remedy seem too slow, and therefore ineffective to apply in cases requiring an urgent and time sensitive response.

The raging dispute between South Africa and the EU in the Poultry sector is an example of this. South African Poultry producers have accused the EU of essentially dumping dark meat, i.e. chicken legs, thighs and wings, onto the South African market below cost, making it difficult for local producers to compete. A 13.9% safeguard duty granted on chicken legs in 2016 was far too low (compared to the 40% preferred by the Poultry producers) to ease the stiff competition from the EU imports, resulting in thousands of job losses in the local Poultry industry. The implications of the flooding of the domestic poultry imports from the EU are disastrous. The South African poultry meat industry, with a gross value of almost R40 billion (US\$3.0 billion), is the country's largest individual agricultural industry, contributing almost 17% to the total gross value of agricultural products. The EU is the most important trading partner for South Africa in terms of poultry meat, with a 64 % market share in value followed by Brazil with 29% market share.

The current influx of EU poultry products has had a huge negative impact, which include the importation of inferior quality poultry products (at lower prices), killing off the domestic market share for SA producers, declining profits and retrenchments. In 2017, the South African Poultry Association claimed that EU imports accounted for more than 80% of South Africa's frozen bone-in market. This was an increase from 0.5% in 2000, when bone-in imports from the EU rose from 62 000 tons in 2011 to 194 000 tons by the end of 2016, under the TDCA. This made poultry imports from the EU the largest single supply source in South Africa, exceeding the largest local producers. A 2006 Sustainability Impact Assessment Study commissioned by the EU, reports and projects the potential negative impact of the SADC EPA on agricultural sectors and the poultry sector. The report goes further to recommend the need for ACP countries to “protect” these highly sensitive sectors.

Empirical evidence shows that while South Africa applies several anti-dumping measures, it has implemented much fewer safeguard measures in trade, in general. Examples were the imposition of safeguards on frozen chips from Belgium and the Netherlands (under the WTO) in 2013/ 2014, on EU poultry products in 2016/17. Many of the exporters / local producers have argued that the safeguards are ill-suited to match their needs and remain difficult to apply for, even when deemed necessary. Monitoring the application of the safeguard on the current poultry dispute will help key lessons in the application of the safeguard mechanism under the SADC-EPA - not only for South Africa, but also for the rest of SADC member states who are Party to EU-FTAs.

2.2 The social development impact of the SADC EPA in South Africa

The SADC EPA makes the argument that improved market access complemented by development aid / assistance under the Partnership agreement will have positive welfare effects. The SA government expects the SADC EPA to modestly reduce the poverty headcount in South Africa. It is logical to anticipate the SADC-EPA poverty reduction effects would be through beneficiation of small-scale producers across the products covered by the Partnership Agreement. The TDCA was heavily criticized for transforming the status-quo of subsistence farmers, small-scale producers and rural communities. It remains very difficult therefore to draw the direct linkages between the EPA and welfare gains across the country. It becomes imperative that the South African government does not assume that trade will automatically have a direct impact on household incomes, consumption patterns, access to basic services and ultimately on poverty reduction, equity and equality. It remains the responsibility of the government to deliberately play the role of the developmental state and consciously strive towards developing interventions for poverty reduction targeted at the most vulnerable populations.

South Africa is the second largest economy in Sub-Saharan Africa and has enjoyed relative macro-economic stability and significant GDP growth, as well as a steady rise in spending on social services since the end of apartheid in 1994. However, South Africa's Upper Middle-Income status masks the many problems it faces in terms of poverty, inequality and unemployment, which remain significant development challenges. In 2017, Statistics South Africa (StatsSA) released the poverty statistics for South Africa, which showed an increase in the number of poor, compared to 2011. Approximately 30 million of South Africa's 55-million citizens live below the upper poverty line of ZAR 992 per person per month. One in seven (13.4%) of the total population face extreme food poverty or survive on less than ZAR 442 per person per month. These poverty statistics reveal a regression as SA's current poverty statistics than those of a decade ago (i.e. 2007). In June 2017, unemployment hit a 14-year high at 27.7%, with youth employment at 53%. Unemployment levels remain higher for women than for men. In June 2015, 27.3% of working age women were unemployed, compared to 23.1% of men and the labour absorption rate also remained lower for women (37.6%) compared to men (49.7%). Furthermore, while the labour force participation rate was 64.6% for men it was just 51.8% for women during the same period. The weak economic performance has led to very modest increases in job creation.

The Gini coefficient of consumption of 0.65 makes South Africa one of the world's most unequal countries in the world. The level of inequality is the most significant socio-economic factor accounting for these differences in poverty levels. According to an Oxfam Inequality Report on South Africa (2017), the richest 1% of the population in SA has 42% of the total wealth. Almost 50% of the black population is reported to live below the national poverty line, compared with only 2% of the white population. For 2014/15, white-headed households had an income roughly 4.5 times larger than black African-headed households and 3 times larger than the average national income. Female-headed households continue to earn significantly less than their male counterparts, with 57.17% of female-headed households found in the lower income quintile. Socio-economic inequalities continue to threaten long-term stability. The legacies of apartheid, poor service delivery, corruption and widespread poverty strongly characterised socio-political discourse over the past few years. Protests against service delivery remain widespread in various parts of the country.

To address the high levels of unemployment, poverty and inequality, South Africa has drawn up a Medium-Term Strategic Framework that includes a "comprehensive, responsive and sustainable social protection system". The spending focus is primarily on increasing access to social assistance, and reforming and standardizing practices in the social-welfare sector. Social grants increased from ZAR3 million in the year 2000 to over ZAR17 million by 2017. By 2017/18, it is expected that 17.5 million beneficiaries will be receiving social grants, the budget for which will be ZAR 148.9 billion. Nonetheless, SA's Gross Domestic Product Per Capita remains higher than many of the other SADC-EPA countries. By 2016/1, South Africa's GDP Per Capita (based on purchasing power parity) stood at US\$11 375, compared to the average of

US\$2 476 for Sub-Saharan Africa.

Trade is a key instrument for the delivery of the SDGs, but 'done wrong', trade liberalization can exacerbate rather than relieve poverty. EPAs relate most strongly to Goal 17: global partnership for sustainable development. The SADC EPA also contains various provisions committing to the application of the principles of sustainable development in its implementation, including social, labour and environmental matters. Part of civil society's contentions with the SADC EPA was that it just did not have sufficient provisions to achieve these sustainable development objectives.

3. Implementation framework

All the SADC EPA countries (South Africa included) deposited their instruments of ratification of the EPA. For implementation purposes, the EPA replaces the TDCA, and is likely to use, and or expand the instruments used for the implementation of the TDCA. The DTI is the primary ministry responsible for the negotiations, policy oversight in the implementation, monitoring and evaluation of the SADC EPA. The South African Revenue Authority is the principle agent in the implementation/administration of the Agreement and responsible for issuing out the instruments for operationalisation and regulating the implementation of the Agreement. Examples of these are the various Government Gazettes (e.g. 21 January 2014, 28 October 2016, outlining the "procedures and application" of export permits and quotas TDCA/EU-EPA, Parliament Announcements on Trade).

3.1 The implementation institutional framework

While many of the SADC EPA Member States are in the process of developing National EPA Implementation Plans, South Africa is likely to integrate the trade and trade related commitments of the SADC EPA in the existing policy and legislative framework, of which were instrumental the implementation of the TDCA.

3.1.1 The Joint Council

The EU-SADC EPA establishes several institutions responsible for monitoring, administering or assisting with the implementation of the Agreement at the global and regional level, with SADC EPA Member States required to constitute national institutions for implementation (at country level). At the international and regional level, the implementation of the SADC EPA will be presided over by the Joint Council, comprised of the relevant members of the European Commission and SADC EPA Ministers. This Council is assisted by the Special Committee on Customs and Trade Facilitation, the Special Committee on Geographical Indications and Trade in Wine and Spirits and the Trade and Development Committee (TDC). It is the primary institution responsible for overseeing and administering the overall implementation of the EU-SADC EPA.

The Joint Council's functions include, inter alia, to:

- monitor the fulfilment of the EPA objectives
- examine any major issues that may arise under the EPA
- make appropriate recommendations; monitor the development of economic and trade relations between the parties
- monitor and measure the impact of parties' cooperation on sustainable development
- review the progress of all matters covered by the EPA
- supervise the work of the Trade and Development Committee.

The Council is also expected to provide periodic reports on the operation of the EU-SADC EPA to the Council of Ministers, established in accordance with Article 15 of the Cotonou Agreement. In addition, the Joint Council has power to make decisions in respect of all matters covered by the EU-SADC EPA. Such decisions are taken by consensus and binding on the parties.

At the national level, South Africa established the EU-South Africa Cooperation Council (under the TDCA). This Council will continue to oversee trade and development cooperation under the SADC EPA. The Council convenes annually to assess the implementation of the trade / Partnership Agreement. However, it will also take stock of the broader bilateral issues development, economic cooperation and political / policy dialogue between SA and the EU. This augmented by having bilateral Ministerial meetings, and high policy dialogue. A Dialogue Facility has been established to create an operational development dialogue forum on the SADC EPA, the Development and Cooperation TDCA and on the EU-SA Strategic Partnership Joint Action Plan (JAP).

"The Dialogue Facility is designed to support the various dialogues that are in operation or in the process of being established through the provision of technical assistance resources, i.e. expertise and resources for related support costs, logistics for conferences and workshops, and visibility actions" (Dialogue Facility).

These funds (that are committed through the Dialogue Facility) must be accessed by stakeholders through submission of proposals. The call for proposals (i.e. earlier this year) identify the "academia, the media, trade union, business organizations/chambers and other NSAs" as eligible for accessing this fund. However, the eligibility is limited to each of the stakeholders by firstly, applying in partnership with at least one SA government department (through submission of an SA government signed letter of commitment or support) and secondly, that they are not a for-profit institution/organisation. The challenge fundamentally with the eligibility criterion is that it may purposefully exclude stakeholders deemed to be "troublemakers" by government or those that may have an 'opposing view', no matter how relevant or constructive that view could be.

3.1.2 The Trade and Development Committee

The Trade and Development Committee consists of representatives (normally senior officials) of the EU and SADC Group. It is chaired alternately by a representative of each of the parties for a period of one year. The Trade and Development Committee may establish special technical groups to deal with specific matters within their expertise. It supervises and establishes rules of procedure of such technical groups. It is accountable to the Joint Council and is responsible for monitoring and evaluating the implementation of the SADC EPA. The TDCA has met only once since the implementation of the EPAs commenced last year. There is currently no structured framework for civil society engagement in the SADC region to engage in the implementation of the SADC EPA.

The main functions of the Trade and Development Committee are in the areas of trade and development cooperation. In respect of trade, the Committee, among other things, monitors and evaluates the implementation of the decisions of the Joint Council; facilitates and supervises the implementation of the EPA provisions; makes recommendations to the Council on cooperation priorities and conflict avoidance; monitors the development of regional integration. The Committee must undertake actions that may facilitate trade, investment and business opportunities between the parties, and to discuss any matters under the EPA and any issue that may affect the attainment of its objectives. In relation to development cooperation, the Committee monitors the implementation of the EPA provisions on cooperation and coordinates such action with third party donors; makes recommendations on trade-related cooperation between the parties; and monitors and assesses the impact of the EPA on sustainable development of the parties. In addition, the Trade and Development Committee has specific tasks to monitor and review the implementation of the Chapters on technical barriers to trade and sanitary and phytosanitary measures, Chapters V and VI of the EPA respectively.

The SADC EPA further makes provisions for the establishment of Special Committees to deal with specific matters. One is the Special Committee on Customs and Trade Facilitation, composed of the representatives of the EU and the SADC Group. It is responsible for monitoring the

implementation and administration of Chapter IV (Customs and trade facilitation) and Protocol 1 (Concerning the definition of the concept of “originating products” and methods of administrative cooperation) of the EPA. Thus, it deals with the co-operation, development, application and enforcement of customs issues, including rules of origin, customs valuation, customs procedures, tariff classification, transit and mutual administrative assistance in customs matters. The Special Committee on Customs and Trade Facilitation is also responsible for following up on the harmonisation of customs standards at regional level. It reports to the Trade and Development Committee. A second Special Committee is for Geographical Indications and Trade in Wines and Spirits (i.e. Article 13 of Protocol 3 of the EPA). It was tasked with the implementation and functioning of Protocol 3 of the EPA (Geographical Indications and Trade in Wine and Spirits).

At the national level, the Department of Trade and Industry (DTI) was primarily responsible for South Africa’s negotiations under the SADC EPA. The DTI will have the ultimate responsibility to monitor the operation of the EU-SADC EPA and ensure that the Agreement is correctly implemented. Moving forward, it is imperative to identify the possible platforms for engagement for civil society organisations in South Africa. The EPA also establishes a consultation procedure for environmental or labour issues and defines a comprehensive list of areas in which the partners will cooperate to foster sustainable development. Civil society will have a special role in monitoring the impact of the agreement.

South Africa has several platforms for policy dialogue with the EU on trade issues, which are also likely to incorporate engagement on the SADC EPA. Among these are the South Africa-European Union (SA-EU) Inter Parliamentary Meetings (IPM). However, it remains largely unclear how consistent these spaces are open to civil society. In future, it may be useful for DTI to assess how these dialogue platforms that largely inter-ministerial and or intergovernmental are made more open to civil.

4. Financing and Development Cooperation for the South Africa under the SADC EPA

Relations on development cooperation between the EU and South Africa are in a state of transition. The EU has traditionally been one of the largest sources of official development assistance (ODA) to South Africa, providing 70% of all external assistance funds, 25% from the European Commission, 20% from the European Investment Bank (EIB) and 25% from EU Member States. Given its development status among the other Member States that are Parties to the SADC EPA, South Africa will not receive direct financial assistance through the Trade Related Facility of the European Union’s Development Fund (EDF) and within the framework of the relevant instruments financed by the General Budget of the EU. However, it will be a secondary beneficiary through the resources allocated to SADC in fulfilment of some related development parameters. For instance, the EU has committed to capitalize the Infrastructure Investment Programme for South Africa (IIPSA) through a grant valued at €100 million (approximately ZAR1.5 billion). The programme is expected to address the constraints to infrastructure development in South Africa and the Southern African Development Community (SADC) Region.

In addition, South Africa has been a beneficiary of development assistance from the EU through the Development Cooperation Instrument (DCI). During the 2007-2013 programming cycle, South Africa had an indicative allocation of €980 million which was fully committed. For the 2014-2020 period, South Africa remains one of the exceptions concerning EU’s support to Upper Middle-Income Countries, as the country continues to receive bilateral aid. However, this has been considerably reduced from €980 to €241 million. Aligned with the government priorities set in its National Development Plan – Vision 2030, the 2014-20 MIP focuses on its three key priorities: i) employment creation; ii) improving education, training and innovation and iii) building a capable and developmental state. The aim is to support the Government of South Africa in reducing unemployment from around 25 % (in 2013) to 14 % (by the end of 2020), in transforming the education, training and innovation system so that it can contribute to improved economic

performance of the country and assist South Africa in fulfilling its developmental and transformative role, including improving service delivery. In addition, under the TDCA, there was the TDCA Dialogue Facility, which was meant to enhance dialogue and cooperation between the South African Government Departments and their EU counterparts. The current Dialogue Facility programme is valued at €5 million and will be operational over a 5-year period.

However, it is important to note that South Africa is not dependent on ODA, which accounts for approximately one percent of the state budget and 0.3% of GDP. While South Africa has received increased development aid over the past decade, it is also increasingly providing international development support. This is being done primarily through the South African Development Partnership Agency (SADPA). Domestically, the South African government offers financial support for various related programmes, which target SA exporters and SMEs such as: the Export Marketing and Investment Assistance Scheme (EMIA), SMME Development Finance Assistance (incentives like the Incubation Support Programme), Manufacturing Competitiveness Enhancement Programme (MCEP), Agro-Processing Support Scheme (AIS), Black Industrialists Scheme (BIS), the Cluster Development Programme (CDP). However, there is very little information on the real impact of these various incentives and/or support programmes on SA exporters, particularly small-scale producers and exporters. This makes it very difficult to assess the socio-economic and welfare gains of these incentives and therefore determine possible implications under the SADC EPA.

5. Remaining contentious issues for South Africa

While the EU noted the importance and necessity for “flexible approach” in addressing contentious issues, some negotiation outcomes did not reflect full consensus and amendments in concerns put forward by the South African government. These are summarised as follows:

5.1 Non-Tariff Barriers

The South African government was and remains very consistent in calling for the EU to address Non-Tariff Barriers to enhance SA's access to the EU market. Compared to that of the EU, South Africa's regulatory infrastructure remains underdeveloped and fragmented. Key challenges include weak infrastructure for engaging in calibration, testing, certification, accreditation, quality assurance and standardization. As a direct consequence, it is difficult for South African suppliers and importers to comply with all kinds of technical requirements. Products often must undergo re-testing in export markets, leading to large cost penalties for exporters, while substandard products easily find their way into SSA markets. Producers must cover the costs of meeting these standards, further reducing their competitiveness. Although there is some EU technical and financial assistance for meeting these standards, very little private investment is available. However, Annex VI of the EPA lists priority sectors that have been earmarked to 'cooperate in strengthening regional integration and specifically SADC EPA States' on matters concerning sanitary and phytosanitary measures and to address problems arising from SPS measures.

5.2 Inclusion of Trade in Services in the SADC-EPA

For a country riddled with constant societal upheavals on public sector challenges in improving equitable access and affordability of basic utilities, SA has strongly contested the inclusion of Trade in Services, Investment, Competition Policy, and Government Procurement under the SADC EPA. It was on these grounds that SA had refused to initial the Interim SADC EPA (IEPA). South Africa fears that the inclusion of Trade in services in an EPA is likely to create a new generation of trade policy division in SADC and SACU, which will have detrimental implications for its own services sectors. However, the SADC EPA itself contains a “rendezvous clause”, that maintains that Parties 'may consider entering into negotiations' on these issues'. The EU is on record to emphasize that this clause is not an obligation on SADC member states to negotiate these issues. Nonetheless, there is always resistance not just from some of the SADC member states, but also largely from NSAs that view the EU as 'always attempting to push through the WTO+ (plus) issues at bilateral level'. In addition, it is worth noting that Botswana, Lesotho, Mozambique and Swaziland have started and will continue

to negotiate trade in services with the EU and work towards establishing the principles for negotiations regarding the liberalization of services.

5.3 Trade Remedies

Dispute resolution is also covered by the EPA, although only in a limited capacity. For instance, the SADC EPA DSP does not extend to investor-state dispute settlement. Any disputes concerning the application of the SADC EPA are to be settled by consultation, failing which the parties may resort to mediation and ultimately arbitration. The rules of procedure and conduct applicable to any arbitration proceedings are to be agreed by the parties within a year of the agreement coming into force), and in reaching any decision the tribunal must interpret the agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties. This mechanism is largely identical to dispute resolution mechanisms set out in other EU EPA trade agreements with the other regional groups. Interestingly, it is generally anticipated that these provisions are less likely to be used or applied by both SADC and the EU. Empirically, South Africa and the EU never used the dispute resolution mechanism under the TDCA – noting that the TDCA's dispute resolution mechanisms / provisions were weak. As it stands, the SADC EPA dispute mechanism does not include provisions for enforcement and dispute settlement specific to technical regulations and other Technical Barriers to Trade (TBT) matters.

Dispute settlement procedures for EU-FTAs in general, do not follow a precise or common framework. They tend to differ from each other. The TDCA DSP covered disputes related to development, financial or other areas of cooperation and those relating specifically to trade or trade-related areas. It also had a specified timeline for resolving the disputes. For trade-related issues, the TDCA specified that the period between the initial complaint and the implementation of the arbitrators' findings was not to exceed 28 months. This was much longer than what is specified in the WTO DSPs – i.e. 18 months. However, unlike some of the other EU-FTA (e.g. Chile), it did not specify much else. For example, it did provide the specifications of the arbitration panel, but did not indicate possible remedies to the dispute. It did not include any measures a complaining party could take if the other party did not implement the arbitrators' decision in a satisfactory manner. In addition, the complaining party could not dispute the transitional period's maximum length of 15 months and the arbitrators had no formal role once their findings had been communicated to both parties and the Cooperation Council. Therefore, the SADC EPA DSPs are much more comprehensive, compared to the TDCA DSPs and to other existing EU-FTAs.

5.4 The Most Favoured Nation Clause (MFN)

Article 28 remained one of the most contentious issues, especially with South Africa. It provides, with respect to customs duties (including export duties), that the EU must extend any more favourable treatment granted to a third party through a future preferential trade agreement. However, such a concession does not extend to South Africa.

Therefore, if the EU were to grant more favourable treatment to third parties, it will only have an obligation to consult with South Africa. Moreover, where a SADC EPA Member State enters into a preferential agreement and receives substantially more favourable treatment from another major trading economy than that offered by the EU in its EPA agreement, the parties shall consult and jointly decide. On the other hand, if SADC and SACU countries grant more favourable treatment to third countries, they must extend it upon request by the EU. The latter obligation does not cover FTAs with ACP and other African countries and regions. It only applies with respect to FTAs with a 'major trading power', defined as representing more than 1.5% of global trade.

Moreover, any extension of SADC preferential treatment from that FTA to the EU requires consultations and a joint decision with the EU and the MFN clause does not apply retrospectively. South Africa's objection to the inclusion of the MFN Clause results from its concerns about extending its possible concessions under BRICS and AGOA to the EU. The MFN is therefore being deemed to

potentially stifle South-South Cooperation, whilst enforcing South Africa's dependency on the EU market as its main export destination.

5.5 The ideological agenda of the SADC EPA

The EPA sees some reciprocal liberalization in trade by the EU to match that of SA's, but is a far cry from the previous system of unilateral trade preferences provided by the EU under the Cotonou Agreement. For many civil society movements in South Africa, full trade liberalization and reciprocity, between very two different trading partners is a development blooper. There are no guarantees that full trade liberalisation between the EU and South Africa will give access to quality goods, inputs and services, create export opportunities and attract investment that will improve essential infrastructure and competitiveness and bring economic growth. As such, South African stakeholder reactions have been varied and the EPAs in general have been the subject of intense public debate. During the negotiations there was significant criticism from some parts of civil society, who believed (and continue to) that EPAs promote a neoliberal agenda, which is far removed from a human centred development paradigm. Ideologies play an important role in the choice of instruments used to address problems of poverty, inequality and insecurity and to disregard this would be injudicious.

6. Conclusion – the role of South African civil society

It is undeniable that civil society has an invested interest in the impact on trade policy. There are several roles that can be played by South African Civil Society Organisations. These roles can include: monitoring the coherence of EPA domestication with the Industrial Development Policy objectives; the coherence of EPA implementation with national & regional priorities; the coherence of EPA domestication with the National Trade Policy objectives; the coherence of the domestication of EPA with the National Development Plans; and participating in socio-economic support programmes undertaken by International Cooperating Partners (ICPs) on policy dialogue and developing NSAs' capacities to engage more effectively with the SADC EPA, participation in the SADC Trade Related Facility Programme Formulation and in the identification and formulation of EPA Support Programme (s) at both the national and regional levels. The following sections summarised various ways in which NSAs' engagement in the implementation of the SADC-EPA can be enhanced.

6.1 Strengthening institutionalized multi-stakeholder dialogue platforms

The absence of engagement and sufficient consultation of civil society remains a key challenge. This is despite the increasing acknowledgment in the EU and within the SADC Secretariat itself for the need for NSA participation in the consultation and implementation processes of the EPA – at both national and regional levels. Despite these, the real challenge is that the SADC EPA does not have provisions for the participation of civil society, neither is there a comprehensive and inclusive institutional arrangement for its participation in the implementation of the EPA. For South Africa, NEDLAC is often viewed as a comparably more consultative and influential multi-stakeholder platform in the region. However, as outlined earlier, this structure is far from ideal in terms of including the broader multi-stakeholder that is required to improve civil society representation for engagement on the EPA. NSA engagement by DTI has largely been dominated by the private sector and trade unions. Even then, the discourse is not rich enough to sufficiently conclude that these engagements/dialogue sessions are adequate, effective and conclusive. They tend to be largely information briefing/notification sessions.

One of the possible considerations is for the DTI to undertake a more intensive process of mapping NSAs who currently do not seat officially in NEDLAC, and to work towards deliberately establishing a more comprehensive multi-stakeholder forum on the SA-EU Trade and Development Cooperation Framework. Martens D., Orbie J., Van den Putte L., and Williams Y., (2017) suggest useful

recommendations worth considering for institutionalizing civil society participation more meaningfully. One of these is developing and adopting a Protocol on civil society engagement and participation – that can be added to the EPA. This is very similar to the extension of the TDCA through various Protocol e.g. the addition of EU extensions when Croatia joined the EU and thus, the EU-SA TDCA. Alternatively, more focused and consistent informal meetings can be arranged by DTI for civil society engagement to discuss the development-related issues of the EPA. These can also be well complemented by constructively integrating broader civil society participation in the monitoring and/or review meetings of the EU-SA Strategic Partnership Joint Action Plan (JAP).

6.2 Defining objectives for social dialogue under the SADC EPA

There is an increasing proliferation of EU-SADC Member States and civil society meetings on the SADC EPA. However, it remains largely unclear what these meetings are for, and how or if they influence the implementation of the EPA itself. Without giving a real mandate to these dialogue platforms, there is a real risk of having these dialogue and or consultative processes with civil society being reduced to seemingly political processes to “tick the consultation box”, in order to meet some development objectives of EPAs on stakeholder engagement and participation – without really ensuring that civil society gets a chance to meaningfully influence policy outcomes in the implementation of an EPA.