WHAT DOES THE EU-SADC EPA REALLY SAY? AN ANALYSIS OF THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND SOUTHERN AFRICA

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INTRODUCTION

After more than 10 years of negotiations under the umbrella of the Cotonou Agreement, the European Union (EU) and six members of the Southern Africa Development Community (SADC) known as the SADC EPA Group[1] concluded talks on a new economic partnership agreement (EPA). The negotiations came to an end when negotiators initialed an agreed text in July 2014.

In October 2015 the parties completed a process of verification to ensure the legal soundness of the provisions. On 10 June 2016, the agreement was signed in Kasane, Botswana, and on 10 October 2016, the agreement entered into application between the EU and the Southern African Customs Union (SACU).

EPAs are reciprocal trade agreements between the EU and a number of regional groupings from among the African, Caribbean and Pacific (ACP) countries[2] under which all parties commit to trade liberalisation, but under which ACP countries can exempt sensitive products from liberalisation so as to take account of their level of development.

EPAs replace arrangements which governed trade relations between the EU and the ACP countries over four decades, during which the ACP countries enjoyed free access to the European market but faced no obligation to liberalise their own markets. **EPAs therefore mark a profound makeover of trade relations between the EU and ACP states.**

This deep transformation of the trade ties between the EU and the ACP countries has attracted the attention of a fair number of commentators. Some of them have been dismissive of the EPAs themselves (by describing the agreements as a sign of a "neo-colonial relationship"[3] or by arguing that they offer the "hollow promise of market access"[4]) or critical of the negotiations (by faulting the EU for inflicting "tedious lectures"[5] and for holding "most of the cards"[6]). Then again, these objections have stood in contrast to other reactions in the region on completion of the negotiations: it was said that the EU had been "outmanoeuvred" by the African negotiators,[7] that the SADC EPA Group had "succeeded in fighting off what it regarded as the unacceptable demands of the EU",[8] and that the results could be presented with pride.[9] The strength of the different reactions on the African continent that EPAs have elicited goes to show that the reasons behind the agreement matter.

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NEW TRADE TIES

This new start in trade ties between the EU and the ACP countries rested on three convictions:
1. Access to the EU market could be further improved.
2. Any agreement would have to be in line with World Trade Organization (WTO): to maintain the preferential treatment for ACP countries, reciprocal trade agreements would be the way.
3. Reciprocal trade agreements may address the economic and political realities of African development better than previous arrangements.

WHY ECONOMIC PARTNERSHIP AGREEMENTS?

By the end of the 1990s the EU and the ACP countries came to a common understanding that trade ties between the two groupings needed a fresh start. This new start rested on three convictions. Although these convictions are contested by some,[10] they remain key to an understanding of how and why the SADC EPA negotiations unfolded. The first conviction was that access to the EU market could be further improved, because, despite decades of unilateral free access, "ACP countries failed to increase or even maintain market share, while less preferred exporters were able to raise their market share".[11] One reaction to this (among others) was to wonder whether some degree of trade liberalisation on both sides would not lead to a greater market share. After all, an economy needs access to goods and particularly intermediate goods to prosper and to expand its exports.

The second conviction was that any agreement would have to be in line with World Trade Organization (WTO) rules. WTO rules prohibit discrimination between countries and stipulate that any preferential treatment granted to one country would have to be extended to all WTO members. This prohibition is enshrined in Article I of the GATT and it is more commonly referred to as the most favoured nation (MFN) treatment obligation.[12] So how could the duty-free, quota-free access for ACP countries be brought in line with this WTO obligation? The so-called "enabling clause" was one option. This text says that a party "may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties".[13] This clause, however, does not allow for discrimination *between* developing countries. As it is, not *all* developing countries are ACP countries and therefore not all developing countries benefit from the preferences accorded to the ACP group. The enabling clause was therefore not of much help.

A second exception to the non-discrimination rule is presented by article XXIV of the GATT, which implies that one could deviate from the MFN treatment obligation through the negotiation of a free trade agreement.[14] Such a free trade agreement is understood as an agreement that liberalises "substantially all trade". There is no commonly accepted definition of "substantially all trade", but there is at least agreement that conformity with this criterion would require liberalisation by all parties. So, to maintain the preferential treatment for ACP countries, reciprocal trade agreements would be the way out.

This is indeed what the leaders of the EU and the ACP countries together agreed to do. This legal reasoning of course conceals the moral dimension of the question of non-discrimination. In the absence of a free trade agreement, one could ask whether it is fair to grant ACP countries, some of which are upper middle-income countries (Botswana or Namibia, for instance), duty-free, quota-free access when other non-ACP developing countries, such as Bolivia or Indonesia, do not get the same treatment.

A final argument for the EPAs, and one that gained currency, is that reciprocal trade agreements may address the economic and political realities of African development better than previous arrangements. Political leaders of African economies have come out in favour of a relationship with the EU that caters for the economic growth on the continent and that cements this positive dynamic. This agenda was forcefully expressed by leaders of the EU and the African Union when they called for "a fundamental shift from aid to trade and investment as agents of growth, jobs and poverty reduction".[15]

'One of the main objectives of the SADC EPA negotiations was to harmonise the import tariff regime for the whole of SACU and restore the common external tariff of what is known to be the oldest existing customs union in the world.'

PECULIARITIES OF THE SADC EPA

This remodelling of EU-ACP relations applies along these same lines to the trade ties between the EU and SADC EPA countries.[16] However, trade between the EU and the Republic of South Africa had already been governed by a reciprocal trade agreement, known as the Trade, Development and Cooperation Agreement (the TDCA). Negotiating the TDCA was concluded in 1999 and the agreement entered into force in 2000. It is an important factor in understanding the outcome of the negotiations on the SADC EPA. **The liberalisation agreed on under the TDCA only binds the EU and South Africa.** This is somewhat odd because South Africa is joined together with Botswana, Lesotho, Namibia and Swaziland (the BLNS countries) in SACU. The defining characteristic of a customs union is that the member countries live by a common external tariff: irrespective of the importing country, the import duty ought to be the same.

Namibia, for instance, as it was not party to the TDCA negotiations, did not align its tariff book vis-a-vis the EU with that of South Africa and as a result a container from the EU arriving in Walvis Bay was charged with a different duty than the same container arriving in Durban.

In other words, SACU was an imperfect union that did not function as it was supposed to for imports coming from the EU. One of the main objectives of the SADC EPA negotiations was to harmonise the import tariff regime for the whole of SACU and restore the common external tariff of what is known to be the oldest existing customs union in the world.

This meant that each of the BLNS countries would first have to align its market access for EU goods with that already offered by South Africa under the TDCA. Secondly, for any new market access additional to the TDCA, SACU would have to negotiate as a group. This is exactly what happened under the SADC EPA negotiations.

The TDCA also provides insight into South Africa's goals for the SADC EPA negotiations. Under the TDCA, South Africa does not benefit from duty-free, quota-free treatment. **As a result, the ambition of South Africa in the SADC EPA negotiations was to improve on what had been achieved in the TDCA.** Overall, the TDCA was asymmetrical in South Africa's favour, but in the agricultural sector South Africa felt that there was an unjustified imbalance. It also argued that some rules governing trade were too strict and deserved to be relaxed. Many of the TDCA's provisions, such as those on safeguards and dispute settlement, were in any event ready for an upgrade.

WHAT IS IN THE AGREEMENT?

While much has been written about the politics of EPAs, much less has been published about the exact contents of the SADC EPA.[17] One would have to take the long march through the agreement to assess the new base on which the trade relations between the EU and the SADC EPA Group are founded. What follows is a step-by-step summary of the contents of the agreement.[18]

General provisions

From the outset, the parties set out that **the agreement is based on human rights and democratic principles.** This is important, not simply because it gives the agreement a moral basis, but also because it allows for the adoption of measures in case a party fails to fulfil the obligation to live by these principles. Article 110 of the agreement reveals what kind of measures can be taken. It says that "nothing in this Agreement shall be construed so as to prevent the adoption by either Party of appropriate measures pursuant to the Cotonou Agreement". These "appropriate measures" include the possible suspension of a trade agreement.[19] One can therefore conclude that the SADC EPA is governed by a human rights clause, which has been the practice in the EU's trade agreements for more than 20 years.[20]

Trade and sustainable development

The next chapter (Articles 6-11) deals with the link between trade and sustainability. One hopes that trade leads to a transfer of best practices, to an increase in trade of environment-friendly goods and to investors seeking locations with well-developed labour and environmental conditions. However, at times there is also the fear that countries lower labour and environmental standards to gain a competitive advantage, or that high standards in reality constitute a form of protectionism.

This interplay between trade and sustainable development is therefore a necessary part of trade agreements. Under these provisions, the parties reaffirm their commitment to the international conventions on labour and environment that they have signed.

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They agree that they can only adopt and modify their environment and labour laws provided changes are consistent with these agreements. Importantly, one cannot derogate from or persistently fail to enforce such legislation. **Should there be a problem or an issue, each party can request consultations, which means that a new platform has been created to discuss matters of sustainable development.**

Trade and development cooperation

The chapter on development cooperation commits both the EU and the individual member states to supporting the implementation of the SADC EPA through finance cooperation (Articles 12-15).

To make this finance cooperation a smooth process, it already lists priorities and identifies possible interventions so that the allocation of funding will not have to be designed from scratch. The scale of the development assistance should not be underestimated.

Under the European Development Fund allocated for the period of 2014-2020, support to regional programmes in Eastern and Southern Africa amounts to $1.36 billion, and support for national programmes amounts to $7.5 billion (covering 23 African countries).

Among this financing, Aid for Trade is estimated to amount to around $2.9 billion. Even if these figures do not cover exactly the same territory as the SADC EPA group, they go to show that the degree of financial cooperation is considerable.

This chapter also includes *rendezvous* clauses for future cooperation in the fields of public procurement, intellectual property rights, competition policy and services and investment trade (Articles 16-19).

This means that the agreement itself has few legally binding provisions in these areas (and that instead the provisions of the Cotonou Agreement remain applicable), but it creates the potential for the initiation of future talks.

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Trade in goods

Whether the EU or SADC EPA states liberalise their trade too much or too little (Articles 20-31) will of course depend on the reader's point of view, but any meaningful discussion must start on the basis of solid figures (see Table 1).

Table 1. Degree of liberalisation in tariff lines and trade volumes.

	Tariff lines	Trade volume
EU offer to BLNS		
Full liberalisation	100% (except arms and ammunition)	100% (except arms and ammunition)
EU offer to South Africa		
Full liberalisation	94.9%	96.0%
Partial liberalisation	3.2%	2.7%
Excluded	1.9%	1.3%
SACU offer to EU		
Full liberalisation	84.9%	74.1%
Partial liberalisation	12.9%	12.1%
Excluded	2.2%	13.8%

Source: Estimates by the European Commission, DG TRADE, 2015.[21]

Table 1 reveals that the EU has offered duty-free, quota-free access to Botswana, Lesotho, Namibia and Swaziland, but in return, SACU countries liberalise around 85% of their tariff lines, which translates into around 75% of actual trade. There is therefore a significant gap between what the EU offers and what its counterparts have offered in return. The EPAs are after all asymmetric, development-oriented agreements, allowing the ACP countries to shield sensitive products from full liberalisation.

SACU protects goods from full liberalisation in two ways. First, it excludes from liberalisation 2.2% of all tariff lines, which translates into 13.8% of actual trade. Second, for 12.9% of tariff lines (12.1% of actual trade), SACU has agreed to partial liberalisation.

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Partial liberalisation can mean two things. It can mean a tariff reduction compared with the MFN rate has been accorded to the EU.[22] In other words, there is a margin of preference for European goods compared with goods from competitors, but some duty still needs to be paid. Such partial liberalisation applies, among other items, to vehicles, car parts and textiles/clothing and footwear. To give just an indicative example, EU exports of off-the-road logging trucks will benefit from a five percentage point reduction compared with the MFN rate. Alternatively, partial liberalisation can mean a tariff rate quota (TRQ) has been agreed. Under a TRQ, a product would get a preferential rate, but only for a given volume.

Outside this volume, the full MFN duty will apply. TRQs are applied to a number of agricultural products. For instance, wheat can be exported duty-free to SACU, but only up to 300,000 metric tons. Once this threshold has been reached, exports will face the normal MFN rate.

In contrast to the BLMNS countries, South Africa does not benefit from full duty-free, quota-free access to the EU.[23] This was already the case under the TDCA. The negotiations over recent years have been about how the TDCA can be amended to make it a better deal.

The table shows that South Africa will enjoy free market access to the EU for more than 96% of actual trade and partial liberalisation for an additional 2.7% of traded volume. The EU has excluded 1.9% of tariff lines from liberalisation (which is equal to 1.3% of actual trade) and has partially liberalised 3.2% of tariff lines (which constitutes 2.7% of actual trade). The latter are almost all agricultural products and the EU stops short of full liberalisation for these tariff lines in two ways. First, it may accord a tariff reduction compared with the MFN rate. This is the case, for instance, for sugar confectionary, pasta, vinegars and asparagus. The MFN rate for asparagus is 17.6% but South Africa will pay a slightly reduced duty of 14.1%. Second, it may offer a tariff rate quota. South Africa has, for example, been granted a TRQ of 80,000 metric tons of ethanol. This volume of ethanol can be exported to the EU duty-free, but any volume over and above this threshold will face the normal MFN rate.

A reasonable question now would be how much of this liberalisation is new and how much has already been liberalised under the TDCA? The most important novelty is that Botswana, Lesotho, Namibia and Swaziland have now legally agreed to align themselves to what South Africa has liberalised under the TDCA. What is more, any new market access granted to the EU additional to the TDCA has been granted by the five SACU countries together in their capacity as a customs union.

This therefore brings an end to the situation whereby the SACU members did not impose a uniform external tariff on the imports of goods coming from the EU. Second, South Africa has succeeded in improving on the market access it has already been accorded under the TDCA.

The upgrade consists of full liberalisation of the fish sector, something that was not yet accomplished under the TDCA, and South Africa has also been successful in getting improved commitments from the EU on selected tariff lines under TRQs for sugar, wine, fruits, fruit juices, canned fruit, flowers, dairy products, jams and ethanol. The EU, in return, has been granted new TRQ commitments by SACU[24] on selected tariff lines in the fields of pork, offal, butter, cheese, cereals and ice cream, and its fish exports have also been fully liberalised.[25]

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Trade defence

Does liberalisation imply that trade is now completely left to market forces? This is not the case. In the chapter on trade defence, a number of safeguards have been agreed (Articles 32-38). Safeguard measures provide a "safety valve" in recognition of the fact that, if liberalisation causes severe hardship to a country's economic sector, then it should be able to temporarily reintroduce the import duty that has been reduced.[26]

The idea is that an industry in distress will then have a little more time to adapt to the changing circumstances in which they have to compete. In legal language this is normally drafted as a scenario in which "as a result of the obligations incurred under the Agreement", a product will enter a country's market "in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry". This language is not set in stone but the SADC EPA provisions employ similar language. Safeguard measures are a staple of trade agreements, but notwithstanding their ubiquity, there can be intense discussions on the details of the provisions. Parties may have diverging ideas on the level up to which a duty can be reinstated, the duration of the measure, the product coverage and so on.

The SADC EPA is comparatively generous given the large number of safeguards. One can find (a) provisions on multilateral safeguards, (b) a bilateral safeguard, (c) an agricultural safeguard, (d) a food security safeguard and (e) a safeguard custom-made for the BLNS countries. On top of all this, the SADC EPA contains an infant industry clause.

So why are there so many safeguards provisions? The main reason for this is that EPAs are, by design, development-oriented agreements: the SADC EPA is meant to help SADC EPA countries cement economic growth, and it is not meant to displace domestic industries through cheaper imports from the EU.

The safeguards cater for various scenarios under which domestic industry can experience injury. As such, the safeguards are meant to give comfort to business operations facing increased competition (see Table 2).

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Table 2. Safeguard measures.

	Bilateral safeguard	Agricultural safeguard	Food security safeguard	BLNS safeguard	Infant industry
Beneficiary	All parties	SACU	SADC EPA States	BLNS countries	BLMNS countries
Coverage	All products	23 agricultural tariff lines	All products	60 tariff lines	Infant industry produce
Measure	• suspension of further reduction of the duty; or • increase in duty up to MFN rate; or • - introduction of tariff quotas	A duty which shall not exceed 25% of the current WTO bound tariff or 25 percentage points, whichever is higher. Such duty shall not exceed the MFN rate	Not specified	Increase in duty up to the MFN rate or a zero duty TRQ, with duty outside the quota not exceeding the MFN rate	Suspend further reductions of the duty or increase in duty up to the MFN rate
Duration of the measure	For the EU, 2 years with possible extension of 2 years. For SADC EPA countries, 4 years, with possible extension of 4 years	For the remainder of the calendar year or 5 months, whichever is the longer	As soon as the circumstances leading to its adoption cease to exist	Four years, with possible extension of four years	Eight years
Duration of the provision	Indefinite	12 years from entry into force	Indefinite	12 years from entry into force	As long as injury is a result of a reduction of the duties

Source: Author's compilation based on the SADC EPA document.
Note: text in this table is *not* a verbatim copy of the SADC EPA provisions.

Table 2 reveals that the safeguard provisions do not adhere to some strict sense of uniformity. There are differences in terms of product coverage, duration of the measure, duration of the provision and the nature of the measure. These differences partly relate to the fact that the beneficiary countries and the product coverage for each safeguard tend to differ. **It is notable that the agricultural safeguard is different from the other safeguards in the sense that its trigger mechanism is not based on a demonstration (backed up by the necessary documentation) of injury to a domestic industry, but is rather based on volume of imports.**

Once a predetermined threshold of imports has been reached, the safeguard can be invoked. This so-called volume-based safeguard is an unfamiliar sight in trade agreements negotiated by the EU, and was agreed only on the condition that the provision would be of a temporary nature. Also notable is that the specific BLNS safeguard stems from the unease between the functioning of SACU and the TDCA.

During the negotiations for the SADC EPA, the BLNS countries agreed to align themselves with the degree of liberalisation that South Africa had already granted to the EU under the TDCA. The BLNS countries have agreed to do so even though they were never party to the negotiations for this TDCA.

In return for their flexibility, they have asked for an additional safeguard mechanism for those products that were considered particularly sensitive. This explains why this safeguard only applies to the BLNS countries and only to a selected group of 60 products. Lastly, the idea behind infant industry protection is that particularly new industries are vulnerable to competition and that they need protection until they can attain the economies of scale necessary to compete.

Customs and trade facilitation, TBT and SPS

A World Bank report from 2012 concluded that Africa is not achieving its potential in food trade.[27] It identifies, among other factors, technical barriers to trade (TBT) such as costly border crossings and diverging sanitary and phytosanitary (SPS) rules as obstacles to a thriving regional trade in food in Africa.

This goes to show the importance of customs and trade facilitation and of consistency and clarity in rules. This is why in the agreement three chapters are dedicated to trying to address these concerns (Articles 41-68) by agreeing on good customs practices and by establishing early warning mechanisms when new TBT or SPS legislation is in the making. In the chapter on development cooperation, customs cooperation as well as meeting SPS and TBT standards are singled out as possible avenues for development financing.

Dispute avoidance and settlement

Trade leads to trade irritants. **It is inevitable that trading partners will have disagreements, particularly when trade is voluminous.** These might include faulty paperwork, claims of fraud, disputed science or measures that go against the spirit or the legal provisions of the agreement. There are endless possibilities for discord.

In the past, options to solve such bilateral disputes were essentially diplomatic. Consultations, discussions and negotiations were the instruments of choice. In the early 1990s, however, new options became available. Binding arbitration procedures were introduced into the North American Free Trade Agreement, and the EU followed shortly in 2000 with dispute settlement provisions in the TDCA, the EU-Mexico Agreement and the EU-Chile Agreement. **The shift towards binding procedures resulted from the dissatisfaction with the effectiveness of diplomacy and the growing experience in and satisfaction with WTO dispute settlement procedures in getting to neutral and less political solutions**.[28]

Even if resorting to diplomatic tools remains the preferred option, the SADC EPA contains such a modern and detailed dispute avoidance and settlement chapter. Articles 75-96 show that the parties will first try to solve the problem among themselves. If this is not successful, the parties can seek, in common agreement, to find a mediator. If this also does not work, an arbitration procedure will be initiated.

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A panel of three arbitrators will rule on the dispute and the party complained against will have to take any steps necessary to comply with this ruling. In case of non-compliance the other party will have the right for compensation or will be allowed to take "appropriate measures", which could mean an increase in duties.

Institutional and common provisions

All trade agreements contain technically important provisions on the definition of the parties, the arrangements on entry into force, the territorial application or the possibilities of accession of other countries. In the SADC EPA, these are grouped together under the institutional and final provisions (Articles 100-122). These also lay down the institutions that will be responsible for the "management" of the agreement.

MANAGING THE AGREEMENT

A joint council at ministerial level will be responsible for the operation and implementation of the agreement and will monitor the fulfilment of its objectives. The joint council will be assisted by the Trade and Development Committee, which in part will oversee the Special Committee on Geographical Indications (GIs) and Trade in Wines and Spirits (responsible for monitoring the development of the protocol on GIs and trade in wines and spirits) and a Special Committee on Customs and Trade Facilitation (responsible for monitoring the implementation and operation of the chapter on customs and trade facilitation and the protocol on rules of origin).

Among these provisions is also spelled out how the SADC EPA will relate to the Cotonou Agreement and to the TDCA.

The TDCA is not just a trade agreement. It is the instrument for development assistance and steers the political ties between the EU and South Africa. This is why the SADC EPA could not simply replace the TDCA.

A separate protocol stipulates how and under what conditions the trade provisions of the TDCA have been repealed by the SADC EPA.

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Protocol on the Rules of Origin

The EU and the SADC EPA states have agreed to eliminate or reduce the duties on substantially all products. For example, Namibia will have duty-free access to the EU market. Yet how does one know whether a product is really a Namibian product? This is a valid question given that value chains link countries around the world. If a machine has components from all over the globe, how does one decide where it is coming from? For this, the agreement has the Protocol on the Rules of Origin (Protocol 1). These rules determine the "economic nationality" of a product.

Two main factors determine the "economic nationality" of a product. One is whether a product is "wholly obtained" in a country. On the face of it, this is usually straightforward. Fruit coming from a Namibian tree, exported without any further processing to the EU, is clearly wholly obtained. However, are products of aquaculture, such as fish or molluscs, wholly obtained if they are born or raised in Namibia but from imported eggs or larvae? The negotiators under the SADC EPA decided that they are, but in trade agreements between other parties they may decide they are not. Rules to determine whether a good is "wholly obtained" therefore still need to be negotiated.

A second factor is to determine how much processing needs to take place before a product gets "originating status". This is typically (but not exclusively) defined in two ways. One way is to determine how much value the non-originating materials can have in the final value of the product (ex-works price). For instance, to make a life-jacket, a country may import material from China comprising up to 40% of the value of the final ex-works price of the product, but not more. In other words, processing in the country itself needs to account for 60% or more of the value of that product. Another way is to demand a change in the tariff classification of a product. Each traded product has a tariff code. This has been laid down in a coding system, called the Harmonised System, which is managed by the World Customs Organisation. For instance, "furniture" is classified under chapter 94 and the rule of origin states: "manufacture in which all the materials used are classified within a heading other than that of the product". So, if, a table is made entirely of wood, then using wood (which is classified under tariff heading 44) to produce a wooden table (which is classified under tariff heading 94) will constitute a change in tariff heading from 44 to 94. This tariff heading change means that sufficient processing has taken place to qualify for "originating status".

The Protocol on Rules of Origin also contains valuable provisions on a process called **"cumulation of origin"** (Articles 3-6). According to the rules of origin,

to export, for instance, canned fruit under preferential treatment, the fruit would need to be harvested in the exporting country and it would then also need to be canned and preserved in the same country. Cumulation of origin is a concession that allows the fruit to be harvested in one SADC EPA state and then preserved and canned in another. In other words, two countries (or more) can try and meet the rules of origin for an industrial or agricultural product together rather than one country having to do it all by itself. This can be done without losing the preferential market access to the EU.[29]

Protocol on Geographical Indications

The agreement concludes with a protocol on geographical indications (Protocol 3). GIs are the names of products "**that originate in the territory of a particular country, region or locality where a quality, reputation or other characteristic is closely linked to the product's geographical origin**".[30]

Above all, GI provisions protect the intellectual property rights of the original producers. Champagne is the obvious example of a GI. The GI names are protected against the commercial use of a protected name, or against any misuse or imitation of the name. However, GIs can also help consumers distinguish products in the market place and bring increased value to the products of local communities. Under the SADC EPA, South Africa and the EU have agreed to a protocol that brings such protection to 251 European GIs and to 105 South African GIs. The EU GIs include wines, foodstuffs, beers and spirits. On the South African side, the GIs are essentially all wines plus the three food GIs – Karoo meat of origin, Honeybush tea and Rooibos tea.

ROOIBOS – A CASE STUDY

Rooibos can maybe serve as an example of what benefit GI protection in reality imparts. If the use of the name Rooibos becomes protected, it means the following:

♦ A producer in an EU member state would like to market a tea, processed from a plant from its own territory, as "Rooibos". This is not possible because the name 'Rooibos' is protected under the agreement.

♦ The producer decides to add the name of the region where his product comes from -such as "California Rooibos". This is still not possible as, even though the true origin may be clear, the name Rooibos is protected only for the South African product. It would have to be called something else – like "California herbal tea".

♦ The producer then decides to call it by a translated name, but makes reference to Western Cape in the new name: the label suggests the tea comes from South Africa. This is not possible because the agreement stops any misleading indication as to the origin of the product even if the name is translated.

♦ The producer then decides to use a different name, but adds well-known images of Rooibos plants, Rooibos farming and images of the Western Cape. This is not possible either, because the agreement protects against evocation – that is when the consumer looks at the label, he or she thinks of the original South African Rooibos.

IS THE EPA A GOOD AGREEMENT?

The preceding section summarised the contents of the economic partnership agreement. However, naturally, the more subjective question is whether this is a good agreement. Time will tell whether the SADC EPA is successful in reducing poverty, increasing employment and propelling economic growth. Yet debate about the virtues of the EPAs started some time ago and, in reading the existing literature, one encounters a fair amount of scepticism.

Concerns in these critical accounts have included: the effect that the EPAs would have on the development prospects of EPA partners;[31] the substantial losses in fiscal revenues that EPAs may cause; the belief that EPAs will bring larger gains to the EU than to the ACP countries;[32] the fear that EPAs will have a damaging effect on regionalism;[33] and the limitations that EPAs impose on governments' policy space.

This article seeks to contribute to this debate by providing a response to these criticisms. **This section will seek answers to three questions about the features of the SADC EPA: (a) can the SADC EPA be considered a development-oriented agreement; (b) can the EPA help in diversifying the economies of the SADC EPA states; and (c) does the SADC EPA respect policy space?**

The developmental character of the SADC EPA

The EU is on average more economically advanced than the SADC EPA states. Per capita GDP (in purchasing power parity) in the EU is $35,692 and in the SADC EPA states $8,836. The objective of the negotiations was to reflect this difference somehow in the agreement by making sure that the SADC EPA states would get advantages that the EU, as the more prosperous partner, would not.

The first of these advantages was the "asymmetric" market access: the EU would open its markets fully, but the SADC EPA states would not need to reciprocate in full. Instead, they would be allowed to shield sensitive products from liberalisation. As a result, as shown already above, the EU offered duty-free, quota-free access to Botswana, Lesotho, Namibia, Swaziland and Mozambique, but in return, SACU countries liberalised around 85% of their tariff lines which translates into around 75% of actual trade.

It is true that this is the most often cited example of how the EU has drafted the agreement, so as to make it reflect the difference in economic development. However, what is less known is that there are numerous benefits that are available to some, or all the SADC EPA states, but not to the EU (see Table 3).

> ***'Time will tell whether the SADC EPA is successful in reducing poverty, increasing employment and propelling economic growth.'***

Table 3. The asymmetric nature of the EU-SADC EPA.

Provision	Benefit accorded to the SADC EPA States but not to the EU
Article 12.2	The EU will financially support the implementation of the agreement in the SADC EPA states.
Article 12.4	Not only the EU will financially support the implementation of the agreement, but individual EU Member States have taken a similar commitment.
Articles 16–18	In the *rendez-vous* clauses for possible future negotiations on Intellectual Property Rights, competition and public procurement, the EU has already now committed to special and differential treatment.
Article 26.2	The agreement prohibits new export duties but in exceptional circumstances, Botswana, Lesotho, Namibia, Mozambique and Swaziland may introduce temporary export duties on a limited number of additional products.
Article 26.3	In addition, in exceptional circumstances, all SADC EPA States may introduce temporary export duties for reasons of industrial development on a limited number of products.
Article 33.2	The EU shall for 5 years exclude imports from any SADC EPA State from multilateral safeguards applied by the EU.
Article 34.6	For the EU, a bilateral safeguard measure shall not be applied for a period exceeding 2 years. For the SADC EPA States a bilateral safeguard measure shall not be applied for a period exceeding 4 years.
Article 34.8	In case of a bilateral safeguard measure taken on a provisional basis, for the EU such action may be taken for a maximum period of 180 days while the maximum period for the SADC EPA states will be 200 days.
Article 35	An automatic agricultural safeguard clause will be available to SACU.
Article 36	A food security safeguard clause will be available to all SADC EPA states.
Article 37	A temporary safeguard measure has been designed to cater for the alignment of Botswana, Namibia, Lesotho and Swaziland with the TDCA.
Article 38	Botswana, Lesotho, Namibia, Mozambique and Swaziland will be able to resort to an infant industry clause.
Article 49	The SADC EPA States will benefit from a transitional period of 8 years before they have to respect the provisions dealing with fees and charges and customs standards.
Article 86	If a dispute settlement procedure leads to the right to ask for compensation or other appropriate measures, the EU shall exercise due restraint in this. The SADC EPA states do not have a similar obligation.
Article 5 Protocol of Origin	SADC EPA states can benefit from cumulation of origin with respect to materials which are subject to MFN duty-free treatment in the EU.
Article 6 (1) Protocol of Origin	SADC EPA states can benefit from cumulation of origin with respect to materials which are subject to duty-free treatment in the EU under the EU's Generalised System of Preferences.
Article 6 (2) Protocol of Origin	Following a request procedure, the SADC EPA states may benefit from cumulation of origin with respect to materials which are subject to duty-free treatment in the EU under the EU's free trade agreements with third countries.
Article 7.3 Protocol of Origin	Namibia benefits from a relaxation of the rules of origin for chartered vessels.
Article 43 Protocol of Origin	Under conditions, the EU 'shall respond positively' to request by the SADC EPA states for derogations from the Protocol of Origin if this helps the development of existing industries or the creation of new industries.
Article 43 (10) Protocol of Origin	For a total of 800 metric tons, Namibia will benefit from a relaxation of the rules of origin for tuna.
Article 43 (11) Protocol of Origin	For 5 years, Mozambique will benefit from a relaxation of the rules of origin for shrimps, prawns and lobster.

If one were to summarise Table 3, one could say that the SADC EPA states will benefit from financial assistance to make the SADC EPA a success; they will have special safeguards to protect their domestic markets; they will benefit from derogations from agreed rules such as on export duties, rules of origin and fees and charges; and they will have more opportunities for cumulation of origin than the EU will.

The agreement's developmental character therefore partly resides in the numerous provisions that offer benefits to SADC EPA states but not to the

Diversification and beneficiation

There is widespread consensus that a diverse economy is superior to an economy specialised in a few commodities. Diversification helps to make an economy less vulnerable and renders it less at the mercy of world prices. Similarly a diverse export base is also desirable.

Table 4. Export base by SADC EPA country for exports to the EU.

Country	Top-three products	Top-10 products
Botswana	98.7%	99.9%
Lesotho	99.7%	99.9%
Namibia	55.7%	90.4%
South Africa	34.3%	59.5%
Swaziland	88.5%	98.4%

Source: Trade data from Comext 2014. Export products are categorised at four-digit level in the HS tariff classification.

Table 4 reveals that the top 10 export products to the EU from each SADC EPA state constitute more than 90% of all their exports to the EU (the notable exception is South Africa). This means that their export base is narrow.

There is, however, no clear consensus on what should be done to ensure diversification. Instead of exporting raw materials, would it be possible to develop a processing industry and add value before exports take place? Or, as the terminology goes in Southern Africa, can "benefication" be achieved?

Many factors could explain why diversification is limited. It could be because of lack of credit, lack of access to skills and technologies, lack of market size or because of macroeconomic factors or government practices and exploitative elites, just to name some of many possible reasons.[34]

Does the SADC EPA then help in achieving this desirable beneficiation and diversification? A first point to make would be that having access to foreign markets is essential to make export diversification a success. After all, there is little point in trying to broaden the export base when you have no access to markets. The SADC EPA states are getting guaranteed duty-free, quota-free access to the EU (or, in the case of South Africa, something very close to that). The fact that this access has been laid down in a treaty means that investors and exporters have the predictability that they need. Similarly, for an economy to diversify, it needs access to affordable intermediate goods. The World Bank, for instance, points out that in many African countries it is costly to import fertiliser even if smooth trade flows could give a boost to African agriculture.[35] The EPAs are meant to facilitate the import of such necessary inputs.

However, the SADC EPA does not stand in the way of protecting certain sectors of the economy with high tariffs to allow for new industries to grow protected from international competition. SACU for instance has only marginally reduced tariffs in the car and textile sectors.

'There is no clear consensus on what should be done to ensure diversification. Instead of exporting raw materials, would it be possible to develop a processing industry and add value before exports take place? Or, as the terminology goes in Southern Africa, can benefication be achieved?'

The SADC EPA offers a host of safeguards. These allow the authorities, when domestic industries are being injured by increasing imports, to raise the import tariff back to MFN levels. The infant industry clause has in fact been written with new industries in mind. New businesses ("infant industry") may be vulnerable and not ready yet to face the reality of the global marketplace. This clause allows for the duty to be raised to the applied MFN rate to create a temporary buffer for the businesses to mature.[36] Of course, some academics argue that giving help to infant industry could create "perpetual children"[37] and that any assistance will have to be granted in moderate doses. This is why the clause is temporary in nature.

A more controversial tool is export duties (sometimes called the "poor cousins" of import duties).[38] When governments around the world introduce export duties or export restrictions, the objective could, for instance, be to raise revenue or to secure domestic supply. However, research has shown that, in 13% of the cases, the reason export restrictions are introduced is to encourage domestic processing and seek an increase in value-added.[39] The argument then is that, by making it more expensive to export goods, and raw materials in particular, an incentive is created for increased domestic processing. This explains why SADC EPA states wish to have recourse to such duties. Whether export duties actually are effective in bringing about beneficiation remains questionable. The EU, for instance, tends to favour the prohibition of export duties in the free trade agreements it negotiates (in the EU-South Korea agreement, for instance, such duties have been prohibited).

Under the SADC EPA, there is a general prohibition on new export duties but a host of exemptions allow SADC EPA states to use them all the same. Botswana, Lesotho, Namibia, Swaziland and Mozambique may introduce temporary export duties if they can justify such a duty for reasons of revenue needs, for the protection of infant industries, for the protection of the environment or to ensure food security. In addition, all SADC EPA states may introduce export duties for reasons of industrial development (which, it is claimed, could lead to diversification of the economy), on the condition that the duration of the measure, the rate of the duty and the number of measures that can be taken at the same time will be limited.

Finally, the rules of origin can also be exploited to help propel diversification. First, cumulation of origin, as explained above, is a concession that allows for two countries or more to try and meet the rules of origin together rather than individually. The objective is to build value chains across the region. If the possibilities to export under preferential rates increase, then the chances of export diversification might increase in parallel. Secondly, the Protocol on Rules of Origin contains an article on "derogations". It is directly linked to economic diversification and it is worth quoting. It states that "derogations from this Protocol may be adopted where the development of existing industries or the creation of new industries in the SADC EPA states justifies them".

'Under the SADC EPA, there is a general prohibition on new export duties but a host of exemptions allow SADC EPA states to use them.'

What this means is that a SADC EPA state could be granted an exemption from the rules of origin to facilitate new industries or industries in development while maintaining preferential access. What is more, "the EU shall respond positively to all the SADC EPA States" requests which are duly justified in conformity with this Article and which cannot cause serious injury to an established EU industry.[40]

The SADC EPA and policy space

> ***'The standstill clause in the SADC EPA does not apply to non-liberalised products. This means there is therefore policy space left for the parties that often is not available in other trade deals.'***

One criticism of the EPAs is the agreements restrict the policy space of national governments to steer their economies. The EPAs would tie the hands of policymakers when they need the flexibility to react to economic upturns and downturns. It is true that the SADC EPA restricts policy space in terms of tariff policy. Now that tariff liberalisation has been agreed, national governments cannot step away from their commitments and refrain from tariff reductions or, worse, increase import duties (even if safeguard measures allow governments to do so under certain conditions).

Yet what is less well known is that the SADC EPA does not lock in the duties of those products that are not subject to any tariff reduction commitment. This means that, for all the trade that SACU has excluded from liberalisation, they are free to raise the duties. This is highly unusual because in normal circumstances a trade agreement would contain a "standstill clause" that stipulates that no duty can be increased.

However, the standstill clause in the SADC EPA does not apply to non-liberalised products. This means that there is therefore policy space left for the parties that often is not available in other trade deals.

Similarly, the MFN clause has at times been identified as a rule that would restrict the freedom of SADC EPA countries to negotiate other trade deals.[41] An MFN clause normally holds that the parties will extend to each other any more favourable treatment granted in a trade agreement with another trading partner. There can be various reasons for incorporating such a clause.

One could for instance consider whether it would be fair for SACU to liberalise sectors in a trade agreement with a major competitor of the EU when these sectors remain non-liberalised in the SADC EPA despite the EU's offer of 100% free market access. An MFN clause would ensure that the EU would also benefit from the concessions accorded to a third party.

> ***'An MFN clause normally holds that the parties will extend to each other any more favourable treatment granted in a trade agreement with another trading partner. There can be various reasons for incorporating such a clause.'***

One can think long and hard about such an approach, but the reality is that the SADC EPA does not contain any automaticity for SACU countries (or for Mozambique as a least developed country for that matter) to extend to the EU any more favourable treatment that SACU has accorded to a third party in a trade agreement. **The article only says that consultations shall take place to decide "whether and how to extend the more favourable treatment contained in the preferential trade agreement", if that agreement has been negotiated with a "major trading economy". Setting considerations of fairness and partnership aside, SACU's policy space therefore remains essentially unaffected.**

Moreover, the SADC EPA states have negotiated hard to exclude any binding commitments on trade in services, investment, intellectual property rights, competition and public procurement.[42]

Trade in goods benefits from smoothly operating services trade, an open investment climate and transparent procurement procedures. This is why agreements on trade in goods often are accompanied by chapters on these matters. The SADC EPA, however, does not include such chapters and policy space is therefore not limited.

CONCLUSION AND NEXT STEPS

In the first half of 2016, the European Commission issued a study to make public preliminary figures on the economic impact of the SADC EPA.[43] The study indicates that by 2035 individual SADC EPA countries are likely to benefit from a GDP growth of between 0.01 and 1.18%, compared with a scenario without the EPA.

Similarly, by 2035 SADC EPA exports to the EU are expected to increase by 0.91% compared with a situation without an EPA. Fiscal revenue loss, the study shows, is expected to be limited as, on average, a decrease of 0.59% in duty collection is anticipated. Overall, the study points to moderate but positive gains that will derive from the SADC EPA, if there is:

1. Correct implementation
2. Diligent monitoring
3. Evaluation of the objectives of the agreement
4. Development financing by the EU needs to be rolled out
5. Design of regular stakeholder consultations

> ***'The parties need to design regular stakeholder consultations to make sure that non-state actors such as business associations, non-governmental organisations, labour organisations, think-tanks and academia are consulted and involved in the unfolding of this agreement.'***

This is promising, but there remains an obligation on all sides to make sure that the agreement will deliver these results. For this, five tasks need to be taken up in the years to come.

First, a successful agreement will require correct implementation; the parties need to live up to the obligations and commitments stipulated by the text.

Second, **the parties need to undertake diligent monitoring to make sure that the SADC EPA will impart maximum benefits, particularly to the most vulnerable groups. This monitoring is an obligation**.[44] However, some thinking is still required on how best to do this. One could study whether parties are actually using the trade preferences for their exports ("preference utilisation rates"), whether cumulation of origin provisions are being invoked, whether new industries start exporting to the EU and so on. Along such lines, the parties would need to agree on a list of indicators the monitoring of which would reveal whether the agreement is successfully in operation or not.

Third, and this is a more long-term assignment, the parties would need to *evaluate* whether the agreement is meeting its objectives. The objectives include poverty reduction, regional integration, capacity-building and economic growth. This is a more demanding task but it fits in well with the SADC EPA's revision clause which states that the entire agreement will be subject to review no later than five years after it enters into effect.[45]

Fourth, the development financing by the EU and the member states needs to be rolled out to make sure that SADC EPA states are financially supported in making the most of the SADC EPA. Finally, the parties need to design regular stakeholder consultations to make sure that non-state actors such as business associations, non-governmental organisations, labour organisations, think-tanks and academia are consulted and involved in the unfolding of this agreement.[46]

> ***This is a heavy agenda. Taking up all these tasks will require a conscientious approach to making the SADC EPA come alive and to aligning it with the vibrant dynamic that is on display on the African continent.***

NOTES

1. The SADC EPA Group consists of Botswana, Lesotho, Namibia, South Africa and Swaziland (they form together the Southern African Customs Union – SACU) and Mozambique. Angola has had observer status in the negotiations.
2. The EU has been engaged in negotiations with the following groupings: Central Africa, Eastern and Southern Africa, East African Community, Southern African Development Community, West Africa, the Caribbean and the Pacific.
3. Goodison P, "EU trade policy & the future of Africa's trade relationship with the EU", *Review of African Political Economy,* 112, 2007, p. 248.
4. C/V/7 *Society Organisations Declaration on the EU-SADC EPA,* circulated on 10 June 2016.
5. See Grynberg R, "The Economic Partnership Agreement with Europe – hold your nose and ratify", http://allafrica.com/stories/201409171650.html
6. Vickers B, "Between a rock and a hard place: Small states in the EU-SADC EPA negotiations", *The Round Table: The Commonwealth Journal of International Affairs,* 100.413, 2011, p. 184.
7. Fabricius P, "EU loosening apron strings with former colonies", *Pretoria News,* 28 July 2014.
8. *Financial Mail,* 25-30 July 2014.
9. "We should be proud of the fact that Namibia as a member of the negotiating configuration took strong and consistent policy stances" said then Trade Minister of Namibia Mr Schlettwein when presenting the concluded EPA to the Namibian Parliament. See http://www.tralac.org/news/article/5906-speech-by-namibian-trade-minister-to-parliament-on-epas.html
10. Some civil society organisations came out against this analysis. As recent as 17 May 2016, Concord, the European NGO confederation for relief and development, maintained its objections to the EPA agenda. See http://library.concordeurope.Org/record/1707/files/DEEEP-PAPER-2016-046.pdf. Similarly, the Civil Society Organisations of SADC on 10 June 2016 circulated a detailed declaration requesting members of Parliament not to approve the SADC EPA. For an analysis of the influence of activists, see Del Felice C, "Power in discursive practices: The case of the STOP EPAs campaign", *European Journal of International Relations,* 20.1, 2012, pp. 145-167.
10. European Commission, *Green Paper on Relations between the European Union and the ACP Countries on The eve of the 21st Century,* 1996, p. 17. The Green Paper pointed out that market share had dropped from 6.7 in 1976 to 2.8% in 1994. A more recent study states that, between 1973 and 2012, "the share of imports from the ACP group as a whole (i.e. including both LDCs and non-LDCs) of total imports from developing countries have also decreased significantly over time" *(Assessment of Economic Benefits Generated by the EU Trade Regimes Towards the Developing Countries,* Copenhagen Economics, version of 15 December 2014, report prepared for the European Commission). LDC stands for Least Developed Country.
11. Article I, entitled "General Most-Favoured-Nation Treatment", reads "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties".
12. *Differential and more favourable treatment, reciprocity and fuller participation of developing countries,* Decision of the GATT contracting parties of 28 November 1979.
13. Article XXIV (5) reads "the provisions of this Agreement shall not prevent... the formation of a customs union or of a free-trade area".
14. Declaration of the Fourth EU-Africa Summit, April 2014. See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/142096.pdf
15. To avoid confusion, a short description of the acronyms used is warranted. South Africa together with Botswana, Lesotho, Namibia and Swaziland form the Southern African Customs Union, or *SACU.* The latter four countries are known as the *BLNS.* Sometimes Mozambique is grouped together with the BLNS which then results in the acronym BLMNS. The SADC EPA was negotiated between the EU and the *SADC EPA Group,* which brings together SACU and Mozambique, while Angola remains an observer. The SADC EPA Group should not be confused with SADC. SADC is a regional economic community and comprises 15 member states.
16. Exceptions are Erasmus G, *Legal and Institutional Aspects of the SADC Economic Partnership Agreement,* TRALAC Working Paper, no. S14WP07/2014; and Ramdoo I, *ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis,* ECDPM Discussion Paper, no. 165, 2014.
17. A copy of the Agreement can be found at http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf.
18. These "appropriate measures" are laid down in Article 96 of the Cotonou Agreement. Trade suspension is understood to be a "measure of last resort".
19. Bartels L, *Human Rights Provisions in Economic Partnership Agreements in Light of the Expiry of the Cotonou Agreement in 2020,* Ad Hoc Briefing, Directorate-General for External Policies, European Parliament, 2016.
20. Trade figures are calculated on 2012-2014 trade data. Under the SADC EPA, Mozambique liberalises around 74% of its actual trade in goods. This article focuses, however, on South Africa and SACU.

21. The World Bank has a helpful definition of the MFN rate: "MFN tariffs are what countries promise to impose on imports from other members of the WTO, unless the country is part of a preferential trade agreement (such as a free trade area or customs union). This means that, in practice, MFN rates are the highest (most restrictive) that WTO members charge one another".
22. See footnote 16 for an explanation of the acronym BLMNS.
23. Remember that it is not South Africa that needs to agree on new market access concessions. SACU negotiates as a whole to preserve SACU's common external tariff.
24. One would have to note here that, within the fisheries trade, some tariff lines on both sides will be subject to tariff dismantling. This means that, over a number of successive years, the tariff will be progressively reduced until the trade will be free of duty.
25. Van den Bossche P & W Zdouc, *The Law and Policy of the World Trade Organization.* Cambridge: Cambridge University Press, 2015, p. 607.
26. World Bank, *Africa Can Help Feed Africa; Removing Barriers to Regional Trade in Food Staples,* September 2012.
27. Garcia Bercero I, "Dispute settlement in European Union free trade agreements: Lessons learned?", in Bartels L & F Ortino (eds) *Regional Trade Agreements and the WTO Legal System.* Oxford: Oxford University Press, 2006.
28. See also factsheet at http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152818.pdf
29. This text of paragraph 4.9 can also be found in European Commission, *The Economic Impact of the SADC EPA Group – EU Economic Partnership Agreement,* 2016, see also http://trade.ec. europa.eu/doclib/docs/2016/june/tradoc_154663.pdf.
30. See for instance Ramdoo I & S Bilal, 'What would it take to make an EPA economically and politically feasible for Europe and Africa?', ECDPM Briefing Note, no. 57, November 2013, or Bidaurratzaga E, A Colom & E Martinez, 'Are EU's economic partnership agreements developmental? An assessment of the southern African region', *Revista de Economfa Mundial,* 38,2014, pp. 273-298.
32. Karingi S, O Pesce & S Mevel, "Preferential trade agreements in Africa: Lessons from the tripartite free trade agreements and an African continent-wide FTA", in Low P, C Osakwe & M Oshi-kawa (eds) *African Perspectives on Trade and the WTO – Domestic Reforms, Structural Transformation and Global Economic Integration.* Cambridge: Cambridge University Press, 2016. United Nations Economic Commission for Africa, *Transformative Industrial Policy for Africa,* Addis Ababa: United Nations Economic Commission for Africa, 2016.
33. Stevens C, The EU, Africa and economic partnership agreements: Unintended consequences of policy leverage, *Journal of Modern African Studies,* 44.3,2006, pp. 441 -458 and Hurt SR, The EU-SADC Economic Partnership Agreement negotiations: "Locking in" the neoliberal development model in southern Africa, *Third World Quarterly,* 33.3, 2012, pp. 495-510.
34. Rodrik D, *The Globalization Paradox; Why Global Markets, States, and Democracy can't Coexist.* Oxford: Oxford University Press, 2011, p. 137. For a more spirited account, see Mbeki *M, Architects of Poverty; Why African Capitalism Needs Changing.* Johannesburg: Picador, 2009.
35. World Bank, *Africa Can Help Feed Africa; Removing Barriers to Regional Trade in Food Staples,* September 2012.
36. The SADC EPA does not define "infant industry" but the draft agreement on the tripartite free trade area among southern and eastern African countries agreed that: "infant industry shall be understood to refer to a new industry of national strategic importance that has not been in existence for more than five years, and that is experiencing high start-up costs and difficulties competing with like imports".
37. Wolf M, *Why Globalization Works: The Case for the Global Market Economy.* New Haven, CT: Yale Nota Bene, 2014, p. 202.
38. Sandrey R, *Export Taxes in the South African Context,* TRALAC Working Paper, no. D14WP01/ 2014.
39. Mendez Parra M, SR Schubert & E Brutschin, *Export Taxes and Other Restrictions on Raw Materials and their Limitation Through Free Trade Agreements: Impact on Developing Countries.* European Parliament, Directorate-General for External Policies, Policy Department, 2016.
40. Protocol I Article 43 (1) and Article 43 (1.2).
41. See Article 28 on *More Favourable Treatment Resulting from Free Trade Agreements.*
42. This has been rightly called "significant concessions from European negotiators" in Murray-Evans P, "Regionalism and African Agency; Negotiation of an economic partnership agreement between the European Union and SADC-minus," *Third World Quarterly,* 36.10, 2015, pp. 1845-1865.
43. European Commission, *The Economic Impact of the SADC EPA Group - EU Economic Partnership Agreement,* 2016, http://trade.ec.europa.eu/doclib/docs/2016/june/tradoc_154663.pdf
44. See Article 4 on *Monitoring.*
45. See Article 116 on the *Revision Clause.*
46. See Article 10 (3) of the chapter on *Trade and Sustainable Development* on involving outside stakeholders.