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Economic partnership agreements negotiations: understanding the responses of Nigeria and South Africa

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Chapter 1

Introduction

1.1 From Yaoundé Conventions to the Economic Partnership Agreements

Trade relations between African, Caribbean, and Pacific (ACP) countries and Europe since the end of colonial rule have revolved around a variety of trade treaties to facilitate exchange between the former colonial master and newly independent countries. The majority of the trade agreements have been based on non-reciprocal trade preferences that granted duty free access to the European market for nearly all products originating in ACP countries; they have long been considered a model for North-South trade co-operation.[1] Efforts have been made to expand trade between Europe and its former colonies through preferential treatment under successive treaties. These trade treaties were instrumental in diversifying ACP exports amongst the European Economic Community (EEC) states, thus reducing their dependence on a single European country for their exports.[2] The first post-colonial trade treaty/agreement between Europe and Africa to be negotiated and signed was the Yaoundé Convention of 1963.

This agreement was signed between the European Economic Community (established in 1957) and the African and Malagasy States associated with the EEC in Yaoundé Cameroon.[3] Yaoundé convention was broken into two periods. The first period of the treaty was known as Yaoundé I which was from 1964-1969. The second part of the Convention was Yaoundé II which was also for a period of five years from 1970-75. The Yaoundé Convention covered mainly West African states particularly the Francophone countries. This was attributable to the fact that United Kingdom (UK) was not a member of the EEC at the time when the Yaoundé treaty was concluded and signed. The envisaged outcome of this treaty was to diversify markets for raw materials originating from ACP nations. The Yaoundé treaty was not aimed at changing the disparity and inequity in trade between the former colonies and Europe it was a gesture and an expression of the supposed equality since the end of formal colonialism. The aim of the treaty was to assign markets for exports from former colonies to

[1] European Commission, 2002. Economic Partnership Agreements start Negotiations: A New Approach in the Relations between the European Union and the ACP Countries. Belgium, September, European Communities

[2] Macki M. Sissoko, Louis O. Osuji and William I. Cheng. 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade', The African Economic & Business Review, Vol. 1, No. 1, Spring 1998, pp6-24

[3] Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community and Annexed Documents, /' (signed at Yaoundé on 20 July 1963)

European economies and at the time, it did very little to industrialise and diversify the economies of the ACP countries away from extractive and agricultural sectors.[4]

The Yaoundé Convention was followed by the Lomé Convention in 1975. The Lomé Convention had four parts from Lomé I to IV. The first Lomé Convention signed in 1975 was inspired by the accession of the United Kingdom to the European Economic Community and therefore the European Community had to accommodate the incoming commonwealth states.[5] The Lomé Convention was amended a number of times to reflect changing economic, political and international norms. The changes/amendments to the Lomé Convention include but not limited to human rights, democratisation in ACP states, development and industrialisation, investments security and the importance of the extractive industry to ACP economies.[6] These changes are reflected in the Lomé I Convention of 1975 to Lomé IV in 1990-2000. The Lomé Conventions sort to advance the economies of the ACP states, by the time of the Lomé IV was revised and signed it contained aspirations for more environmental protection; decentralised cooperation; diversification of ACP economies; the promotion of the private sector; and increasing regional cooperation.[7] The Lomé Convention further recognised the sovereignty of ACP countries and sort to advance the notion that Europe was in a partnership with ACP countries, and more importantly that trade was non reciprocal. Meaning Europe was to eliminate more barriers to trade both tariff and none tariff whilst the same was not required of the ACP economies.[8]

The Lomé Convention had been succeeded by the Cotonou Partnership Agreement (CPA) signed in Cotonou in 2000. This agreement was revised twice since its initial signing, it was first revised in Luxembourg in 2005 and secondly in Ouagadougou in June 2010.[9] The agreements between the European Community and Africa had given preferential treatment to Africa in that the agreements/treaties had not been expected to open up Africa's markets to European goods, services and investments to the extent that the European Union (EU) had for ACP exports. This is however changing once more as the Cotonou Agreement has expired

[4] Macki M. Sissoko, Louis O. Osuji and William I. Cheng. 1998

[5] 'From Lomé I to IV', Development and Cooperation – EUROPEAID. European Commission. Available on line at http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm Accessed on the 10th August 2014

[6] European Commission, 2015. Development and relations with African, Caribbean and Pacific s
States Accessed 23 February 2015 http://ec.europa.eu/development/body/cotonou/lome_history_en.htm

[7] Lomé IV Convention – English, African, Caribbean and Pacific Group of States (ACP Group). Agreement Amending the Fourth ACP-EC Convention of Lomé Signed in Mauritius on 4 November 1995.

[8] ibid

[9] European Commission, The Cotonou agreement Signed in Cotonou on 23 June 2000 Revised in Luxembourg on 25 June 2005 Revised in Ouagadougou on 22 June 2010 Development & Cooperation – EuropeAid EUROPEAN UNION

and the Economic Partnerships Agreements (EPAs) have been recently concluded between the EC and a number of ACP countries most of those state are in Africa.

Since de-colonialisation there have been a number of changes to trade relations between Europe and its ACP counter parts. This is more evident in the most recent trade agreement between the two parties, the Economic Partnership Agreements. The EPAs are different to other trade agreements signed by the EU and ACP countries in that they advocate for a reciprocal relationship in terms of market access.[10] The principle of reciprocity is an important feature of the EPAs and one of the more salient between EC and the different sub regions within Africa which were (some are still) negotiating the EPAs. The principle of reciprocity would be applied gradually over a longer period of time. Whereby ACP countries' access for their goods to the European market would have to be matched by access they grant to European goods and services. Reciprocity in terms of market access is mainly a resultant of the Most Favoured Nation (MFN) clause contained in the EPAs. MFN clause seeks to reciprocate terms of trade granted by the parties to the EPAs and a third part (that is any state that is not party of the EPAs) given the third party is granted more favourable market access conditions compared to an EPA signatory; bearing in mind that the MFN does not apply if the third party is an ACP member state.[11] It appears as this partnership the EC envisages between its economies is mostly reliant on this notion of reciprocal relationship between the EU and their former colonies.[12]

The manner in which the EPAs have been negotiated from the onset has been one of the more troublesome issues regarding this new trade arrangement. Negotiating the EPAs has been a long process which started in September 2002 between the EC and 27 ACP countries in preparation for the end of the Cotonou Partnership Agreement in January of 2008. The CPA set the scene for the negotiations of the EPAs between the EC and ACP states. Negotiations for EPAs started in 2002 and were supposed to be concluded by the end of 2007, when a waiver on inconsistencies between the Cotonou regime and World Trade Organization regulations expired. The negotiations for the EU-Economic Community of West African States (ECOWAS) EPA started in 2002. The West African group negotiating the EPA was

[10] Stephen Karingi, Rémi Lang, Nassim Oulmane, Romain Perez, Mustapha Sadni Jallab and Hakim Ben Hammouda. 2005. Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements, African Trade Policy Centre, United Nations Economic Commission for Africa

[11] See article 16 of Negotiations on an Economic Partnership Agreements between West Africa and the European Union. Draft Joint Text. After Conclusion of the Negotiations by Senior Officials, February 2014. Economic Partnership Agreement (EPA) Between the West African states, ECOWAS and WAEMU of the One Part and The European Community and its Member States of the Other Party

[12] Claudia Rommel. 2012. Economic Partnership Agreements in the EU's post-Lomé Trade Regime: Negotiations with West Africa, Discussion Paper Centre for European Integration Studies ISBN 978-3-941928-14-5

made up of the full complement of the 15 member states of Economic Community of West African States[13]. Mauritania was added to the ECOWAS group. Moreover all member states of the West African Economic and Monetary Union (WAEMU) formed party of the negotiations. In the negotiations Nigeria took a more active role as a leading power not only due to its economic prowess and interests in the sub-region but also as means to ensuring a more equitable partnership between ECOWAS and EU.

The Southern African Development Community (SADC) EU-EPA group is the sub-region that faced most of the consequences of EC reconfiguration of regional blocks. Out of the 15 traditional SADC[14] membership compliment a number of states found themselves negotiating in four different EPA configurations.[15] The Southern African sub-region is a sub-group of the SADC, comprising Angola, Botswana, Lesotho, Namibia, Swaziland, Mozambique and South Africa.[16] The other six members of the traditional SADC membership compliment the Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe are negotiating Economic Partnership Agreements with the EU as part of other regional groups, namely Central Africa and Eastern and Southern Africa.[17] The EPAs negotiations between SADC and the European Commission were officially launched on 8th July 2004 in Windhoek, Namibia. South Africa at this stage was not an active member within the negotiations; it became part of the negotiations as a member of the SADC-EPA group in 2007. The SADC grouping is more complex because of the significant role the Southern African Customs Union (SACU) plays in the regional economy not limited to the Botswana Namibia Lesotho and Swaziland (BNLS) states. Mareike Meyn argues that Mauritius had decided to negotiate a "Southern-Eastern Africa EPA" that contains mainly Common Market for Eastern and Southern Africa (COMESA) states but excludes SACU countries. Reasons for this decision are Mauritius' improved market access to COMESA countries compared to SADC countries, mainly South Africa, and its aversion to adopt the EU-South Africa liberalisation schedule.[18]

[13] Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo

[14] Member of SADC, Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe

[15] Elijah Munyuk. 2011

[16] See European Commission. Trade Policy. Countries and regions, Southern African Development Community (SADC). Available online http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/ Accessed 15 January 2015

[17] ibid

[18] Mareike Meyn.2002 Do EPAs Promote or Constrain Regional Integration in Southern Africa? Are Economic Partnership Agreements likely to Promote or Constrain Regional Integration in Southern Africa?

1.2 Features of the EPAs

The European Commission asserts that EPAs are meant to be instruments for development furthering poverty reduction, sustainable development, regional integration and integration into the world economy.[19] The agreements set the rules of trade between Europe and the ACP countries for decades to come. Ostensibly intended to be 'development agreements' that would promote regional integration, there is huge controversy about whether EPAs will deliver or undermine the objectives the EC argues the EPAs would achieve.[20] All EPAs negotiations provided for WTO-compliant agreements, covering "substantially all trade" in goods (at least 80 percent) plus services, investment and trade-related rules, with a view to fostering ACP integration into the world economy thereby promoting their sustainable development.[21]

EPAs as envisioned by the EC are a step to the differentiation of a mutual relationship between capable parties from both sides. Economies of the ACP nations are not as diversified and advanced as the EU this fact is important in understanding the rationale behind the resistance that has characterised the EPAs negotiations. This is also true in Africa a region where many economies are heavily reliant on extractive industries and to a large extent in differing degree to agriculture. Both Economic Community of Western African States and Southern African Development Community EPA groups concluded their EPA negotiations in July 2014. According to Isabelle Ramdoo the timing of the conclusion of the ECOWAS and SADC EPAs is important, as it pre-empts the 1st October 2014 deadline, after which all non-Least Developed Countries (LDC) in both groups (i.e. Ghana and Ivory Cost in ECOWAS and Botswana, Namibia and Swaziland in the SADC group) would have otherwise lost their Duty-Free Quota-Free (DFQF) preferences for their main exports to the EU market, and fall back on the Generalised System of Preferences (GSP) or in the case of Botswana, would lose all preferences after 2016 when the transitional period accorded to upper middle-income countries expires.[22]

[19] European Commission, 2014. Overview of EPA Negotiations Updated March 2014. Available online form http://trade.ec.europa.eu/doclib/html/144912.htm. Accessed on the 01 May 2014

[20] Traidcraft 2009 August. Economic Partnership Agreements, What MEPs need to Know. Available on line at http://www.traidcraft.co.uk/Resources/Traidcraft/Documents/PDF/tx/policy_EPA_briefing.pdf Accessed 25th of May 2014

[21] European Commission, 2014. Overview of EPA Negotiations Updated March 2014. Available online form http://trade.ec.europa.eu/doclib/html/144912.htm. Accessed on the 01 May 2014

[22] Isabelle Ramdoo. 2014: v

The negotiations have been difficult to say the least; the manner in which the negotiations have been carried out has resulted in much dissatisfaction with the EC. The difficulty of the negotiations is not only evident in that the deadline to conclude the negotiations have been altered numerous times and the fact that the negotiations are still on going in some of the EPA negotiating group in Africa particularly more than ten year after they commenced. One of the more contentious issues has been the manner in which Africans' sub-regions have been reshaped disregarding existing sub regions within the continent and therefore disregarding any Regional Trade Agreements (RTA) and/or Free Trade Areas (FTA) that have existed between sub regions and countries on the continent. For instance the SADC sub-region negotiating the EPA was not the traditional fourteen member state group. This carving of Africa could be pointing to the changing political economic relations as evidenced by the changes in the global economy for instance the increasing Chinese economic and diplomatic influence in Africa and globally which may have encouraged the EC to push for reciprocity with its former colonies.

The global economic relations changes have been more pronounced since the global financial crisis which has meant developing economies the majority of them being in ACP are becoming more important to the EC and other developed economies as they strive to revive and/or strengthen their economies. Hence the more pronounced expectations contained in the EPAs about the former colonies capabilities and capacity to cope with EU expected reciprocal trade. This is mainly in dealing with how the EC has unilaterally carved up Africa's sub-regions to suit their negotiations style and undermine African opposition to the EPAs. Undermining not only those states in opposition of the EPAs but also attempting to weaken the negotiating power of Africa as region, as Africa would have been better resourced to negotiate as a whole compared to much smaller sub regional groupings.

EPAs negotiations took place at sub-regional levels. In Africa, there were five separate negotiating blocks – West Africa, Central Africa, SADC, East Africa Community (EAC) and the Eastern and Southern African (ESA) countries[23]. Countries belonging to the EPA regional negotiating blocks do not coincide exactly with the ACP countries' own regional configurations. This has been a major hiccup in the negotiations as the EC moved to create a new sub-region and other countries negotiated in regions they were not originally part of. To add to these complexities, some countries are considering or had signed the interim EPAs not

[23] Aileen Kwa, Peter Lunenborg, and Wase Musonge. 2014. African, Caribbean and Pacific (ACP) countries' Position on Economic Partnership Agreements (EPAs). The European Parliament's Committee on Development. European Union, ISBN: 978-92-823-5667-8

with their regional block but as either single countries or they were outside their traditional block such as in SADC.

The more important parties to the negotiations process of the EPAs on the African continent and for this study, Nigeria and South Africa were affected by the EC's decision to reshape African sub-regions for the purposes of the negotiations process, to this end it can be noted that South Africa was not included in the EPAs negotiations process until 2007. The implications for the negotiations were that in some of the sub regions whereby countries had been moved to a different sub regional body or those that were forced to create a new sub-region altogether were mostly negative. Take for instance the case of the Democratic Republic of Congo which had been part of SADC and found itself in Central African sub-region when it came to the EPAs. This would have meant that amongst other issues it had to establish different ways of negotiating and relating to the new members that it was not familiar to as it has been member of SADC. There is also the case of the Eastern and Southern Africa the region was not even made up of countries within a single geographical region. This region is made up of 12 countries including Zimbabwe, Sudan and Somalia to mention a few; this is a diverse grouping of countries. Economically these countries lacked adequate resources to prepare for negotiations to the highest standards.

Notwithstanding the fact that South Africa is the most advanced economy in Africa; it is the biggest economy inside the Southern African Development Community, and Southern African Customs Union (SACU) sub-regions it was not included from the EPAs negotiations form the start in 2002. Even within the SADC sub-regional negotiating party it has not been inclusive of all SADC states as some member states were not negotiating within the SADC group of countries at a certain point of the negotiations or they were moved to a different negotiating block altogether such as the Democratic Republic of Congo and Tanzania[24]. For the countries that are the focus of the study they remained in their respective sub regions during the negotiations which happened in stages as they were staggered over a period of more than a decade as deadlines issued by the EC came and the negotiation were still to be concluded and they had not even began to negotiate certain issue such as market access, Most Favoured Nation clause, principle of reciprocity to name a few. These issues and impact on

[24] Sanoussi Bilal and Corinna Braun-Munzinger, 2008. EPA negotiations and regional integration in Africa: Building or stumbling blocs. Paper prepared for the Trade Policy Centre in Africa (trapca) 3rd Annual Conference "Strengthening and deepening economic integration in LDCs: current situation, challenges and way forward" Arusha, Tanzania 13-15 November 2008

[24] Government of Nigeria (Abuja) 2 May 2014 press release Africa: EPA - African Leaders Align With Nigeria's No Deal Position available on line at http://allafrica.com/stories/201405021539.html Accessed on the 3rd of May 2014

[24] *European Centre for Development Policy Management.* West Africa becomes the first African region to conclude an EPA available online at http://ecdpm.org/news/west-africa-becomes-first-african-region-conclude-epa/ 11-07-2014 Accessed 30th July 2014

the negotiations process will be discussed in detail in the subsequent sections of the paper. In the case of Nigeria which was negotiating within the Economic Community of West African States their region remained intact with the addition of Mauritania. Both South Africa and Nigeria were amongst the leading voices in articulating their interests and reservations for the EPAs on their possible impact they would have on their respective economies and sub-regional blocks.

1.3 Statement of the problem

The negotiation of the EPAs in ACP countries began in September 2002. Negotiations between the European Commission and their African counter parts have lacked momentum at times and have been faced with a multitude of challenges. This is despite the European Commission's claims that the EPAs being negotiated comply with the World Trade Organization (WTO) rules which all the parties involved in the negotiations are a member of. Some of the challenges faced by the negotiating regions included but were not limited to that some of the countries in Africa had signed Interim Economic Partnership Agreements (IEPAs) moreover the, slow pace of the negotiations and time pressures compounded the challenges encountered by the negotiating parties. The multitude of challenges to the negotiations combined with the fact that Nigeria the biggest economy on the African continent has not concluded an EPA alludes to the challenging nature of the EPAs negotiations. Furthermore, when the negotiations began South Africa was not party to the EPAs.

Both regional powers Nigeria and South Africa at different times of the EPA negotiations did not conclude an Interim Economic Partnership Agreement and were openly against the countries who had concluded IEPAs in their respective EPA groupings with the EC. In the Southern Africa Sub-region Botswana Lesotho and Swaziland (BLS) by concluding an IEPA had ignored Article 31 of Southern African Customs Union (SACU) which prohibits bilateral agreements with third parties. To this end South Africa responded by stating that it will take strong measures to protect its economy from adverse effects that may occur as a result of BLS countries concluding and rectifying the IEPAs. Nigeria faced with a similar situation in ECOWAS whereby Ghana and Ivory Coast had concluded an Interim EPA separately with the EC decided to take a different approach that was focused more on conducting studies regarding the expected adverse impact of the EPAs in the sub-region and its economy. Thereafter and during the IEPA negotiations advocating for the preservation of what the

region had achieved in terms of intraregional trade and economic cooperation. The responses of the major economies in the continent to the EPAs negotiations may be to a certain degree perplexing as they are the leading beneficiaries of Africa and EU trade on with the continent. The proposed this study will attempt to understand the responses of Nigeria and South Africa to the EPAs negotiations.

1.4 Research questions

Has EPAs negotiations been slow due to the influence and/or responses of Nigeria and South Africa?

What key factors external and internal to the negotiations of the EPAs inform the responses of Nigeria and South Africa?

What consequences has the principle of reciprocity has on the responses Nigeria and South Africa?

What is the impact of the responses of Nigeria and South Africa on the negotiations and how it will influence the stance of regional partners going forward?

1.5 Aims of the study

The main aim of the study is to explain Nigeria's and South Africa's positions on the EPAs negotiations process. In order to explain the responses of both countries the study will be in the form of a desk research study going through secondary data complemented by data from the negotiations process. This data may come in the form of statements, reports, press releases, journal articles and other research material. The study of the available literature has been undertaken to gain an in-depth and overall perspective of the area of research and to acquire new knowledge, add deeper understanding to certain aspects of the negotiations. For this research data will be carefully studied and analysed to understand the process of the negotiations between Nigeria in ECOWAS grouping and South Africa in SADC grouping as a process.

In order to achieve this, the study will make use of process tracing to examine the role of individual actors, and gain insights into the actual negotiation process. Moreover to ascertain and understand the role and influence of actors such as labour and/or business organisations, community based organisations (CBOs), nongovernmental organisations (NGOs) and other

interest groups on the official national governments' position on the EPAs negotiations and lastly the citizenry of the countries negotiating the Economic Partnership Agreements as they are going to be affected by the EPAs.

1.6 Rationale

This study will attempt to fill the gaps in the literature dealing with EPAs negotiations as they are a recent and currently unfolding phenomenon in political economic relations between the European Union and Africa, Caribbean and Pacific states. In that the literature generated thus far has been aimed at working out potential impact of EPAs on Africa's regionalisation efforts, poverty eradication, development, economic displacement, loss of revenue and other similar issues. Furthermore these studies have tended to focus on specific sub-regions or particular countries involved in the EU-EPAs negotiations. The area that has been covered extensively is the impact of the principle of reciprocity on the above mentioned topics. However, there is a clear lack of literature on the responses of any of the negotiating parties to the negotiations let alone of the major economies in Africa. In studying the responses of Nigeria and South Africa the study would be useful in understanding how major players in negotiations may influence smaller parties. Secondly, in understanding whether the responses are as result of dissatisfaction with peripheral or core issues. It would further tackle whether the responses of the two countries were coordinated, if they were not coordinated what would explain the position of each country. Lastly in understanding the responses of Nigeria and South Africa the study hopes to shed light on how negotiations involving similar parties and issues could be simplified in order to be concluded within/not far from the given timelines. In order to narrow the focus of this paper a number of limitations had to be made. First of all the paper focus is on the EPA negotiations between the West African region/ECOWAS EPA group and Southern African sub region/SADC EPA group. This is done to locate more the investigation into the Economic Partnership Agreements negotiations in the respective sub regions it does not focus on the negotiations in other sub regions. Also within the ECOWAS and SADC sub regions the foci of the study is on Nigeria's and South Africa's responses to the whole negotiations process.

1.7 Methodology

This study will be qualitative in nature and process tracing will be the method chosen to undertake the study. This is due to that process tracing method of inquiry would be most informative, about what transpired in the negotiations process. According to George and

Bennett process tracing method attempts to identify intervening causal process, the causal chain and causal mechanisms-between an independent variable(s) and the outcome of the dependent variable[25]. Process tracing highlights the role of intervening variable in any phenomenon and/or its outcome it contribute decisively both to describing political and social phenomena and to evaluating causal claims.

Process tracing is defined as the systematic examination of diagnostic evidence selected and analysed in light of research questions and hypothesis[26]. Process tracing is useful in tracking the development of a phenomenon leading to a specific point in the development of a phenomenon such as that of EPAs negotiations. That is tracking the development in different stages from the initiation of the negotiations to their conclusion. Process tracing inherently analyses trajectories of change and causation, but the analysis fails if the phenomena observed at each step in this trajectory are not adequately described[27]. Process tracing does require that the researcher has deeper understanding of the case(s) nonetheless for example; it has the capacity for disproving claims that a single variable is necessary or sufficient for an outcome[28]. This aspect of process tracing is invaluable in discounting correlations as proof of causality and also it highlights the role and/or impact of the intervening variable(s) that contribute to shaping outcomes that may not be necessarily be accounted for in the theory or hypothesis. Process tracing can contribute meaningfully in a research design in four basic ways (i) identifying novel political and social phenomena and systematically describing them; (ii) evaluating prior explanatory hypotheses, discovering new hypotheses, and assessing these new causal claims; (iii) gaining insight into causal mechanisms; and (iv) providing an alternative means, to address issues such as reciprocal causation, spuriousness, and selection bias[29].

George and Bennett argue that Process tracing commonly appears in four forms the first one is *detailed narrative*, in this form the researcher gives a chronicled narration of how the events developed/came about. This would be a highly specific narrative not necessarily backed by theory explicitly, secondly, use of *hypothesis and generalisation* in this instance it is more analytical parts of the narrative are accompanied by the highly specific explicit casual hypothesis; thirdly, *analytical explanation* this form of process tracing converts a historical narrative into an analytical casual explanation couched on explicit theoretical forms. Lastly,

[25] George, A and Bennett, A. 2004. Case Studies and Theory Development in the Social Sciences page 206
[26] See David Collier, 2011. 'Understanding Process Tracing', *Political Science and Politics*. Page 823
[27] ibid
[28] George and Bennett, 2004: 220
[29] Colliers, 2004: 824

more general explanation this entails a general explanation of the phenomenon rather than a detailed tracing of casual process. This is mostly in scenarios where there is a general lack of data, theory or the objective of the research is to have a general explanation[30].

This study will be descriptive it will use process tracing to make snapshots of specific moments in the events of the negotiations such a discussing what transpired on specific periods of the negotiations as it focuses on the unfolding events or situations over time. For the proposed study process tracing will be invaluable where there is more than one path leading to an outcome/equifinality and more generally process tracing is the only observational means of moving beyond co-variation alone as the source of casual inferences.[31]

1.8 Research Report outline

The first chapter is a very brief introductory chapter with a brief background on the history of the economic relations between the ACP countries and Europe from the first Yaoundé Conventions to the Economic Partnership Agreements. The first chapter also contains the rationale for the study, research questions and methodology. Chapter two builds on the brief introduction of the political economic relations history between the EU and ACP countries in particular Africa. It discusses the conventions from Yaoundé, Lomé, Cotonou and the more recent Economic Partnership Agreements. Chapter three extensively discusses the case studies Nigeria and South Africa. Tracing the negotiations from inception in 2002 to 2014 and how the two countries have responded to the negotiations. Also what were the major issues that Nigeria and South Africa had to deal with? Furthermore the chapter provides the way forward for Nigeria South Africa. The fourth chapter discussed and analyses the findings of the case studies. The last chapter, chapter five provides the conclusion to the study.

[30] George and Bennett, 2004: 210-211
[31] George and Bennett, 2004: 215, 224

Chapter 2

The History Africa's Trade Relationship with the European Union

2.1 From the Yaoundé Conventions to Economic Partnership Agreements

Trade relations between Europe and ACP countries follow the institutional evolution of the European Economic Community (EEC) to the European Union. Trade between Europe and ACP reflect the changes that have taken place to this European body for instance as the EEC grew and more countries joined and eventually becoming the EU it meant more countries especially in Western Europe were covered by agreements between the European Commission and ACP members. From its inception the European Economic Community agreed to apply a favourable economic treatment to African countries. The Treaty of Rome, signed in 1957, founding the EEC, offered special trade and economic support measures for the off shore territories and dependent countries[32] of the then EEC member states (Belgium, Federal Republic of Germany, France, Italy, Luxemburg, and the Netherlands). In 1958, the first developmental instrument was set up to finance economic and social development projects, mostly in then French territories[33]. These were the first steps from Europe towards the movement away from the colonial trade regimes which treated the soon to be former colonies as an extension of Europe. The advent of de-colonialisation starting from the 1960's onwards meant that there was a large number of new countries that had just joined the international system and were eager to become part of international regimes to show their independence.

Trade became one area where these former colonies were making inroads. The Yaoundé Convention was divided into two time periods. The first period of the treaty was known as Yaoundé I which was from 1964-1969. The second part of the Convention was Yaoundé II which was also for a period of five years from 1970-75. The first of the Yaoundé Conventions Yaoundé I was concluded in 1963 became effective in 1964 between the six European and eighteen African countries mainly Francophone countries[34]. The Yaoundé Convention covered the majority of former French colonies and/or territories. This was because at the time of the treaty's negotiation and conclusion the United Kingdom was not a member of the EEC. The more salient aims of the Yaoundé Convention treaty was to create

[32] These are the countries that had recently express intention for independence those that later gained political independence were no longer colonies of the European powers. However such countries remained heavily dependent on the former colonisers for markets for their goods and also for imports they sort to sustain and grow their economies.
[33] Karingi et al, 2005: 8
[34] Claudia Rummel, 2012.

more markets for European manufactured goods and also differentiated markets for raw materials from the Africa Caribbean and Pacific states. The Yaoundé treaty was not aimed at changing the disparity and inequity in trade between the former colonies and former masters it was more of a carrot to express the perceived equality since the end of formal colonial rule. The Yaoundé Convention was a gesture at equality because even though ACP countries were politically independent, economically their respective economies and markets were far weaker and not as advanced and diversified as European markets which meant in the negotiation of the treaty and thereafter they remained price takers as prices for commodities they were exporting to the EU were set by the EU. The aim of the treaty was to assign markets for exports from former colonies to the economies of Europe and, it did very little to industrialise and diversify the economies of the ACP countries from extractive and agricultural sectors to more value adding sectors such as manufacturing and services.

Trade provisions of Yaoundé I were based on reciprocal and non-discriminatory terms, pursuing the trade arrangements of pre-independence time[35]. Such reciprocal arrangements were closer to those of a free trade agreement than of a preferential trade scheme. The first Yaoundé Convention was succeeded by the Yaoundé II Convention in 1969. The 1969 Yaoundé Convention was the last of the conventions as Europe was undergoing changes as the European Community was growing and trade relations between Africa and EU were soon to following the growth trajectory. Another significant step for the newly independent states particularly in Africa came as a direct result of the accession of the United Kingdom to the European Economic Community in 1972 the accession was followed by a significant increase in the number of member states in the ACP group[36].

The following Convention was a series of Conventions known as the Lomé conventions concluded between ACP countries and Europe. The Lomé Convention had four parts from Lomé I to IV; the Lomé Convention in its different incarnations would shape relations between ACP countries for a period of twenty five years. The Lomé Conventions were for a much longer period than the previous Yaoundé Conventions part of the rationale for the much longer agreement was to ensure policy stability and predictability between the EU and ACP. The First of the Lomé Conventions was concluded in 1975. Lomé I marked the formal beginning of the ACP as for the first time in political, economic and trade relations as Europe formally welcomed the Caribbean and Pacific nations. This meant that the ACP had grown to

[35] Karingi et al, 2005
[36] See Claudia Rummel, 2012

forty six members as a result of the United Kingdom accession to the European Economic Community which brought along the countries of the commonwealth to the ACP fold.[37] The Lomé Convention was amended a numerous times to reflect changing economic, political and international norms. The amendments to the Lomé Convention included but were not limited to human rights, democratisation in ACP states, development and industrialisation, investments security and the importance of the extractive industry to ACP economies. The Lomé Conventions proposed non-reciprocal discriminatory trade agreement between the EEC and the ACP group of states. The first Lomé arrangement marked a radical change from the Yaoundé Convention, which stipulated reciprocal and non-discriminatory trade.[38] Concretely, while the EU was granting very favourable market access to ACP countries, those were not committed to grant equivalent concessions[39]. One of the more important aspects of the history of the Lomé Conventions is that it introduced the principle of partnership as shown in Article 2 of the Lomé Convention in "the right of each State to determine its own political, social, cultural and economic policy options" which meant that each state was able to determine the purpose of the aid received from the EU and the areas for which it wanted to use it. It went further in cementing the idea of an equal relationship between developed and developing countries.[40] The equality between the EC and ACP states was in principle as the ACP for the most part remained both politically and economically weaker to the EU and could not implement policies that would jeopardise EU's economic interest in their respective countries without facing a backlash from the EU.

The first Lomé Convention in a sense set the trend for the Cotonou Partnership Agreement that eventually replaced Lomé after its mandate had expired in that it granted non reciprocal market access to the ACP countries. The first Lomé Convention went further than the previous Yaoundé Conventions in order to alleviate revenue generation anxiety within ACP by introducing safe guards against the loss of revenue for the commodity exporting countries due to the decline in commodity prices. The Lomé Convention introduced an innovative mechanism aimed at compensating ACP members in cases of a fall in their commodity export revenues. STABEX[41] was therefore introduced by the first Lomé Convention in 1975, with a view to offer compensations for ACP states that experienced a brutal decline in their revenues

[37] Karingi et al, 2005
[38] Karingi et al, 2005: 9
[39] Ibid
[40] See Rummel, 2012: 6
[41] This Scheme was introduced in order to mitigate against the harmful consequences of instability, under this scheme whenever a country experiences fall in export earnings of a set of specific agricultural commodities then stabex fund would the released by the commission to the concern government (Colliers et al., 1999: 669).

from trade in agricultural goods.[42] Rummel asserts the Lomé Convention did not change much in trade relations between Africa and the EU, the fourth Convention which would be the last amendment of Lomé Conventions the EU signalled that it was no longer in favour of preferential treatment for ACP states[43]. This amendment was therefore an important step towards establishing a trade regime that would not discriminate between developing countries.

The principle of sovereignty and equal partnership was diluted as the EU aimed to gain more control over national programs by giving the European Commission a larger role in the administration of programs.[44] Giving the EC more powers to negotiate and make key decisions on behalf the EU meant that the EC could take decisions that might have not been political justifiable if the EU was negotiating as the political body. However when the powers to make difficult decision were devolved to the EC this meant that the EC could take more of a hard-line stance when negotiating any future agreements on behalf of the EU. Secondly it meant the EC had the powers to interfere in ACP countries' economies by telling the ACP countries how to organise their economies in order to be allowed to access to the European market. This interference in national economies of ACP countries was possibly a contributing factor in the introduction of the Structural Adjustment Programmes (SAP) which further curtailed policy making powers of ACP states. Lomé IV was revised and signed for the period of 10 more years from 1990-2000 the major aims for the period was to do more in order to protect the environment; cooperation; diversification of ACP economies; the promotion of the private sector; and increasing regional cooperation.[45] The Lomé IV convention further emphasised the recognition of sovereignty of ACP countries and went further to advocate that the EU trade relations with the ACP countries were based on partnership, and more importantly that trade was non reciprocal. Meaning Europe was to eliminate more barriers to trade both tariff and none tariff whilst the same was not required of the ACP economies[46]. It further introduced the notion of the most favoured nation into the trade relations of the EU and ACP. Lomé IV was the last revision of the Lomé Convention.

Cotonou Partnership Agreement was a successor of the Lomé Conventions that came to an end in 2000. The Cotonou Partnership Agreement was concluded in 2000, after a period of

[42] Rummel, 2012: 6
[43] ibid
[44] See Rummel, 2012
[45] Lomé IV Convention – English, African, Caribbean and Pacific Group of States (ACP Group). Agreement Amending the Fourth ACP-EC Convention of Lomé Signed in Mauritius on 4 November 1995.
[46] ibid

five years it was amended in 2005 and once more after another period of five years had lapsed in June 2010.[47] The Cotonou Agreements between the European Commission and Africa had given preferential treatment to Africa in that they have not been expected to open up their markets to European goods, services and investments to the extent that the EU had for ACP exports.

The Cotonou Agreement served as the precursor to the EPAs. The main paradigm shift from Cotonou agreement is in the area of trade. Rummel maintains that the Cotonou Agreement displays a clear commitment to free trade, the idea of negotiating and establishing relationships with several regions and not just one group was introduced by the Cotonou agreement.[48] The main objectives of the Cotonou Agreement were to restore macro-economic balances, develop the private sector, improve social services, support regional integration, promote gender equality, protect the environment and progressively eliminate all trade barriers between ACP Members and the EU, on a reciprocal basis.[49] The CPA signified a major revision of the structure of the relationship between the two parties (EU and ACP); replacing the bilateral arrangement with a set of regional relationships between the EU and seven sub-regions of the ACP grouping.

The Cotonou Agreement marked the first introduction of EPAs in the relations of the ACP with the EU.[50] The Cotonou Agreement expired at the end of 2007 giving way to the EPAs. As the Cotonou Partnership Agreement introduced EPAs it stated according to Article 37 (5) of the Cotonou Partnership Agreement, the EPA negotiations will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP group taking into account regional integration processes within the ACP.[51] However a number of ACP countries were either not equipped in terms of negotiating skills and resources and/or were ill prepared for the negotiations consequently the set deadline of the end of December 2007 to conclude EPAs negotiation was not met in most of the EPA groups apart from the Caribbean Forum (CARIFORUM) with is a sub set of the ACP states. The 31st of December 2007 was the date when all EPAs negotiations were supposed to have been concluded by, and those

[47] European Commission, The Cotonou agreement Signed in Cotonou on 23 June 2000 Revised in Luxembourg on 25 June 2005 Revised in Ouagadougou on 22 June 2010 Development & Cooperation – EuropeAid EUROPEAN UNION
[48] Rummel, 2012
[49] Karingi et al 2006. Assessment of the Impact of the Economic Partnership Agreement between the COMESA countries and the European Union. ATPC. Economic Commission for Africa November 2006
[50] Stephen R. Hurt, Donna Lee, and Ulrike Lorenz-Carl, 2013. The Argumentative Dimension to the EU-Africa EPAs. International Negotiation 18 (2013) 67–87
[51] European Commission, The Cotonou agreement Signed in Cotonou on 23 June 2000 Revised in Luxembourg on 25 June 2005 Revised in Ouagadougou on 22 June 2010 Development & Cooperation – Europe Aid. European Union

countries that had not concluded an EPA would lose their preferential market to the EU. The EU was granted a waiver by the World Trade Organization to continue preferential and discriminatory market access in order to continue negotiating the EPA. The EC granted the remaining negotiating parties Market Access Regulation (MAR) 1528/2007 to ensure undisrupted trade whilst the remained countries continued to negotiate EPAs. With regards to the EPA they are certainly not as bad or as good as their critics and advocates tend to argue. With a few exceptions (most probably in Southern Africa), and thanks to a gradual transition period and significant exclusions, the main impact of trade liberalisation is unlikely to be felt for years to come, and will most likely be concentrated on few products and sectors, in specific countries.[52] Economic Partnership Agreements are free trade deals negotiated (the majority of ACP countries have concluded the EPA only a small portion are still negotiating as of July 2014) between the European Union by the EC and 76 developing countries mostly former colonies in Africa, the Caribbean and the Pacific. EPAs negotiations started on the 27th September 2002 and were expected to be concluded by 31st December 2007, a date by which the waiver that had been granted by the World Trade Organization (WTO) to EU and ACP would expire.

The EU waiver stated as a result of the incompatibility of the EPAs with WTO rules, a waiver is required for every trade preference that entailed discrimination amongst WTO members so as to cover the non-discrimination imposed by the Article I of the General Agreement on Tariffs and Trade (GATT). The waiver to the preferences granted under the Lomé Convention expired in February 2000 and a request for the extension of the waiver under the Cotonou Agreement was requested in 2000. After much debate, the EU was granted a waiver, until 31 December 2007. After which countries that had not concluded the EPA would lose preferential access to the EU market in differing degrees depending on whether they were a Least Developed Country and/or the trade regime that existed between that country or group of countries and the EU. For example market access to the EU would be different for countries that fell under Everything but Arms (EBA) agreement with the EU and those that traded with the EU based on standard Generalised System of Preferences (GSP) agreements. As stated above EPAs are meant to be WTO compatible and therefore advocate for reciprocal trade relations between the EU and ACP states. That is why the EU has stated that states that

[52] San Bilal and Isabelle Ramdoo, 2014. Economic Partnership Agreements and beyond. Ecdpm Great Insights. Volume 3. Issue 9. October/November 2014

fall under the EBA or the GSP would not be subject to the WTO rules against discriminating trade rules between its members.

The Economic Commission negotiating on behalf of the EU asserts that EPA negotiations provide for WTO-compliant agreements, covering "substantially all trade" in goods (at least 80 percent) plus services, investment and trade-related rules, with a view to fostering ACP integration into the global economy thereby promoting their sustainable development.[53] Each EPA concluded by the EC and respective regions within ACP countries their key feature is to liberalise trade between the parties to the agreement. According to Mareike Meyn EPAs are supposed to be asymmetrical trade agreements covering not only trade in goods and services but also 'behind the border' issues, such as competition, government procurement, intellectual property, and trade facilitation.[54] These 'behind the border' or 'Singapore issues' have been one aspect that has been more controversial for the negotiating parties especially countries beyond the CARIFORUM.[55] This region amongst ACP countries is the only one that has signed an extensive EPA covering Singapore issues. Mncedisi Madela argued that the main aim of the EPA is to establish a trade regime that will be WTO compatible, whilst it strives to ensure that the achievement of both Lomé and the Cotonou Agreement are maintained.[56] Moreover EPAs aim to address developmental challenges such as poverty reduction in developing nations or regions that would sign an EPA, in this light the EU is prepared to cover some costs associated with the implementation of these agreements in respective regions.[57] While the Economic Partnership Agreements are primarily centred on goods market access, they include rendezvous clauses containing the possibility of broadening and deepening the arrangements in the future.[58]

[53] European Commission, 2014. Overview of EPA Negotiations Updated March 2014. Available form http://trade.ec.europa.eu/doclib/html/144912.htm Accessed 01 May 2014

[54] Mareike Meyn March 2008. Economic Partnership Agreements: A 'historic step' towards a 'partnership of equals'? Working Paper 288. Overseas Development Institute. London

[55] These are all countries in the Caricom plus the Dominican Republic

[56] Mncedisi Innocent Madela. From the Lome Convention to the Economic Partnership Agreements: An Assessment of Trade Relations Between the ECOWAS and the EU. MA research report for the University of the Witwatersrand, Department of International Relations, Johannesburg. 2010

[57] Mncedisi Innocent Madela, 2010: 26-28

[58] Peter Draper, 2014: 27

Chapter 3

Economic Partnership Agreements Negotiations in Africa: ECOWAS and SADC sub regional negotiations.

3.1 EU-ECOWAS Negotiations Process

The Cotonou Partnership Agreement (CPA) concluded in 2000 between the European Union and 79 African, Caribbean, and Pacific (ACP) stipulates that non-reciprocal trade preferences granted by the EU will be replaced by Economic Partnership Agreements.[59] The EPAs are meant to correct the preferential access granted to the ACP states and to ensure that future trade deals comply with the WTO rules. The CPA set the scene for the negotiations of the EPAs between the European Commission and ACP states. Negotiations for EPAs started in 2002 and were supposed to be concluded by the end of 2007, when a waiver on inconsistencies between the Cotonou regime and WTO regulations expired. The EPAs are a departure from any kind of any agreement that has been agreed to previously.

To remind the reader of this difference a reference is made to Mareike Meyn who asserts that EPAs are supposed to be asymmetrical trade agreements covering not only trade in goods and services but also 'behind the border' issues, such as competition, government procurement, intellectual property, and trade facilitation. This type of 'comprehensive trade agreement' is designed to decrease transaction costs for companies, improve transparency and help to establish bigger markets. According to the European Commission EPAs will, help to improve ACP countries' trade and business environment, promote growth and increase ACPs' overall competitiveness which will, in turn, aid their integration into the global economy.[60] There were a number of challenges that came up in the negotiations process of the EPAs in almost all regions. However the 'behind the border' issues were amongst the more controversial points of the negotiations. The Singapore issues were met with much resistance in ECOWAS as in other regions and sub regions of the ACP countries particularly in Africa. The reaction to Singapore issues was due in party to that the emphases by the EC for a these issues in Free Trade Agreement goes beyond the norm of traditional requirements which do not include aspects such as investments, intellectual property, services. That is for an EPA treaty to meet the requirements set out by the WTO to be regarded as a FTA the behind the border/Singapore issues are not mandatory. The Singapore issues were one of the issues that

[59]European Parliament. 2011. Economic Partnership Agreements EU-ACP: Facts and Key Issues. Office for Promotion of parliamentary Democracy (OPPD).

[60] Mareike Meyn.2008. Economic Partnership Agreements: A 'historic step' towards a 'partnership of equals'? Overseas Development Institute. P1

united governments across sub regional negotiating groupings and their respective negotiators across the different negotiating groupings in the continent as government felt that as the WTO stipulations stand do not require the behind the border issues for EPAs to be considered a FTA the behind the border issues were an attempt to limit policy flexibility by the EC and to foster a way for their companies into government contract in countries within the continent.

3.2 Beginning of the negotiation process

The EU-ECOWAS negotiations started in 2002 and were expected to be concluded by the 31st December 2007 however there were a number of concerns with regards to the manner the EC sort to conduct the negotiations for the EPAs. Some of the concerns ACP countries had were regarding the manner EC was imposing its negotiating style and pushing regional blocks to the negotiations they were not adequately equipped to deal with. Due to a lack of capacity at national level the participation by officials is not consistent over time. Furthermore, negotiators got very little preparatory briefing before meetings and participation by member states in regional preparatory meetings were not always at the appropriate level.[61]

As a consequence of such challenges and other factors which are going to be discussed in more detail below by the time of 2007 deadline for the conclusion of EPAs the negotiations were still on going. All agreements with the exception of the Caribbean up to that time were interim free trade agreements concluded to preserve the market access of these countries to the EU. Under MAR 1528/2007 of 1st January 2008, the EU granted duty-free quota-free (DFQF) market access to exports from EPA countries. Since 2008, other ACP countries have been exporting to the EU under the GSP, which provides DFQF market access to exports from least developed countries (LDCs) under the Everything-But-Arms initiative.[62] With respect to the EU-ECOWAS EPAs negotiations there were a number of key challenges that had a significant impact in delaying the negotiations beyond the 2007 deadline and the subsequent deadlines thereafter issued by the EC.

[61] Overview of Article 37(4) Reviews of the EPA Negotiations, October 2007 Discussion Paper No. 81. ECDPM. Available online at www.ecdpm.org/dp81 Accessed 12 December 2014

[62] Isabelle Ramdoo and San Bilal. What would it take to make an EPA economically and politically feasible for Europe and Africa? Elements for consideration ahead of the Africa-EU Summit of April 2014. Briefing Note No. 57 – November 2013. Ecdpm. P 5. Available from www.ecdpm.org/bn57

The ECOWAS sub-region negotiating the EPA was made up of all members of the ECOWAS plus Mauritania which was the only non-member state of ECOWAS. All members of the WAEMU were party to the negotiations. The sub-region started Economic Partnership Agreements negotiations in earnest on the 6th October 2003. One of the noticeable aspects of the negotiating group is that the ECOWAS grouping is dominated by LDC states, of the 16 states taking part in the negotiations process only three countries were not classified as LDCs by the EU, those being Nigeria, Ivory Coast and Ghana.[63] These West African countries have a population of approximately 242 million people, with almost 130 million in Nigeria alone, which forms a politically and economically diverse group of states.[64] The ECOWAS sub-region is the largest sub-region on the African continent to negotiate an EPA. The sub-region is the biggest in Africa in terms of potential market size, population and that Nigeria is the largest economy in the sub-region and in 2014 became the largest economy in the Africa also makes ECOWAS the largest sub-region economically.

3.3 Nigeria in ECOWAS

Nigeria is the most populous country in Africa. Furthermore Nigeria is the largest economy on the continent and the sub-region hence, West Africa is the biggest in terms of trade, accounting for about forty percent of all EU ACP trade. The EU in turn is West Africa's leading trading partner, accounting for about one third of the sub region's trade. These factors combined to make both ECOWAS and Nigeria significant parties to the negotiations process of the EPAs in general and in particular those on the African continent. About half of the West African population is Nigerian, and current figures estimate that the Nigerian Gross Domestic Product (GDP) amounts to about 60 percent of the region's GDP.[65]

Nigeria is the largest trader in the sub region, accounting for almost sixty percent of West African external trade. Consequential to the dominant nature of Nigeria in ECOWAS she maintains substantially significant influence over the West African sub region, both politically and economically. Bilateral trade between the EU and West Africa totalled about 32 billion Euros in 2006. The sub region's exports to the EU totalled 16.5 billion Euros in 2006, of which about sixty four percent was energy and twenty two percent agricultural

[63] Overview of Article 37(4) Reviews of the EPA Negotiations. Discussion Paper No. 81 October 2007. European Centre for Development Policy Management
[64] In Brief. No 14B November 2006. Overview of the regional EPA negotiations West Africa-EU Economic Partnership Agreement.
[65] South Centre, 2007

products.[66] Nigeria is a major player in the ECOWAS sub-region and as such Nigeria has taken up the task to provide leadership in the EU-ECOWAS negotiations process in order to safe guard the sub regions interests' and that of Nigeria in particular. Even though Nigeria is a large regional player, its share of world trade is very small, accounting for about 0.7 percent of global exports and 0.4 percent of global imports.[67] The figures for Europe are a little higher - 0.8 and 0.6 percent of EU exports and imports respectively moreover West Africa's share of world trade has decreased from approximately five percent in 1980 to less than one percent in 2004.[68] This decline in the proportion of trade between the EU and the ECOWAS group of countries is worth noting nonetheless the region still has a significant role to play in trading with the EU. West Africa exports to the EU are dominated by a limited number of basic commodities. Nigeria is a major oil exporter, recently followed by Ghana. Ghana and Ivory Coast are the world's two largest cocoa exporters. They also export bananas and, together with Cape Verde and Senegal, processed fisheries products. Other exports from the region include a range of agricultural commodities (mango, pineapple, groundnuts, cotton etc.) and to a far lesser extent metals (copper, gold) and diamonds. Imports from the EU to the Ivory Coast and Ghana are dominated by industrial goods, machinery, vehicles and transport equipment and chemicals.[69] In 2011 Nigeria was the EU-27's largest ECOWAS export customer, accounting for nearly half the total ECOWAS exports at nearly eleven billion Euros. Ghana and Senegal each comprised some ten percent of the total, with growth rates between 2010 and 2009 of twenty five percent and forty two percent respectively. Benin, which represents some six percent of 27 member states of the EU (EU-27) exports, recorded a rise of forty percent in the same period. Over the longer term, from 2000 to 2010, the annual average growth rate of EU-27 exports to the ECOWAS countries stood at six percent. For Nigeria, it was over ten percent a year whilst Benin saw growth of 8.5 percent. In contrast, Liberia and Sierra Leone saw falls of imports from the EU-27 of 10.5 percent and two percent per year respectively over the same period.[70] Nigeria's economic importance in the global economic framework is considerably smaller compared to ECOWAS. Bearing in mind these figures the importance of the Nigerian economy on the sub-region is clear

[66] Ibid

[67] Tom, Millar and Jenny , Lovbom. 2007. Nigeria and the European Union to the Economic Partnership Agreement (EPA) Trade for Development An Introduction to the Economic Partnership Agreement (EPA). European Commission, Directorate-General for Trade, Directorate-General for Development and European Commission Delegation in Nigeria. P 10

[68]Tom Millar and Jenny Lovbom. 2007. P 10

[69]European Commission. Trade Policy. Countries and regions, West Africa available on line http://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/ Accessed 15 January 2014

[70] European Commission. ECOWAS-EU - trade and investment statistics. Available online at http://ec.europa.eu/eurostat/statistics-explained/index.php/ECOWAS-EU_-_trade_and_investment_statistics Accessed 23 January 2015

consequently it is no wonder then that Nigeria took an active role in providing leadership during negotiations of the West African EPA.

3.4 EPA negotiations structure and progress

At the time of the start of the EPA negotiations the EC expressed that it expected to have concluded negotiations with all ACP countries and sub regions by the 31st December 2007. The date given by the EC was the day the WTO waiver would expire, which had been granted to the EU and ACP countries to allow ACP countries to continue trading with the EU at the same time as they negotiated their respective EPAs. However, this was not to be the case as up to date not all sub regions have concluded the EPA negotiations with the EC for a variety of reasons.

The EU-ECOWAS Economic Partnership Agreement negotiations were launched on the 6th October 2003 between the EC and the group of West African Countries more specifically ECOWAS. The negotiations in the ECOWAS were structured in a manner that the Regional Negotiating Committee (RNC) took a leading role. RNC conducts the formal negotiations of the EPAs between West Africa and the European Commission. The RNC comprises of the ECOWAS Executive Secretary, the President of the West African Economic and Monetary Union (WAEMU), and two ambassadors of member countries in Brussels, two ambassadors of member countries in Geneva, one representative each of civil society and the private sector and two members of the Technical Support Committee (TSC). The latter includes three government members (the Minister for Trade plus two other subject-related ministers according to the specific issues being discussed), one private sector representative and one civil society representative of each member state.[71] Furthermore member states could also designate up to three experts as part of the delegation. In addition to the formal negotiating structure, a joint contact group had been set up to provide secretarial services and coordinating support to the negotiations. Moreover, a joint structure called the Regional Preparatory Task Force (RPTF) has been created to facilitate links and coherence between the EPA negotiations and development cooperation funding.[72] For the EU the negotiations for the EPA were undertaken by the European Commission with all the ACP state. Despite these

[71] Trade for Development Programme (TDP), South Centre. Trade Negotiations in the West African Region Issues for Consideration. Analytical Note SC/AN/TDP/EPA/8. May 2007 Geneva, Switzerland. P6-7

[72] In Brief No. 14B - November 2006. Overview of the regional EPA negotiations: West Africa-EU Economic Partnership Agreement. P3.

structures to facilitate the EPA negotiation between the EC and ECOWAS the negotiations dragged on longer than anticipated by the EC.

After the official launch of the EU-ECOWAS negotiations in October 2003 and 2007 substantially there was nothing much attained between the negotiators of the EU and ECOWAS. There was still much of the groundwork being done for instance on what products to include or exclude in the sensitive lists and try to work out the differences and overlaps in different countries lists. In August 2004 the EC and ECOWAS signed a Road Map in Accra, specifying the areas, process and modalities for the negotiations, an indicative schedule, and a strategy to conclude an EPA. The Road Map focuses on three major areas: (i) deepening the integration process in West Africa; (ii) improving competitiveness and capacity building; (iii) preparation and effective implementation of the EPA.[73] The Road Map was meant to simplify and clarify issues which had the potential to prolong the negotiations process amongst other objectives to ensure that the negotiations were to be concluded by the initial deadline of 31st December 2007. In order to try achieving this goal the Road Map outlined three phases for the negotiations to be carried out. In the first phase (September 2004 to September 2005) priorities were to be identified for trade and economic regional integration and for a programme to upgrade and enhance competitiveness. During the second phase (September 2005 to September 2006), the overall EPA architecture was to be drawn up and proposals made for a draft agreement on trade-related issues. And in the final phase (September 2006 to December 2007) the actual negotiations on trade liberalisation for goods and services would take place and the EPA concluded[74]. In addition to the outlined phases both parties in Brussels on the 5th February 2007 had given their undertaking to conclude the EPA negotiations by the deadline of December 2007. The deadline for the conclusion of the negotiations for the EPAs between the ACP states and EC were set for the 31st December 2007.

3.5 Negotiations in ECOWAS from 2007-2014

The looming December 2007 deadline to conclude EPAs meant that decision makers in ACP countries had to act to ensure that they did not lose market access to the EU market for their countries exports. Consequently in the ECOWAS region the December 2007 deadline

[73] See Overview of Article 37(4) Reviews of the EPA Negotiations. Discussion Paper No 81 Available from www.ecdpm.org/dp81 p25
[74] Ibid p 25-26

resulted in two major players Ivory Coast and Ghana concluding an Interim EPA (IEPA). The interim EPAs were country specific meant to provides a framework for trade in goods only between the two parties that had concluded the agreement. They served to ensure that trade was not disrupted between the EU and the countries that had signed the IEPAs before the deadline of the conclusion of the EPAs negotiations in the event that the EPAs were not concluded before the deadline. These interim agreements appeared to be divisive as they were aimed at country level whereas the EPAs were being negotiated at sub-regional levels. Ivory Coast and Ghana, initialled bilateral "stepping stone (or "interim") EPAs" with the EU at the end of 2007. The interim EPA with Ivory Coast was signed on 26 November 2008.[75] This move was not welcomed by the leading economy in the sub-region Nigeria as they saw the move as being divisive and anti-regional integration. For those countries of the ACP that had concluded EPAs by December 2007, but had still not implemented or ratified those agreements IEPA served to ensure undisrupted market access to the EU in the meantime.

The EU introduced Market Access Regulation (MAR) 1528/2007. This regulation allowed ACP countries that had signed or concluded EPAs by that time, but had still not ratified or implemented them, to export to the EU under the same terms as the Cotonou regime (duty-free and quota-free).[76] In the interim, Nigeria had submitted an official request to the European Commission to enable immediate admission for itself and other non-LDC ACP countries to the preferential GSP plus scheme, in the event that no EPA agreement was reached by December 31. Nigeria's application was unsuccessfully for GSP plus for the 2009-2011 period due to non-ratification of one of the 27 required treaties to qualify for GSP plus. That was the Convention on Prevention and Punishment of the Crime of Genocide (Genocide Convention), nonetheless Nigeria went on to ratify the Genocide Convention 29 July 2009.[77] The failure by Nigeria to secure GSP plus with the fact that the other two non LDC economies in the ECOWAS negotiations Ivory Coast and Ghana had concluded IEPAs add to that the majority of the economies making up the ECOWAS group are LDC meaning they gain access to the EU market via Everything But Arms. This meant that the sub-region as a whole was moving further away from regional integration as EU disintegrated the ECOWAS region by forcing and railroading Ghana and Ivory Coast to signing Interim EPA in 2007 on the threat of loss of their access to the EU market. The result of this single action

[75] Overview of EPA Negotiations Updated July 2014. Economic Partnership Agreements Negotiations. European Commission

[76] Aileen Kwa, Peter Lunenborg and Wase Musonge. 2014. African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs). Directorate-General for External Policies of the Union, Directorate B, Policy Department. European Parliament. P. 14

[77] See Aileen Kwa, Peter Lunenborg and Wase Musonge. 2014. Pp 21

was the existence of four different trade regimes in West Africa. If Nigeria had not resisted by sacrificing her market access the ECOWAS gains (such as more trade within ECOWAS, easier movement of people within the sub region) over the years would have been lost.[78] Regional integration had been identified as being very important for Nigeria from the beginning of the EPA negotiations.

Regional integration was identified by the Federal Government of Nigeria as vital point which would have to be advanced in the sub-regions' negotiations with the EC on EPA.[79] Oghogho Obayuwana avers that the European Commission had been accused of paying lip service to the importance of the integration process, a fact supported by the fact that the EU put pressure on individual countries to sign the EPA outside the collective regional interests, with interim EPAs concluded by Cote d'Ivoire and Ghana bearing serious repercussions on the regional integration process.[80]

3.6 Major issues in the negotiations

The European Commission's deadline for the conclusion of the EPAs negotiations in all ACP regions of December 31st 2007 came and went. However, negotiations were still on going and in a state of stalemate in the majority of the negotiating sub regional groupings. The negotiations were in a stalemate for a differing reason across the different ACP regions, for example, in Africa the major issues were around regional integration that is the manner in which the EC divided negotiating sub regions was divisive also the lack of resource to allow for adequate preparation and the ability to negotiate became a major factor in Africa. The EC set a new deadline of the 30th of June 2009 for all the remaining EPAs negotiations to be concluded by. There were a number of significant issues that had not been ironed out between the EC and ECOWAS as the new deadline loomed and it appeared there were strong indications that the free trade agreement between ECOWAS and the European Union may not be signed before the revised deadline of the 30th June 2009 because of the need to protect the collective regional interest of ECOWAS States.[81]

[78] Ken Ukaoa. 2014. ECOWAS-EU Economic Partnership Agreement: NANTS statement. Available online from http://www.trademarksa.org/print/news/ecowas-eu-economic-partnership-agreement-nants-statement Accessed 30 May 2014

[79] Government of Nigeria. September 2005. Impact Assessment Final Report Capacity-Building in Support of Preparation of Economic Partnership Agreement (8 ACP TPS 110) #073 Nigeria

[80] Oghogho Obayuwana, 2009. ECOWAS, EU free trade agreement on a cliff hanger. The Guardian. Available on line at http://www.bilaterals.org/spip.php?page=print&id_article=15145 Accessed 21 January 2015

[81] See Oghogho Obayuwana

The collective interest were a salient point for the West African sub-region however the insistence on the protecting those interests (regional integration, united ECOWAS) was mostly a derivative of the Interim EPA concluded by Ivory Coast and Ghana in 2007. Not much progress was made in the negotiations as there were no text-based (as all the negotiations were verbal and informal and also such negotiations tend to be off the record in nature) negotiations took place between April 2012 and December 2013, and therefore no progress was made in the six 'persistent divergences' in the negotiations with the EU as identified by the ECOWAS Commission.[82] As a result the ECOWAS commission appeared to have been weakened when the negotiations resumed in 2014.

3.7 Market Access Offer

The European Council decision called for all EPA negotiations to provide for WTO-compliant agreements, covering "substantially all trade" in goods (at least 80 percent) plus services, investment and trade-related rules, with a view to fostering ACP integration into the world economy thereby promoting their sustainable development. For the ECOWAS negotiating party such conditions to market access was unrealistic as they were seen as being unfavourable to the economy of the region and individual states of the negotiating group. On the side of the West Africa the aim was to achieve Quota-Free Duty-Free market access to the EU market for those that benefit from such access. Early on in the EU-ECOWAS EPA negotiations it was determined that trade in services, investments and government procurement be left out of the negotiations for a number of reasons.[83] Consequently a rendezvous clause was agreed to negotiate these issue after the initial EPA has been concluded and came into effect.[84]

Nigeria being the largest economy in the West Africa with a significantly larger population of 150 million, it constitutes about two-thirds of the West African market in terms of trade with the rest of ECOWAS and the size of their domestic market for goods and services. Nigeria championed the formation of ECOWAS, bears most of the weight of its funding, and has led the fast-tracking of the regional integration process. With the strongest industrial and

[82] See Aileen Kwa et al. 2014. P 21-22
[83] South Centre. 2013 EU-ACP Economic Partnership Agreements: Current State of Play. Trade for Development Programme (TDP). Analytical Note SC/TDP/AN/EPA/31. March 2013. P6
[84] South Centre, 2013: 6

investment base in the sub-region, its budget is internally-generated.[85] Given the significance of the Nigerian economy in the sub-region market access to the EU and the EU's access to the broader ECOWAS market in general and Nigerian market in particular for Nigeria is an important issue. Close to 38 percent of trade into ECOWAS came from the European Union, suggests that preferential trade liberalisation with the EU could have a significant negative impact on the Nigerian economy argues Soamiely Andriamananjara et al.[86]

While the EU is still the largest import supplier to Nigeria, beyond the prohibition list, Nigeria maintains high tariffs in a number of sectors. The fact that the EC in its council decision of 2002 had sort trade liberalisation of around eighty percent had the EC been successful that would have a substantially negative the impact on the Nigerian economy as the government lose a large portion of the revenues because of the liberalisation. The tariff structure of Nigeria is extensive and complex. However the tariff schedule was simplified in 2005, and was partially aligned with the ECOWAS Common External Tariff (CET), with the maximum rate lowered, but only to 50 percent, well above the ECOWAS proposed ceiling of 20 percent. A number of products including rice, sugar, cigarettes, plastics, tyres, steel, household appliances, and vehicles are currently subject to 50 percent tariffs. If liberalised preferentially with the EU only, these high tariffs are very likely to lead to welfare-reducing trade diversion.[87]

In 2007 the EU had initiated MAR1528 to deal with the issues of market access as the negotiations continued with the ACP. The MAR1528 was adopted on 1st January 2008. MAR 1528 had been initiated and adopted by the EU in order to avoid market disruption and to allow countries that had concluded an Interim EPA sufficient time to sign and ratify the agreements. Because Nigeria had not concluded an Interim EPA she could not benefit from MAR1528. The issue of market access is not only problematic for Abuja due to the significant imports from the EU; across the ACP countries, states in this region will experience revenue shortfalls immediately if/when the process of tariffs dismantlement began under the reciprocation process. Cumulatively, these shortfalls while not unexpected will pose serious fiscal adjustment challenges for ACP countries EPAs will result in significant

[85] Chibuzo N. Nwoke. 2009 EU-ECOWAS Economic Partnership Agreement: Nigeria's Role in Securing Development-Focus and Regional Integration, Nigerian Institute of International Affairs. Prepared for presentation at the 2009 African Economic Conference organized by the African Development Bank and the Economic Commission for Africa, on the theme "Fostering Development in an Era of Financial and Economic Crisis", Addis Ababa, Ethiopia, 11th – 13th November, 2009. P 25

[86] Soamiely Andriamananjara, Paul Brenton, Jan Erik von Uexküll and Peter Walkenhorst. 2009. Assessing the Economic Impacts of an Economic Partnership Agreement on Nigeria. Policy Research Working Paper 4920. The World Bank, Africa Region, Africa Technical Families. April 2009

[87] Ibid

reduction in revenues.[88] The decline in revenues in ACP countries in line with the liberalisation are expected due to that the ACP countries are net exporter of raw materials and commodities and net importer of finished goods on which they impose significantly higher tariffs compared to EU. As trade between the EU and ACP countries is liberalised under the EPAs the ability to impose such tariffs similar to those before the EPAs would be lost and as a direct result the loss of the tariff revenues from all the imported goods from the EU. The loss of revenue as a result of market access conditions would mean that from the onset of the liberalisation schedules governments such as that of Nigeria which relies on tariffs, excise duties and other import related revenues they will have to do with less in revenues collections.

On the other hand Chibuzo Nwoke suggests the inappropriateness of the EPA strategy is that it strives for ACP countries to open their markets to EU goods and services faster and more substantially than to goods and services from EPA regions and the rest of the world.[89] Liberalising the Nigerian market to EU's imports faster and more than to its neighbouring countries would mean that regional integration efforts in West Africa are reversing as such actions will result in making trading between ECOWAS states less attractive compared to the EU. Regardless of all the talk about liberalisation, the EPA deals hardly improve the access of ACP countries to the EU's markets. Nigeria remains by far the biggest economy in the sub-region accounting for some 61.04 percent of real GDP in 2005.[90] The country recorded a 6.9 percent growth rate in 2005 from 6.0 percent in 2004 contributing 8.8 percent of the sub-region's economy, up from 2.27 per cent in the previous year, fifty nine percent of Nigeria's GDP is accruable to merchandise export—mainly petroleum products.[91] The EU will open its market completely from day one; West Africa will remove import tariffs only partially over a transition period of twenty years.[92] Whilst requiring ACP countries to dramatically open up their markets to imports from Europe, the EU is set to open up to other Third World countries, thereby eroding any gains to ACP countries. This is in addition to the several tariff and non-tariff barriers the EU places against ACP exports.[93] This fact does not change much for the Nigerian economy as the country mostly exports crude oil to the EU which carried

[88] Stephen Karingi, Rémi Lang, Nassim Oulmane, Romain Perez, Mustapha Sadni Jallab and Hakim Ben Hammouda, March 2005 Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements. African Trade Policy Centre No. 10. Economic Commission for Africa. P17

[89] Chibuzo N. Nwoke, 2009:6

[90] South Centre. 2013 EU-ACP Economic Partnership Agreements: Current State of Play. Trade for Development Programme (TDP). Analytical Note SC/TDP/AN/EPA/31. March 2013. P8

[91] South Centre, 2013: 8

[92] EU-West Africa EPA. Economic Partnership Agreement with West Africa. Facts and figures. 23/07/2014

[93] Chibuzo N. Nwoke. 2009: 7

very little duties and it is not subject to much none tariff barriers. The potential cost impacts of the EPA on the Nigerian economy will be heaviest in the short-term. The efficiency effects of liberalisation may only begin in the medium to long-term. Theoretically, the only likely short-term benefits to Nigeria would be in terms of increase in its exports to the EU, assuming the EU further opens its markets to imports from Nigeria.[94]

In the build up to the West African-EU EPA negotiations ECOWAS and the EC had in the road map that both negotiating parties agreed to negotiate market access for goods during the third phase of the negotiations which was the period of September 2006 to December 2007.[95] According to the Global Network in 2008 Nigeria offered to commit to opening sixty percent of its domestic market to EU goods for a period of thirty five years before any further liberalisation is considered.[96] This offer was declined by the EC which insisted on the initial eighty percent as stated in the council decision of 2002. Market access for Nigeria is more vital given the fact that from 2007 after Ghana and Ivory Coast concluded an Interim EPA and following that they were denied the status to GSP plus. After the offer made by Nigeria was declined by the EC the negotiations on market access for the ECOWAS sub-region remained dormant for more than two years. Another offer by West Africa to open seventy percent of its market over twenty five years, a proposal judged insufficient by the EU, which insisted on an eighty percent market opening within 15 years.[97] In the Dakar Summit of the 25th October 2013, ECOWAS Heads of States and Governments agreed to resume the negotiations on the basis of the new proposals, and with a view to concluding the regional agreement as soon as possible. Furthermore the EU and West-Africa formally met in Dakar in the week of 20th January 2014 to discuss the issues surrounding market access.

On the market access offer, the EU asked for clarification on the reasons why the ECOWAS has excluded from liberalisation some tariff lines that sort to increase the rate to over seventy five percent. Nevertheless West Africa rejected this possibility, explaining that their choices are consistent with the Common External Tariff (CET) and that there is no more space for concessions on market access. On 24th January 2014, senior officials reached an agreement in terms of market access on the EPA between the EU and ECOWAS. In terms of product coverage, ECOWAS will liberalise seventy five percent of its tariff lines, based on its

[94] Chibuzo N. Nwoke, 2009: 17

[95] See Overview of Article 37(4) Reviews of the EPA Negotiations. Discussion Paper No. 81 October 2007. European Centre for Development Policy Management. www.ecdpm.org/dp81 . P27.

[96] Global Network. 2008. Economic Partnership Agreements – The Case of Nigeria. Solidar

[97] Bridges Africa. 2014. EPA: West Africa and the EU conclude a deal. 2014. International Centre for sustainable trade and development. Available on line at http://www.ictsd.org/bridges-news/bridges-africa/news/epa-west-africa-and-the-eu-conclude-a-deal Accessed 6 February 2015

common external tariff, over a period of 20 years. The list of exclusion covers a wide range of products, ranging from agricultural goods to industrial goods. It is meant to ensure that local industries will not be subject to competition from duty-free products from Europe.[98]

3.8 Most Favoured Nation (MFN) Clause

According to Article 16 of the EPA, the EU shall grant the ECOWAS/West Africa any most favourable tariff treatment that it shall offer to a third party if the EU becomes part of a preferential agreement with this third party after the signing of the Economic Partnership Agreement.[99] This essentially means that the EU will reciprocate any agreement it enters into after the EPA comes into force with West Africa should it offer more favourable terms to a third party compared to the terms granted to ECOWAS. Article 16 notwithstanding article 21 further states that after the signing of the agreement, West Africa shall grant the EU any most favourable tariff treatment that it shall offer to a trading partner other than countries of ACP member states, with a share of global trade in excess of 1.5 percent and an industrialisation rate measured by manufacturing value-added as a share of GDP in excess of ten percent in the year prior to the entry into effect of the preferential agreement referred to in this paragraph. If the preferential agreement is signed with a group of countries acting individually, collectively or by means of a free trade, the threshold relating to the share of global trade considered shall be two percent.[100] The second part of article 21 clearly brings to the surface the notion of reciprocity. This is the case as the second part of the article deals with any agreement that ECOWAS/West Africa may conclude with the rest of the world.

Moreover article 21 sets out what ECOWAS can do and cannot and the consequences of any action they take in relation to trade with any party of the world be it a group of countries of individual countries that seek to conclude trade agreement(s) with West Africa. Article 21 implies that West Africa ought not to offer any third party better terms of trade that what has been agreed to with the EC under the EPA because they are legally obliged (under the EPA agreement) to reciprocated such deals given they either meet one of the clause criterion/all the criteria (1. a country's share of global trade in excess of 1.5 percent and an industrialisation rate measured by manufacturing value-added as a share of GDP in excess of

[98] Aileen Kwa, Peter Lunenborg, and Wase Musonge. 2014: 22
[99] Negotiations on an Economic Partnership Agreements between West Africa and the European Union. Draft Joint Text. After Conclusion of the Negotiations by Senior Officials, February 2014. Economic Partnership Agreement (EPA) Between the West African states, ECOWAS and WAEMU of the One Part and The European Community and its Member States of the Other Party
[100] Ibid

ten percent in the year prior to the entry into effect of the preferential agreement referred to in this paragraph, 2. for a group of countries acting individually, collectively or by means of a free trade, the threshold relating to the share of global trade considered shall be two percent). This suggests that for countries in the sub-region in term policy there are limited options in negotiating trade agreements in the foreseeable future should the EPAs come into force because of the reciprocity clause. In engaging other leading and/or emerging powers in international trade such the United States of America (USA) under African Growth and Opportunity Act (AGOA), and China which is the second largest economy in the world and becoming a significant and influential trade partner on the continent and countries such India, Brazil and Russia.

For countries such Nigeria this poses a number of challenges as under the MFN clause, 95 percent of Nigeria's exports to the EU currently attract zero per cent duty; and even with the recent down-grading of Nigeria's status to GSP, only its exports of tuna will attract twenty percent plus duty in the EU's market.[101] Add to that the fact that Nigeria has traditionally had very high levels of MFN tariff protection and numerous imports bans, and despite recent reforms continues to be more protectionist than the averages for Sub Saharan Africa and the world.[102] For Nigeria MFN clause as it stands means that policy options going forward are limited, this is further complicated by the stand still clause which states tariffs cannot be increased. The impact assessment study on the implication of the EPA for Nigeria found the removal of import bans and non-discriminatory "most-favoured-nation" (MFN) reduction of tariffs decreasing the tariff differential between Nigeria and its neighbours would go even further in reducing smuggling.[103] More worryingly is that the EU's share of imports in ECOWAS has been steadily decreasing over the last two decades (from around 60 percent in the late eighties) as more efficient Asian suppliers gained market shares over their European counterparts. Indeed, starting from around one percent in the mid-eighties, the market shares of China and India rose, to fourteen percent and five percent in 2006 respectively. The United States was the second largest source of imports in 2006, accounting for sixteen percent of Nigeria's merchandise imports.[104]

In relation to the above point Chibuzo Nwoke argues that the implication is that, in relative terms, Nigeria may end up bearing virtually all of the burden of adjustment, while the EU

[101] Chibuzo N. Nwoke, 2009: 17
[102] Soamiely Andriamananjara et al. 2009: 25
[103] ibid
[104] See Soamiely Andriamananjara et al 2009: 4

will capture all the benefits, arising from Nigeria's participation in the proposed West Africa-EU EPA initiative due to high MFN tariffs.[105] Nwoke further asserts that the persistence of import bans and other non-tariff barriers, and a highly concentrated export base, even a doubling of non-fuel exports to the EU and to regional partners would hardly generate the economic growth rates that Nigerian policy makers are aspiring to. There is a salient caveat to the Most Favoured Nation clause, there is an undertaking between the parties that conclude an EPA that the question of extending preferences ECOWAS countries could grant to third party countries (countries that make up two percent of world trade and/or make up 1.5 percent of world trade if it is an individual country) in future negotiations have been addressed through a non-automatic clause, where consultations will be conducted and the preferences assessed by a joint EPA committee.

3.9 Economic Partnership Agreement Development Funding

The essence of the Economic Partnership Agreement Development Programme (EPADP/PAPED) is to cater for revenue loss and implementation costs as well as the economic adjustment costs arising from or occasioned by the EPA. On the other hand, the European Development Fund (EDF) has been a subsisting fund deriving from the development cooperation chapter of the Cotonou Agreement of 2002. The region had requested additional funds to be earmarked for EPA related adjustment cost but the EU firmly refused this request.[106] On a more positive note for the sub region, ECOWAS is the only sub-region to have received commitment for development funding from the EU. Regional negotiators from ECOWAS secured a commitment from the European Commission and EU Member States to contribute to fund a development programme to ameliorate negative impact of the agreement on the West African community. The EPA Development Programme should be "adequate and accessible" beyond the commitment already made in the EDF.[107] With regards to development Soamiely Andriamananjara et al. suggests EPA is likely to have positive and significant impacts when integrated into a comprehensive strategy towards competitiveness and to alleviating the supply constraints that have muffled the impact of

[105] Chibuzo N. Nwoke, 2009.

[106] Ken Ukaoa, 28 February 2014. ECOWAS-EU Economic Partnership Agreement: NANTS statement. Trade Mark Southern Africa (TMSA) Advancing Regional Integration in Southern and Eastern Africa. Available online at http://www.trademarksa.org/print/news/ecowas-eu-economic-partnership-agreement-nants-statement Accessed 30 May 2014.

[107] Oghogho Obayuwana, 2009. ECOWAS, EU free trade agreement on a cliff hanger. Guardian Online Available http://www.bilaterals.org/spip.php?page=print&id_article=15145 Accessed 21 Jan 2015

previous preferential and multilateral trade agreements on exports, output and employment.[108] The funds made available to ameliorate the adverse impact of EPA on poverty, job losses and other trade diversion are not seen as being adequate. Chibuzo Nwoke argues that even though the European Commission and the European Union member states have promised to provide funds towards compensating huge losses arising from the EPAs, it is doubtful that such funds will be sufficient to cover the loss.[109] On the other hand, the EDF has been a subsisting fund deriving from the development cooperation chapter of the Cotonou Agreement of 2002.

The sub-region had requested additional funds to be earmarked for EPA related adjustment cost but the EU firmly refused this request. The funding made available from the EU is vital in ensuring that the region make strides in integrating itself to the broader world economy whilst developing infant industries. It is worthy to note here that while the region is expected to lose close to 1.8 billion American Dollars per annum in import duty (tariff revenue loss) as a result of liberalising its import under the EPA, the total fund to be provided under the EPADP by the EU is 6.5 billion Euros for a period of five years. This simple calculation shows that even in addition to the apparent loss of the statutory EDF, West Africa is billed to lose 9 billion Dollars in import revenue in order to receive 6.5 billion Euros. What a shame? And of course, Nigeria 'as the big brother' shall be taking the elephant share of the loss. Is this what Nigeria bargained for in the EPA? to lose her market, lose tariff revenue, lose other funds, lose jobs and probably lose her development and future?[110] The development funding allocated to the ECOWAS sub-region in terms of financial support and development, had been allocated for the period 2015-2019 and for at least 6.5 billion Euros.[111]

3.10 Agricultural subsidies

The EU agriculture and its agricultural products are far more developed compared to that of West Africa. This is in large part be attributable to the amount and extent of subsidies agriculture enjoys in differing degrees in different EU member states. consequently ECOWAS and its member countries were justified in being apprehensive about the potential adverse impact EU agricultural products can have on their small agriculture in terms of GDP contributions however significant larger in terms of employment creation hence the chapter

[108] Soamiely Andriamananjara et al, 2009:22
[109] See Chibuzo N. Nwoke, 2009.
[110] Ken Ukaoa, 2014
[111] Isabelle Ramdoo, 2014: vi

six of the EU-ECOWAS EPA agreement. Preferential liberalisation in sectors in which the EU has a substantial initial market share may lead to more trade creation than trade diversion, if the high initial share indicates that the EU is a competitive/efficient source in those sectors. However, in the case of some food products, such as dairy, it could reflect EU production and export subsidies. On the other hand, if there are only a few firms behind such a dominant position then the tariff reduction may not be passed on to consumers but the rents may be appropriated by the EU companies.[112]

In a similar line of argument Chibuzo Nwoke argues the EPA maintains Nigeria as a raw materials exporter. By offering zero duty on cocoa beans, the EU encourages cocoa exports from Nigeria only in its raw form.[113] For food security and developmental aspects linked to agriculture to come to fruition in West Africa the EU needs to ensure adequate support for the regions farmers and move away from using the region as the supplier of raw material. Africa's dependence on Europe for agricultural imports is huge. In 2007, thirty percent of West Africa's agricultural imports came from Europe, an increase of thirteen percent from 2006. Nigeria's imports of agricultural products from the EU have continued to grow, from about 811 million Dollars in 2003 to about 860 million Dollars in 2008. Since the global economic crisis, the EU has resumed its export subsidies to support its farmers. The heavy subsidisation of the EU's agricultural products and their adverse effects on African agriculture and food security is still a very contentious issue in EPA negotiations.[114]

3.11 Southern African Development Community trade with the European Union

The EU is the SADC EPA Group's largest trading partner, with South Africa accounting for the largest part of EU imports to and EU exports from the sub region. Imports are mostly primary products such as crude oil, and number of minerals and agricultural produce including fruits, fisheries, beef, EU exports a wide range of goods to the Southern African Development Community EPA countries, including vehicles, machinery, electrical equipment, pharmaceuticals and processed food.[115] For the sub-region more favourable trade terms with the EU are necessary for the prosperity of the whole sub-region as the EU is the largest trade partner to the region. When the EU started the EPAs negotiations in 2002 with

[112] Soamiely Andriamananjara et al,2009: 6
[113] Chibuzo N. Nwoke, 2009: 21
[114] Ibid 14.
[115] See European Commission. Trade Policy. Countries and regions, Southern African Development Community (SADC) Available online at http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/

the ACP countries the EU set a deadline date of the 31st December 2007 for all negotiation to be concluded. However the deadline was not met that notwithstanding the EC succeeded in putting pressure to countries to conclude the Interim EPA. At the end of 2007 Botswana, Lesotho, Swaziland, Mozambique on 23rd November and Namibia 3rd December agreed an Interim region-to-region EPA with the EU.[116]

Namibia later refused to sign the interim EPA together with Angola and South Africa who had not concluded the Interim EPA. In the Southern African negotiating group in 2008 total trade flows with the EU for the four countries which have now signed, or are about to sign, the interim EPA were almost 2.1 billion Euros. All four countries enjoyed individual trade surpluses with the EU – the combined surplus standing at around 1 billion Euros. The SADC sub-region as a whole has been a net beneficiary of trade with the EU up to now and the EPA will allow the region to improve competitiveness, diversify its exports, and build strong regional cooperation networks in support of those that currently exist or are being developed.[117]

3.12 SADC-EU EPA negotiations

Negotiations for the EPAs between the EU and ACP countries began officially in September 2002. Thereafter negotiations between the EC and specific regions of the ACP began, in the case of the SADC sub-region and the European Commission negotiation were officially launched on 8th July 2004 in Windhoek, Namibia.[118] In order to make the process of negotiating the EPAs in regional/sub-regional groupings more manageable, the EPAs were to be broken up into three different phases. For the SADC sub-region the three phases were as follows. Phase one starting July to December 2004 was devoted to priority setting and preparations for the EPA negotiations. Phase two from January 2005 to June 2007 was set aside for substantive negotiations, with emphasis on market access for agriculture, non-agricultural products and fisheries, trade in services, development cooperation, trade-related issues and legal provisions. And the last phase, phase three was from June to December 2007 as reserved for finalisation of the agreement.[119]

[116] Fact sheet on the interim Economic Partnership Agreements. SADC EPA GROUP. November 2011
[117] Economic Partnership Agreements: EU and Southern African countries sign interim deal - Brussels, 4 June 2009
[118] InBrief. No. 14F - November 2006. Overview of the regional EPA negotiations: SADC-EU Economic Partnership Agreement. European Centre for Development Policy Management
[119] See InBrief. No. 14F - November 2006

The Southern African Development Community (SADC) is composed of a diverse group of countries facing various development challenges. Amongst the sub-region's 15 member states, with a total of more than 200 million inhabitants, there are large differences in size, economic development, trade patterns and factor endowments. SADC comprises eight least developed countries, some land-locked and small and vulnerable economies, as well as one prominent country, South Africa, which accounts for over two-thirds of the sub-region's economy.[120] The SADC group of countries population-wise is a combination of very small and medium to large countries. Measured by their Gross Domestic Product they are small economies compared to the EU and/or individual member countries of the EU. In terms of income levels, the smaller countries, with the exception of Lesotho, are better off than Mozambique, Angola and Tanzania. However, the economies with the highest per capita incomes experience high inequality in the distribution of income as shown by the large shares of the highest twenty percent of income and consumption.[121] Within this configuration Angola, Lesotho, Mozambique and Tanzania are least developed countries with the EBA option available to them. The EBA initiative is an extension of the EU General System of Preferences that grants duty free access to imports without any quantitative restrictions of all products from LDC's, except for arms and munitions and some farm products.[122]

At the beginning of the SADC-EU EPA negotiations in July 2004, two aspects to the negotiations are significant in differentiating the SADC-EU EPA group constitution from ECOWAS-EU EPA group. The first was the exclusion of the biggest economy in the sub-region South Africa and the second one is how different the SADC EPA group of countries is different from the traditional make up of SADC.[123] However the absence of South Africa as party to the negotiations could be explicated by that South Africa's trade relations with the EU were based on the Trade, Development and Co-operation Agreement (TDCA) that was signed in late 1999 and came into effect on January 1, 2000. The agreement is framed asymmetrically: the EU will liberalise ninety five percent of its imports from South Africa within 10 years; South Africa will reciprocate with market access for eighty six percent of its imports from the EU over 12 years.[124] The second anomaly in the SADC sub-region negotiating the EPA was due to the EC unilateral decision to reconfigure many of Africa's

[120] ibid
[121] See InBrief. No. 14F - November 2006: 33
[122] Ibid P 32
[123] SADC member states Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe
[124] Brendan Vickers and Che Ajulu. March 2008 South Africa's economic diplomacy: trade and investment promotion. Report prepared for The Presidency's Fifteen Year Review. Institute for Global Dialogue

existing sub-regional bodies such as SADC and created a new sub-region to negotiate the EPAs on the African continent. SADC is the sub-region that faced most of the consequences of EC reconfiguration of regional blocks. Out of the 15 SADC member states they were spread across and had its members negotiating in four different EPA configurations.[125] The Southern African sub-region is a sub-group of the SADC, comprising Angola, Botswana, Lesotho, Namibia, Swaziland, Mozambique and South Africa.[126] The other six members of the members of the traditional SADC region the Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe are negotiating Economic Partnership Agreements with the EU as part of other regional groups, namely Central Africa or Eastern and Southern Africa.[127]

The reconfiguration of the SADC sub-region negotiating the EPA added more complexities in the already complex sub-region in terms economic relations. In that Mozambique, Angola and Tanzania are members of SADC but at the same time Angola is also a member of Common Market for Eastern and Southern Africa (COMESA) and Tanzania a member of the East African Community. Moreover the Botswana, Lesotho Namibia and Swaziland (BLNS) countries are members of Southern African Customs union (SACU) which South Africa is a member. It was decided to include South Africa as a negotiating party in the SADC EPA configuration and propose a single trade deal to govern all trade between the two regions.[128] The final group of countries that was designated Southern African EPA group is made up of seven countries, Angola, Mozambique, BLNS countries and South Africa. Rob Davies argues that in Southern Africa, members of the SADC have found themselves divided into no less than five separate negotiating configurations. Each of these has reached agreements involving somewhat different obligations towards the EU, the implications of which SADC has yet to examine in detail. Even within the configuration, designated SADC EPA, which consists of the five members of the SACU plus Mozambique and Angola, we find that three members of SACU and one other country initialled late last year, whilst one other did so later and under protest.[129]

South Africa joined the SADC EPA Group in February 2006 in an attempt to resist further fragmentation in SADC. At the time when South Africa joined the EPA negotiations the

[125] Elijah Munyuk. 2011
[126] See European Commission. Trade Policy. Countries and regions, Southern African Development Community (SADC). Available online http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/ Accessed 15 January 2015
[127] ibid
[128] McCarthy, C.L., Kruger, P., Fourie, J. July 2007. Benchmarking EPA negotiations between EU and SADC. P 15
[129] Rob Davies. 2008. Bridging the divide: the SADC EPA. *Trade Negotiations Insights*. Volume 7. Number 4/May 2008

decision was not officially recognised by the EC it was still a framework by the SADC EPA. McCarthy, Kruger and Fourie confirm that on 7 March 2006, the SADC EPA group presented this adopted framework document to the EC in which SADC trade Ministers proposed to include South Africa in the SADC EPA configuration as a negotiating party and suggested that the TDCA review be aligned with the EPA negotiations.[130] The EC discussed and approved the proposal to include South Africa and was made official by the EU Council of Ministers and as official response presented to the SADC EPA group on 23 February 2007. Thereafter the proposal to include South Africa into the configuration as an active negotiating party was adopted by the Council.[131]

South Africa's objective in joining the EPA negotiations was to harmonise the region's various trading regimes with the EU into a single approach (thus strengthening regional integration), and to address some of the more defensive concerns of Botswana, Lesotho, Namibia and Swaziland. The SADC position held that the reciprocity required for WTO-compatibility had been effectively dealt with by virtue of South Africa's TDCA with the EU, which de facto applies to the BLNS.[132] The reconfiguration of the SADC sub-region was a major challenge for the negotiations nonetheless it was not the only major concern between the negotiating parties to the EPA. There were other challenges that were more pressing for both parties which needed to be attended to for there to be an EPA at the end of the process.

3.2. South Africa's main concerns with the Southern African Development Community Economic Partnership Agreement

3.2.1 Singapore issues

The Singapore issues/new generation (these are 'behind the border' issues, such as competition, government procurement, intellectual property, and trade facilitation) are contained in the EU council decision as the EPAs are meant to include substantially all trade which also covers the Singapore issues include services, Intellectual Property, investment, competition and government procurement. All SADC EPA States, except South Africa and Namibia, agreed to negotiate services and investment, and have further agreed to consider competition and government procurement for future negotiations. In this way, a new

[130] McCarthy, Kruger and Fourie, 2007: 15
[131] McCarthy, Kruger, Fourie, 2007: 6.
[132] SADC EPA Group - EC Negotiations: Assessing the Emerging Outcome. 30 January 2008, Pretoria

generation of division has opened in the region's trade policy.[133] South Africa and Namibia had argued that, there is no compulsion to negotiate the so-called new generation trade issues under the EPA to meet the requirements of WTO compatibility. Neither the Cotonou Agreement nor the TDCA contain any obligation in these areas. Furthermore the same issues were under negotiation in the WTO. Additional to that SADC EPA Member States had limited institutional and negotiating capacity, which would be severely strained if these issues were to be negotiated under the EPA. Further, new generation trade issues would pose serious policy challenges as SADC has no common policies in these areas.[134] South Africa's insistence on not negotiating the Singapore issues paid off in that the EC agreed in the negotiations that the new generation issues will not be included in the EPA negotiations however there is a provision that these issues will be negotiated once the EPA has been concluded. This agreement is known as the rendezvous clause.

3.2.2 Market access

In South Africa's case improved market access into the European Union market was important. Given that South African negotiators knew that the scope to make more gains in terms of market access into the EU was very limited compared to all the neighbouring states they had joined back in 2006 to negotiate the Southern African-European Union EPA. As far as market access for goods is concerned, the Council confirms that due to South Africa's level of development and degree of competitiveness, the granting of different treatment for the access of South African products to the EU market is unavoidable.[135] This decision by the EC was not unexpected as the EU had entered into the bilateral trade agreement the TDCA which was mainly due to the economic prowess of the South African economy in the SADC sub-region. Secondly the decision was attributable to that the majority of the SADC group countries were LDCs including Lesotho in the Botswana, Lesotho, Namibia and Swaziland group of countries and Mozambique and Angola trading with the EU under Everything but Arms initiative which granted them quota free duty free access to the EU market. The EU is the most important trading partner of South Africa and South Africa's main destination for exports, with a share of 17.6 percent of the total country's exports in 2012. The EU is the main source of South Africa's imports, with a share of 24.4 percent of the total country's

[133] SADC EPA Group - EC Negotiations: Assessing the Emerging Outcome. 30 January 2008, Pretoria
[134] Ibid
[135] McCarthy, C.L., Kruger, P., Fourie, J. July 2007. Benchmarking EPA negotiations between EU and SADC. p9

imports in 2012. South Africa's exports to the EU are growing and the composition of these exports is becoming more diverse. Since 2004, total trade between South African and the EU has increased by 128 percent. EU-South Africa trade in goods represented 47.1 billion Euros in 2012; South Africa was the EU's 17th largest trading partner in 2012. In line with the TDCA, the EU has eliminated tariffs on 92 percent of all tariff lines, while South Africa has done away with tariffs on 72 percent of its tariff lines.[136]

Market access is not only important to South Africa as the EU is a major destination for SADC's exports nevertheless it is critical to South Africa as it has the most liberalised access to EU imports in the SADC region.[137] Consequently in 2009 Botswana, Lesotho and Swaziland (BLS) ignored a key provision of the Southern African Customs Union when they concluded their trade deal with the European Union. The BLS concluded the interim EPA as means to ensuring continued access for their exports to the EU. This was a result of the WTO waiver expiring in 2007 which had allowed all countries that had yet to conclude an EPA to trade uninterrupted whilst they were negotiating the EPAs. Responding to the three countries signing the Interim EPA South Africa's trade minister Dr Rob Davies warned the signatories South Africa is prepared to set up trade barriers to protect itself from cheap imports from the EU. Furthermore South Africa would step up border controls with the countries as more favourable rules of origin under the EPA would threaten its vulnerable clothing and textile sectors.[138] There was no need for South Africa to take any aggressive measures as the Interim agreements between the EC and the BLS were never ratified. Nonetheless there had been an impasse in the negotiations from 2009 and about two years later during the EC-SADC EPA senior Officials meeting held on 29th-30th May 2012, an agreement was reached on how to resolve the long standing impasse on the negotiations on the SACU Agricultural market access offer to the EC. As a result of the of the agreement on the agricultural market access the agreed EPA between SADC and the EC has more favourable access not only for South Africa but for the whole the member states of SADC group.

South Africa had managed to gain in terms of market access in the EPA negotiations concluded in July 2014. The South African minister of trade and industry Dr Rob Davies argued South Africa has achieved improved market access for 32 agricultural products; with

[136] World Trade Organization, 2014. International Trade Statistics 2014. www.wto.org/statistics
[137] Fact Sheet. EU-South Africa relations. General Secretariat of the Council-Press Office. Council of the European Union. Available online at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/138091.pdf Accessed on 27 July 2014
[138] Servaas van den Bosch, 2009. TRADE: EPA Signing Threatens Southern African Customs Union. Inter Press Service New Agency. Available online at http://www.ipsnews.net/2009/06/trade-epa-signing-threatens-southern-african-customs-union/ Accessed 21 January 2015

a significant improvement in access to the EU market for wine (110 million litres duty free), sugar (150 000 tons duty free) and ethanol (80 000 tons duty free).[139] There is also improved access for exports of flowers, some dairy, fruit and fruit products. The EPA allows for greater harmonisation with SACU, some improved access for South African wine, sugar and fruit products, and allows some policy space for export taxes compared to the TDCA, as well as some additional agricultural safeguards.[140] In return, the EU wanted recognition for several of its wines, cheeses, speciality meats and beers, while South Africa was pushing for recognition of its honeybush and rooibos teas, Karoo lamb and some of its wines.[141] This is a mutual recognition of Geographical Indicators (GI) between the SADC EPA group but more especially South Africa and the EC. This gives South Africa more protection for specific agricultural produce and agriculture has gained more in terms of access to the EU compared to the TDCA. GIs are less of an immediate interest to the other members of the SADC EPA Group given that the list presented by the EU covers products that are mainly produced by South Africa.[142]

3.2.3 Most Favoured Nation

MFN clause of the EPA stated that countries of the SADC EPA group will automatically extend any preferential access granted to any other major trading partners the SADC sign trade agreements in the future. That was in the case the SADC group granted conditions of access which were comparably more favourable those granted to the EU by the SADC countries under the Economic Partnership Agreement. The SADC EPA considers a major trading country as a developed country or any country whose world share of merchandise exports is higher than one percent (1.5 percent for a group of countries) before the entry into force of the EPA. Before any extension, the SADC group will have to demonstrate that it has given substantially more favourable treatment to the major trading country.[143] For SADC group of countries in general and South Africa in particular the major cost of the MFN is that the MFN clause restricts South Africa's freedom to conclude other FTAs with non-EU major trading countries defined as those with a share of world merchandise trade of more than one

[139] Rob Davies, 2014. SAnews.gov.za. SA to benefit from economic pact with EU. Available online at http://www.sanews.gov.za/business/sa-benefit-economic-pact-eu Accessed 21 July 2014
[140] Rob Davies, 2014
[141] ibid
[142] Catherine Grant Makokera and Lambert Botha, 2011. South Africa - European Union Trade: Age-old Chestnuts and Dealmakers. South African Institute of International Affairs. Available online at http://www.saiia.org.za/opinion-analysis/south-africa-european-union-trade-age-old-chestnuts-and-dealmakers Accessed 26 August 2014.
[143] Isabelle Ramdoo, 2014. ECOWAS and SADC Economic Partnership Agreements: A Comparative Analysis. Discussion Paper No. 165. September 2014. ECDPM. www.ecdpm.org/dp165

percent. This would certainly constrain South Africa's ability to conclude agreements with countries like Brazil, Russia, China and India (BRIC). South Africa's partnership with these countries has become an important part of the political economy of multilateral agreements at the WTO.[144] For South Africa its BRICS partners are a growing source of both political and economic support and as the MFN stood when it was introduced it would have limited the capacity of South Africa in concluding future trade agreements with BRICS partners and countries like China and moreover this MFN would have a significant impact of the AGOA negotiations with the USA.

The MFN clause had been included in the EPAs negotiations as means to align the EPAs with the provisions of the WTO thereby making the EPA compatible with the WTO provision on none discrimination. The EPAs in succeeding the CPA which contained preferences that were not compatible with the rules of the WTO, as they discriminated against non-ACP developing countries. This was a breach of a fundamental principle of the Most Favoured Nation treatment as set out in Article I of the GATT 1994 of the WTO, which states that a WTO member (the EU) cannot discriminate between members when granting preferences. In July 2014 the announcement was made that SADC EPA negotiations had been concluded. The agreement was reached outlining that the long-contentious issue concerning the inclusion of a MFN clause in the EPA having apparently been resolved it has been agreed that there will no longer be an obligation on the SACU to automatically extend advantages granted to other trading partners to the EU.[145] This then means that there is a mechanism set out to resolve and settle disputes regarding the MFN clause and that as alluded above access granted to a third party given they are outside the ACP and meet the other criteria will not be automatically be reciprocated to the EU. Regarding the MFN there were under issues inter alia export taxes, which had made the negotiations difficult, with South Africa objecting to the EU's demands for a prohibition on export taxes, for most favourable nation status, and what it saw as a lack of give and take, especially over more access for its agricultural and agro-processed goods as well as the final wording on export taxes and GIs.[146]

[144] Manoj Pant. 2009. The Costs and Benefits to South Africa of joining the SADC EPA. December, 2009. Centre for International Trade and Development. School of International Studies. Jawaharlal Nehru University, New Delhi. INDIA. P4

[145] Sean Woolfrey, 2014. The endgame of the EU-SADC EPA negotiations. Tralac. Available online at http://www.tralac.org/discussions/article/5557-the-endgame-of-the-eu-sadc-epa-negotiations.html Accessed 20 July 2014

[146] SAnews.gov.za. SA to benefit from economic pact with EU. Available online at http://www.sanews.gov.za/business/sa-benefit-economic-pact-eu .Accessed 21 July 2014.

3.2.4 Development and Developmental Funding

EPAs essentially embody the principal objectives of the Cotonou Agreement, namely to reduce and eventually eradicate poverty in the ACP states consistent with the objectives of sustainable development, which can only mean diversified growth, and the gradual integration of the ACP countries into the global economy.[147] Trade and development are implicitly and explicitly linked in the EPA mechanism. On the one hand it can be argued that growth in trade through improved market access facilitates (some would even say drives) economic development. On the other hand the argument could also be that the inclusion of trade-related rules and other issues in the negotiation process could be an important factor in encouraging development.[148] The development aspect of the EPAs has been advanced by the EC in all EPA negotiations in the different regions of ACP and the subsequent sub-regional negotiating parties to the EU-EPAs. The EC in the respective regions of the ACP has advanced the notion of trade for development a move meant move the ACP member states away from reliance on EU trade and rather endeavour to grow and develop their economies in order to facilitate more sustainable development. In the case of South Africa the EU is the most important donor by far, the EU and its member states provide together approximately 70 percent of the total cooperation funds, 1.3 percent of the South African budget, i.e. 0.3 percent of the GDP. EU development cooperation with South Africa is financed from the EU budget under the Development Cooperation Instrument. Unlike the ECOWAS sub-region negotiating the EPA SADC sub-region failed to get a commitment from the EC to set aside an amount for development funding in the sub-region.

3.3 Way Forward

3.3.1 Southern African Sub-Region

ECOWAS was the first sub-region in Africa to conclude and officially endorse a regional EPA on 10th July 2014. They were followed by the SADC EPA group, when chief negotiators 'initialled' the EPA on 15th July 2014, marking the conclusion of 12 years of negotiations on trade in goods with the EU. While these agreements are sufficient to ensure access of key products to the EU market, negotiations are however expected to continue on services, investment and other trade related issues to ensure a comprehensive framework that is set to

[147] McCarthy, Kruger and Fourie, 2007: 27
[148] McCarthy, Kruger and Fourie, 2007:20

govern trade ties between African regions and Europe.[149] After 10 years of hard negotiations the European Union finally concluded a deal with South Africa, Botswana, Lesotho, Namibia, Swaziland and Mozambique for a Southern African Development Community EPA on 15th July 2014.[150] This means that negotiations between the SADC sub-group as well SACU member states and the European Commission have been officially concluded after more than ten years of negotiating the Economic Partnership Agreement.

The agreement was initialled by the Chief Negotiators in Pretoria, South Africa. While Angola was part of the negotiations, it did not conclude the EPA. Therefore, the current SADC EPA consists of only six countries.[151] As a group, the SADC EPA group is expected to liberalise 80 percent of its trade with the EU. The market access schedule consists of two distinct lists: The first one covering the SACU region, namely Botswana, Lesotho, Namibia, Swaziland and South Africa and another one covering Mozambique, whose market access scheduled had been agreed already in 2007. The two market access schedules have yet not been merged and therefore still remain separated. There is however an annex to the text for Mozambique to update its tariff nomenclature and to subsequently submit an updated tariff schedule, including the staging categories proposed by Mozambique during the negotiations. However, the text of the agreement is applicable to the entire SADC EPA group.[152]

In the case of the SADC EPA group of countries the EPA has managed to preserve the CET which binds the SACU together as all Member States have initialled the agreement and will, in all likelihood, proceed to sign and ratify it; the EPA has flexible Rules of Origin (ROOs) which will facilitate intra-regional trade and industrialisation across Africa; SADC sub-region have also managed to negotiate flexible terms for export taxes. In addition, as SADC we also managed to get agreement from the EU that they will eliminate export subsidies on agricultural goods destined for the SACU market; SADC negotiating group also managed to restore a safeguard safety-net for BLNS.[153]

The safe guards are in such a manner that they state that the least developed countries will not have to grant market access to EU imports to the extent that South Africa will be required to immediately. In terms of the process and timeframe for entry into force, the agreement will

[149] Ramdoo, 2014: 3
[150] Peter Fabricius, 2014. EU made big concessions to SADC for strategic EPA. Available online at http://www.iol.co.za/business/news/eu-made-big-concessions-to-sadc-for-strategic-epa-1.1726392 . Accessed 29 July 2014.
[151] Isabelle Ramdoo, 2014: 4
[152] Isabelle Ramdoo, 2014: 5
[153] Ministry of trade and industry, Republic of Botswana. Available on line at http://www.mti.gov.bw/content/conclusion-negotiations-eu-sadc-epa . Accessed 20 July 2014

first be subjected to a two-month legal vetting process. "Thereafter, the agreement can be presented to the South African Cabinet and, if approved, submitted to the Parliament for ratification," said Minister Davies.[154] Once ratified, the agreement may be signed, and it will enter into force once all parties have concluded their own respective national approval processes. According to Minister Davies, the timeframe for this process is likely to be around eight months. He said negotiating the agreement was a major achievement for the region, adding that it paves the legal basis for the relationship between African countries participating in a future tripartite free trade agreement and Europe.[155] Ratification can take some time but provisional application will allow for interim access into each other's markets. This will neutralise the danger that exports from the BLNS countries would have lost their duty free quota free access into the EU after October 2014; the deadline set by the European Commission for discontinuing unilateral preferential access of goods from these SADC states.[156]

3.3.2 West African Sub-Region

The ECOWAS region was the first region on the African continent to conclude EPA negotiation with the EC. The West African-European Union negotiations of the Economic Partnership Agreement were closed by Chief Negotiators on 6th February in Brussels and the agreement was initialled on 30th June 2014. On 10th July 2014, ECOWAS Heads of States endorsed the EPA for signature.[157] The agreement is the first Economic Partnership that brings together not only the 16 countries or the sub-region but also their two regional organisations: ECOWAS and the West African Economic and Monetary Union [(WAEMU) or (UEMOA) in French]. This is a clear indication of the West African drive towards closer regional integration, which the EPA seeks to support.[158] The ECOWAS issued a communique in Accra, Ghana, at the end of their one-day summit, ECOWAS leaders declared: The Heads of State and Government decisively approve the EPA negotiated and take due account of the technical concerns raised. They instructed the West African Chief Negotiator "to take appropriate steps to begin the process of signing and implementing the agreement. The communique went further to assert the agreement reached as fair, balanced and mutually

[154] Rob Davies, 2014, http://www.sanews.gov.za/business/sa-benefit-economic-pact-eu .Accessed 21 July 2014.
[155] Rob Davies, 2014.
[156] Gerhard Erasmus, 2014. The Conclusion of the SADC EPA. Tralac. Available online at http://www.tralac.org/discussions/article/5925-the-conclusion-of-the-sadc-epa.html .Accessed . 24th July 2014.
[157] Overview of EPA Negotiations. 2014. Economic Partnership Agreements. Updated July. European commission.
[158] Economic Partnership Agreement with West Africa - Facts and figures. EU-West Africa EPA. Date: 23/07/2014.

beneficial to ECOWAS and the EU.[159] For ECOWAS the concluded EPA will mean the EU will immediately offer the 15-member ECOWAS and non-member state Mauritania full access to its markets. In return, ECOWAS will gradually open up seventy five percent of its markets, with its 300 million consumers, to Europe over a 20-year period.[160] The timing of the conclusion of both the ECOWAS and SADC EPAs is important. It pre-empts the 1st October 2014 deadline, after which all non-LDCs in both groups (i.e. Ghana and Ivory Cost in ECOWAS and Botswana, Namibia and Swaziland in the SADC group) would have otherwise lost their duty-free quota-free preferences for their main exports to the EU market, and fall back on the Generalised System of Preferences or in the case of Botswana, would lose all preferences after 2016 when the transitional period accorded to upper middle-income countries expires.[161]

The celebration for the conclusion of the West African EPA were short lived as one of the more important parties to the negotiations did not conclude the EPA. Nigeria was not part of the countries that concluded the West African EPA in July with the EC. The Nigerian Minister of Industry, Trade and Investment, Mr. Olusegun Aganga addressing the question as to why Nigeria had not initialled the EPA the minister argued the Economic Partnership Agreements were not in the overall best interest of the nation's economy as the major consideration for the Federal Government is the overall well-being of the Nigerian economy[162]. The EPA is not in the interest economy due in large part that given Nigeria's current condition as an import-dependent economy, it would be counter-productive to completely open its doors for imports without first of all developing its industrial sector to compete globally, especially in those sectors where the country has comparative and competitive advantage as provided in the Nigeria Industrial Revolution Plan recently launched by President Goodluck Jonathan.[163]

Another main rationale put forward by Nigeria in responding to the ECOWAS-EU EPA deal had to do with that the impact studies previously commissioned to assess the potential impact of the EPA on the Nigerian economy had understated the impact. The new study the government was referencing included stakeholders from the Manufacturers Association of

[159] Final Communique: Forty –Fifth Ordinary Session of the Authority of ECOWAS Heads of State and Government. N°: 134/2014 10 July 2014 [Accra-Ghana]. Available online at http://news.ecowas.int/presseshow.php?nb=134&lang=en&annee=2014 .Accessed 5 Dec 2014
[160] The Federal Ministry of Trade and Investment, Nigeria. Why Nigeria did not sign EU/ECOWAS trade liberalisation agreement – Aganga. 2014. Available online at http://www.fmti.gov.ng/component/content/article/49-fmti-news/177-why-nigeria-did-not-sign-euecowas.html Accessed 20 July 2014
[161] Ramdoo, 2014: 3
[162] See http://www.fmti.gov.ng/component/content/article/49-fmti-news/177-why-nigeria-did-not-sign-euecowas.html
[163] Ibid

Nigeria (MAN), National Association of Nigerian Traders (NANTS), Nigerian Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA), and other government officials that made assertions against the EPA. Ken Ukaoha avers the Nigerian government had commissioned consultants to review the impact of the outcomes of the negotiations on Nigeria. The result was that the impact of the conclusions of the EPA on Nigeria was more deadly than originally envisaged.[164] For instance, the outcome shows: i) a more than fifty percent decline in tariff revenue over the period if Nigeria signs the EPA and about 0.4 percent if Nigerian remains without the EPA. ii) Nigeria's current account will deteriorate with EPA liberalisation scenario at about 3.5 percent. iii) Impact on the GDP growth path becomes dramatic from 2025 with about three percent as deviations between the two scenarios not too distinctive before 2025; iv) Total government revenue drops relative to the baseline due to tariff cuts, resulting in fall in government savings, drop in national savings, drop in public and private investment demand.[165]

This ultimately means that the recently concluded EPA in the West African sub-region is without the region's most populous and biggest and more diversified economy. The impact of such an EPA group without Nigeria in the sub region is not yet known and as well as to how in the long run this may influence other economies in the sub-region is also not yet clear. Nevertheless what is clear is that Nigeria has not endorsed the ECOWAS EPA thus the negotiations between Nigeria and EC are likely to continue in the near future to include Nigeria in the broader sub-regional EPA. Thus far there has not been an indication from the Nigerian negotiators nor the Nigerian government that they may reopen the Economic Partnership Agreement negotiations in the near future.

[164] Ken UKAOHA, 2014. Secretariat President. Pan African Chamber of commerce and industry. National Association of Nigerian Traders (NANTS). Available online at http://www.pacci.org/cp/contentadmin/index.php?news=147
[165] For more detail see Ken UKAOHA, 2014. http://www.pacci.org/cp/contentadmin/index.php?news=147

Chapter 4

Nigeria and South Africa Case Studies Analysis

4.1 Nigeria's Economic and Trade Relations with the European Union

Nigeria is more reliant on international trade compared to the EU given their heavy dependence on imports including basic goods/staples in order to keep the country's economy moving forward. Nigeria does not only imports machinery, vehicles and equipment from a variety of country it also imports staples such as grain. A substantial amount of imports coming into Nigeria are from the EU, the EU is also a major destination for Nigeria's crude oil exports. In terms of market access agreed with the West African EPA group Nigeria would have had to in terms of product coverage, liberalise 75 percent of its tariff lines, based on its common external tariff, over a period of 20 years.[166] The Nigerian economy is reflective or similar to the economy of the whole West African sub-region, in that country's main export are basically raw material exported to the EU whilst in return the sub-region and Nigeria import mostly finished goods.

The ECOWAS region's two main export products to Europe are fuels and cocoa, accounting for forty five percent and twenty one percent of total EU-bound exports in 2004 respectively. Despite efforts to integrate into the world economy, West Africa has thus far been unable to benefit from the global trade liberalisation trends.[167] Given the promise from the previous Cotonou Partnership Agreement to further integrate Africa, Caribbean and Pacific countries into the world economy had not succeeded. Consequently it meant even though Nigeria is a large regional player, its share of world trade is very small, accounting for about 0.7 percent of global exports and 0.4 percent of global imports. The figures for Europe are a little higher - 0.8 and 0.6 percent of EU exports and imports respectively.[168] The decline in the share of world trade Nigeria is not alone West Africa's share of world trade as a whole has decreased from approximately five percent in 1980 to less than one percent in 2004.[169] Given the current trade figures compared to those in 1980s paint a picture of weak economies in the West African sub-region including that of Nigeria. It is no wonder that Nigeria found the EU's deal on the EPA in general and the market access clause in particular not to be in the country's overall interests especially in the long term of the implementation of the agreement.

[166] Ramdoo, 2014
[167] InBrief No. 14B - November 2006: 2
[168] European Commission, 2007. Nigeria and the European Union Trade for Development: An Introduction to the Economic Partnership Agreement, Directorate-General for Trade, Directorate-General for Development and European Commission Delegation in Nigeria
[169] European Commission, 2007: 10

Given that over ninety eight percent of exports from West Africa already enter the EU without the payment of customs duties. Despite this market access, the region is still unable to maintain its market share, or diversify its exports.[170]

Back in July 2014 when the Nigerian government seemed to have put aside its reservations regarding the EPA Quentin de Roquefeuil argued the approval is a good sign for regional integration in West Africa in so far as fragmentation has been averted. The Nigerian government seemed to have made the decision that sticking to its regional neighbours, which had by now all agreed on the compromise text, was more important than rejecting an agreement it had deep reservations about[171]. Therefore Nigeria's response not to conclude the ECOWAS-EU EPA came as a surprise bearing in mind that the EC had believed that all the major concerns had been ironed out. As it appeared the EC's assertions that EPA's regional market provides an opportunity for countries like Nigeria to develop and strengthen their commercial operations before accessing the global market. The EC emphasised the point that the ECOWAS EPA will help firms develop their business, address supply side constraints (such as expensive inputs), and provide excellent opportunities for diversification and specialisation. The EPA's stable and transparent rules will also encourage much needed investment.[172] Such assertions by the EC did very little to appease the Nigerian negotiating party.

The fact that the Nigeria government had given the ECOWAS their key concerns which the ECOWAS with the assistance of the Ghanaian and Senegalese presidents together with the EU commissioner had reviewed and came to an agreement as to how they would be fixed. It would have come as a surprise when the Federal Government of Nigeria renege on the conclusion of the ECOWAS EPA as they both the EC and other ECOWAS member states had anticipated a smooth move into the process of ratifying the and implementation of the EPAs in respective constituent states that make up ECOWAS. Both the EC and ECOWAS anticipated that they had adequately addressed the concerns of the Nigerian government given that they anticipated a smooth transition to the ratifying the EPA and thereafter its implementation in the sub-region. For Nigeria in these negotiations it was paramount to demonstrate to their regional partners and the European Union that as a leading power in the sub-region they do look out for the best interest of not only Nigeria and its people rather for

[170] European Commission, 2007: 12
[171] Quentin de Roquefeuil, 2014. EPA update. GREAT insights, Volume 3, Issue 7. July/August 2014. Available online at http://ecdpm.org/great-insights/extractive-sector-african-perspectives/epa-update-july-august-2014/ . Accessed December 10 2014.
[172] European commission, 2007: 14

the whole West African sub-region. This is more important in the sub-region of ECOWAS as its economies are on the rise and are pursuing diversification and industrialisation of their economies in order to better capture more Foreign Direct Investment (FDI) to create jobs for their mainly young populations and in doing alleviating poverty.

4.2 Nigeria's role in the EPA negotiations and their responses

The West African sub-region negotiating the EPA with the EU was made up of Benin, Burkina Faso, The Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone, Togo, Mauritania which as LDCs trade under EBA, Ivory Coast, Ghana trade with the EU under Market Access Regulation 1528/2007 and GSP, Cape Verde traded under Generalised System of Preferences Plus (GSP+) and Nigeria traded under GSP. Nigeria together with the Ivory Coast and Ghana are considered Low Income Countries (LIC). Cape Verde was upgraded to the GSP plus on the 9th December 2011, which has recently graduated from being an LDC status. It is the first African nation to join the GSP plus scheme, allowing for its fish products to enter the EU duty-free.[173] For the sub-region's leading economy the graduation into the GSP plus was not forthcoming from the EC as Nigeria unsuccessfully applied for GSP plus for the 2009-2011 periods due to non-ratification of one of the 27 required treaties, the Convention on Prevention and Punishment of the Crime of Genocide (Genocide Convention). Nigeria officially became a party to this Convention on 27 July 2009.[174] Despite Nigeria ratifying the treaty the EU never changed the status of Nigeria from the GSP to GSP plus even though Nigeria had satisfied all the required treaty obligations to qualify for the upgrade.

The frustration with both the EC and EU notwithstanding Nigeria stayed in the EPA negotiations whilst in the whole ECOWAS it was receiving the least favourable access to the EU market despite having met the necessary condition for more favourable access to the EU's market. As a result of not gaining the GSP plus it meant Nigeria lost competitive advantage in the sub-region compared to its ECOWAS partners which translated into major revenue losses for the Nigerian economy. Despite these challenges Nigeria put ECOWAS interests' above its own as it continued to pursue more favourable market access even after

[173] Aileen Kwa, Peter Lunenborg, and Wase Musonge, 2014. African, Caribbean and Pacific (ACP) countries' positions on Economic Partnership Agreements (EPAs). DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION. DIRECTORATE B. POLICY DEPARTMENT. P 21

[174] Aileen Kwa, Peter Lunenborg and Wase Musonge, 2014: 22

Ivory Coast and Ghana had concluded individual interim EPA with the EC. Such actions by Nigeria can be logically explicated by that Nigeria sort a strengthened ECOWAS sub-region which would be able to hold its own despite being pushed into difficult positions by its major trading partners. From this it is evident that regional integration objectives for Nigeria were of paramount interest.

Another factor that played in Nigeria's favour was the loss of more favourable market access to the EU market. This was a positive in that it had allowed Nigeria to assess how its economy performs in relation to other regional economies that enjoyed more favourable terms of trade with the EU. Given that the Nigerian economy did not collapse meant that Nigeria's economy was able to find alternatives to the EU market for its exports, especially as the country's major exports and foreign currency earner is crude oil. The alternatives for both Nigerian imports and export in all likelihood came from none ACP states and China which its share of trade with Africa is increasing annually. As argued above that intra ECOWAS trade had been in decline from about five percent in the 1980s to around one percent by 2004. This means that the sub-region was trading more and more with other parts of the worlds.

Diversification of import sources and exports destination is a critical for a developing economy. It is even more so in the time of economic hardship which Nigeria in the process of negotiating the EPA find its self in. Starting from the early stages of the EPAs there was the global financial crisis and more recently the decline in global oil prices. Nigeria had and continues to deal with the impact of such global challenges. Therefore given the MFN clause of the EPA which would limit policy options for Nigeria in entering into free trade agreements with major trading economies it was in their interest to evaluate the impact of the decision to join the EPA. Trade with the leading economies and the emerging economies will continue to be more important as intra-regional and intracontinental trade in Africa lags behind inter-continental trade. Consequently it is vital to have manoeuvring room to conclude trade agreement with the likes of the USA given the role played by AGOA in opening up the US market to African exporters. China is another country that its importance is growing on the continent the same can be said for the likes of India, Brazil and other emerging regions internationally outside of the EU, this then has given Nigeria more option in terms of trading partners. Moreover the MFN clause made no economic sense for Nigeria as it only inhibits Nigerian trade options as, ninety five percent of Nigeria's exports to the EU already attract zero per cent duty; and even with the recent down-grading of Nigeria's status to GSP, only its

exports of tuna will attract twenty percent plus duty in the EU's market.[175] As a result Nigeria does not have much to gain from concluding the EPA especially with regards to market access as its export to the EU are dominated by oil not only in terms of quantity but the share of exports earnings.

EPA negotiations will nevertheless leave a mark on EU West Africa relations. The agreement is, to this day, deeply unpopular in most countries in the sub-region. Even though the agreement is flexible with twenty five percent of trade not covered, and extensive safeguards available the European Commission's track record of handling these negotiations is not spotless. It is hoped that Europe can find better, more constructive ways of engaging with its African partners on trade in the future.[176] The EC track records in the negotiations includes but not limited to pressuring Ivory Coast and Ghana in the West African region into concluding the IEPA by due to the threat of market access loss due to the expiry of the WTO waiver.

Nigeria had expressed their concerns with the West African EPA text which does not reflect the needs and priorities of ECOWAS member states. They explained that Nigeria insisted on exclusion of certain pharmaceutical products, especially the types that are produced in Nigeria, but that these concerns are not taken on board. The pharmaceutical industry in Nigeria is of strategic importance given the country's population of around 150 million and growing middle class. This industry plays an important role in the health sector. Opening this industry to the EU's pharmaceutical manufactures will mean that Nigeria manufacturers are driven out of the market as they cannot compete with the expertise, capital and market prowess of the EU manufacturers. Trade diversion resulting from the loss of such an industry would mean a loss of jobs and deindustrialisation at a time when both are needed to grow the Nigerian economy. Amongst other issues that Nigeria was concern about with regards to the West African EPA include loss of tariff revenue; loss of industrial capacity/output and employment; loss of policy autonomy; inadequacy of EPA-related support fund.[177] The EC did not adequately address such issues which resulted in Nigeria not concluding the EPA.

While reiterating Nigeria's position on EPA, the Minister of Industry, Trade and Investment, Mr. Olusegun Aganga, said, Nigeria's position on EPA is very clear. Africa is on the rise. It

[175] Chibuzo N. Nwoke, 2009: 17

[176] Edcpm, 2014. West Africa becomes the first African region to conclude an EPA. Available online at http://ecdpm.org/news/west-africa-becomes-first-african-region-conclude-epa/ . accessed 20 August 2014.

[177] Hamisu Muhammad and Sunday Michael Ogwu, 2014. Nigeria: Experts Warn of Collapse of Nigeria's Manufacturing Sector Over EPA. Available online at http://allafrica.com/stories/201410280511.html

is a very big and strategic market for any trading partner. That is what the EU wants from us but Africa must jealously protect what it has. West Africa should leverage our abundant natural resources and large market to develop our industries; create jobs for our people; increase intra-African trade and achieve regional integration. West Africa must not be in a hurry to give away what we have. West Africa must not sign an agreement without first of all carrying out a robust economic analysis of the overall impact the agreement will have on the region, our children and future generations.[178] The minister argued for a more measures approach to the EPA negotiations, countries negotiating trade agreements with their major trading partners ought not to take the envisaged benefits of any agreement from those pushing the agreement as the EC is advocating the EPAs. The lessons from Nigeria's actions are despite not having the clout to shape the negotiations with powerful counter parts such as the EC countries such as those form the West African sub-region should not accept the terms of trade as they are in the text, there should be compromises.

4.3 South Africa's Economic and Trade Relations with the European Union

The EU recognises that South Africa, occupies a position of geo-strategic importance in the in the African region and Southern African sub-region. It is the only African member of the G20 and the BRICS and was a non-permanent member of the Unite Nations Security Council in 2011-2012.[179] Trade relations between South Africa and EU are once more evolving from the TDCA to the much more liberalised Economic Partnership Agreement recently concluded between the EU and SADC group of countries including South Africa. As a group, the SADC EPA group is expected to liberalise eighty percent of its trade with the EU furthermore for South Africa the EPA now includes ninety eight percent duty free coverage for industrial products and sixty percent for agricultural products from South Africa.[180] Because of the existence of the SACU agreement in the Southern African sub-region negotiating the EPA means that BLNS, while they benefit from DFQF on the EU market, as a result of a common offer to the EU, they nevertheless had to make additional efforts to open their markets for some products that they considered sensitive because there were strong interests from the EU for such products in South Africa. Therefore the BLNS countries had to concede much more because of the inclusion of South Africa.

[178] Nkiruka Nnorom, 2014. Nigeria, Zambia, Others to Boycott EU Trade Agreement. Available online at http://allafrica.com/stories/201405010237.html. Accessed. 20 June 2014.
[179] See Fact Sheet EU-South Africa relations
[180] Ramdoo, 2014: 7

The rules of origin in both ECOWAS and SADC EPAs are quite flexible. South Africa is the European Union's largest trading partner in Africa. South Africa is by far the strongest of sub-Saharan Africa's economies. South Africa's exports to the EU are growing and the composition of these exports is becoming more diverse. South Africa is gradually moving from mainly commodity-based products to a more diversified export profile that includes manufactured products.[181] A consequence of South Africa's status as the strongest and the most diversified economy in Sub-Sahara means that it did not qualify for none reciprocal trade terms offered to both LDCs and LIC in the form of EBA and GSP schemes. South Africa's trade had been reciprocal be it asymmetrical (similar to EPA) under the TDCA. In terms of market access reciprocity from the beginning of the EPA negotiations was not a major concerns for South Africa given they had already had reciprocal trade agreement with the EC.

4.4 South Africa's Responses in the Negotiations

What constituted major concerns for South Africa throughout the SADC EPA negotiations were different and fluid topical issues for instance back in 2009 it was the Interim EPAs concluded by three countries Botswana, Lesotho and Swaziland. There was discomfort in that actions of the three countries will destroy regional integration in Southern Africa. There were fears that regional integration was in jeopardy after Botswana, Lesotho and Swaziland (BLS) ignored a key provision of the Southern African Customs Union when they initialled their trade deal with the European Union. The BLS initialled the Interim EPAs in response to the pressure applied by the EU as the EU remaindered the ACP countries if the EPA negotiations are not concluded and the agreement not ratified by the time the EU withdraws MAR 1528/2007, SADC EPA states will be affected in various ways.[182] Due to the BLS signing interim EPA Servaas van den Bosch asserts that the trade deals known as EPAs may derail the very process of regional integration which the European Union has purportedly wanted to promote with the EPAs. With the emergence of different tariffs (as determined by the EPA), SACU practically ceases to exist. The BLS countries ignored Article 31 of SACU which prohibits bilateral agreements with third parties. It is not only a question of how to rectify the problem of different trade regimes within SACU but the profit-sharing formula of the customs revenue pool will also need to be revised. For most members SACU monies are a primary source of revenue, contributing up to sixty percent of government income in some

[181] See European Commission. Trade Policy. Countries and regions, Southern African Development Community (SADC). Available online http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/ Accessed 15 January 2015
[182] South Centre, 2013: 13

cases.[183] South Africa responded to this by arguing that it will take strong measures to protect its economy from adverse effects that may occur as a result of BLS. This seemed to work as these agreements were never ratified.

Market access was a concern for South Africa however it was for certain specific aspects of terms of market access which were of particular interest. In the case of the most favoured nation clause cumulation was important for South Africa. South Africa and the sub-region gained in that the EC agreed to allow countries within the ACP group to cumulate amongst each other, they also allow countries to cumulate with other EPA signatory states. Furthermore, the rules of origin allows countries the possibility to source their inputs for cumulation from countries that have a free trade agreement with the EU and with countries that benefit from duty free quota free access under EU autonomous preferential regimes, such as the GSP and the EBA. Although cumulation with EU FTA partners and GSP/EBA countries does not apply to agricultural products, it allows EPA signatories to cumulate with LDCs on most industrial products.[184]

The most favoured nation clause became a salient issue that was most contested in the SADC EPA group. There is no denying that access to the EU market for South Africa is an important issue in international economic relations. The problem with EC's proposal was the automatic granting of any preferential access given to a third party given they amongst other things a major trading party globally. Trade with other major economies for South Africa will continue to become ever more important as South Africa's trade footprint has evolved over the past years. In 2000, for instance, Europe occupied the top position as South Africa's main export partner and received about one third of South Africa's exports. As time evolved, however, Asia's importance in the global trading environment grew and it usurped the top spot, with exports to Asia amounting to about thirty five percent of SA's exports in 2012 from just twenty three percent thirteen years ago. Subsequently, Europe is now the recipient of twenty three percent of SA exports.[185] Such figures point to the importance of maintaining policy flexibility and this was the case for South Africa as it sort to get a fair deal in term of policy flexibility whilst South Africa was negotiating the EPA. Being a member of BRICS played a role in how South Africa responded to the automatic nature of the MFN clause. Not only are BRICS partners a source and destination of South Africa's imports and exports they

[183] Servaas van den Bosch, 2009.
[184] Ramdoo, 2014:8
[185] Shireen Darmalingam, 2013. Macroeconomics South Africa: Trade Special Report. Part IV: SA trade picture—Africa's dominant position. 12 August 2013. Standard Bank. P5

provide South Africa together with other trading partners such as the USA and others with opportunity to diversity both their exports and imports. In the end the MFN clause did not include the automatic reciprocity rather there was an agreement for a dispute resolution mechanism in the event it is need.

The modification of the MFN was a welcomed compromise for the South African economy. The compromise has meant that BRICS as South Africa's largest trading partner will not be automatically subjected to the MFN clause of the EPA with the EU. Within the BRICS group of countries China is South Africa's largest trading partner not only within the BRICS formation but globally. Rob Davies in his National Day Celebrations of the People's Republic of China speech argued that economic cooperation and trade between South Africa and China have developed fast and has great potential. He continued to add that total trade between South Africa and China experienced an upward trajectory since 2009, growing from 118 billion Rands to 271 billion Rands by the end of 2013, but decreased to 261 billion Rands by the end of 2014. Between 2009 and 2014, total trade's growth rate highest peak was 36 percent in 2011, due to China's increased appetite for South Africa's raw commodities. China has set up more than 80 companies in South Africa since 1998, bringing its FDI (cumulatively) to nearly 6 billion Dollars.[186]

Trade relations between South Africa and other BRICS members are expected to continue to grow this growth is going to be affected by the failure or success of the recently launched BRICS Development Bank. Moreover there are still going to be a number of structural challenges facing BRICS as a whole which will have a significant impact on the South African economy. Some of the challenges are that BRICS is dominated by China which is not surprising as it is the World's second largest economy. This dominance means that if the Chinese economy declines smaller economies such as South Africa feel the negative impact. Secondly, BRICS economies are dominated by trade in commodities from oil, gas, and petroleum from Russia to minerals from South Africa this means that when commodity prices fall these economies take a strain. Lastly the decline of the economic growth rates across BRICS will pose a significant challenge to the group as a whole especially if the Chinese economy growth rate declines the sharpest. For South Africa the compromise reached with

[186] Rob Davies, Minister Rob Davies: National Day Celebrations of the People's Republic of China. Available online at http://www.gov.za/speeches/minister-rob-davies-national-day-celeberations-people%E2%80%99s-republic-china-29-sep-2015-0000 29 September, 2015 accessed on 20th Dec 2015

the EU regarding MFN clause is a positive as it can continue to negotiate trade deals within BRICS and with other trade partners without the need to automatically reciprocate to the EU.

The EPA negotiations offered an opportunity to improve South Africa's agricultural exports to the EU for a more equitable exchange of preferences in South Africa's agricultural trade with the EU and its member states. Under the existing free trade agreement between South Africa and the European Union, the Trade, Development and Cooperation Agreement, South Africa liberalised its agricultural markets more than the EU.[187] Agriculture as the minster alludes to was a key point in the negotiations. South Africa's major victories were in negotiating greater access to the EU market for thirty two agricultural products, especially wine with an increase in the quota from forty million litres to 110 million litres a year; sugar, with a new quota of 150 000 tons a year and ethanol, with a new quota of 80 000 tons a year, all duty free. South Africa previously had no duty-free quota for sugar and ethanol exports to the EU.[188] This marks an improvement in the accessing the EU market for South African produce going into the EU.

Additionally Rob Davies declared South Africa agreed to negotiate a Protocol on Geographical Indicators (GIs) because we have an interest in protecting the names of the many South African wines we export to the EU, and we have a growing interest to protect the names of specialised South African agricultural products (such as "rooibos", "honeybush" and "karoo lamb"). The outcome of the GI negotiations will not affect the product names currently being used by producers in South Africa and importantly, for our stakeholders, we established a mechanism to address non-tariff barriers that inhibit trade in wine. Negotiations on GIs were almost exclusively between the EU and South Africa as the other party had hardly gains they could derive from negotiating GI. In this case it clearly shows that South Africa chose to pursue and protects its interest above those of the regional partners. In relation to agriculture South Africa managed get commitments form the EU notwithstanding that it had initially opposed export taxes, it eventually compromised by allowing such taxes on eight products for twelve years, with some exception for exports to the EU. The EU further agreed to eliminate export subsidies on agricultural goods destined to the Southern African Customs Union, as well as more effective safeguards to address damaging surges of

[187] Rob Davies, The SADC EPA and beyond. In Ecdpm's Great Insights. Economic Partnership Agreements and beyond Volume 3. Issue 9. October/November 2014 www.ecdpm.org/GREAT

[188] Peter Fabricius, July 28 2014. EU made big concessions to SADC for strategic EPA. Available online at http://www.iol.co.za/business/news/eu-made-big-concessions-to-sadc-for-strategic-epa-1.1726392 Accessed 10 August 2014

imports.[189] The safe guards on the surge of imports is welcomed in the sub-region given that the EU did not set aside a development linked funding in the sub-regions as they did in West Africa with PAPED.

From the onset of South Africa's involvement in the EPA negotiations SA had maintained that new generation trade issues had no place in the EPA and thereby they were not prepared to negotiate on such issues. On that note the Minister of Trade and Industry in South Africa Rob Davies avowed that as a country SA welcomes the final agreement in the EPA to approach such new generation trade issues as government procurement and competition in terms that are cooperative and not legally binding. However, we are concerned that the ongoing negotiations on services and investment between the EC and some members of the SADC EPA Group, if concluded, will create a new generation of trade policy division in SADC and SACU.[190] Additionally such will have implications for the broader 15 member state SADC as there is no policy framework in the region that deals with new generation trade issues. However such concerns are not the only remaining concerns for the SADC EPA group. Issues on regional integration are still evident as Rob Davies argues our overriding concern remains that conclusion of the separate EPAs among different groupings of countries in Africa that do not correspond to existing regional arrangements will undermine Africa's wider integration efforts. If left unaddressed, such an outcome will haunt Africa's integration project for years to come.[191]

4.5 Findings

The evidence that suggests in the case of Nigeria the principle of reciprocity in the EPAs played a significant role in informing the decisions taken in relation to the EPAs whereas in the case of the Southern African EPA group South Africa's rationale and response were largely attributable to South Africa's pre-existing FTA with the EU the TDCA. Nigeria was more concern with reciprocity mainly for the larger ECOWAS sub-region not for Nigeria alone. For Nigeria the principle of reciprocity was major issue of concern due to the competition that their domestic manufacturers and traders would be subjected to because of opening up of the Nigerian market in particular and ECOWAS in general. However for the Nigerian negotiators the issues of regional integration, regional economic cooperation and increasing intra-regional trade were more pressing that reciprocity. This is not to argue that

[189] See Peter Fabricius, 2014
[190] Rob Davies, 2014: 11
[191] ibid

reciprocity was not a major concern as it was in the case of Nigeria. Reciprocity for South Africa did not have that much on an impact due in large part to the TDCA which had already liberalised trade between the EU and South Africa.

On the question whether EPAs negotiations stalled due to the influence and/or responses of Nigeria and South Africa? To qualify this point the negotiations had stalled at different stage of the negotiations it is difficult to say as to whether they had stalled due to actions of Nigeria in the West African sub-region or to South Africa actions in the South Africa sub-region every time they had stalled. Nonetheless at certain stages of the negotiations it is clear to point to the actions of both Nigeria and South Africa that had clearly caused the negotiations to be delayed. For example, towards the end of 2007 there was impetus in the negotiations in all the ACP regions to conclude the EPA including both West African and Southern African sub-regions. As a consequence of that Ivory Coast and Ghana concluded interim EPAs and in SADC EPA group of countries BLS did the same. In both case Nigeria and South Africa respectively responded negatively to such development. The countries that had concluded IEPAs had to go back to the negotiating table because they were forced to stop the process of ratifying those interim EPAs. I argue that the resulting impasse in the negotiations for nearly two years was a consequence of how these countries had responded to the pressure the EU and/or EC put on the individual states within the sub-regions to conclude the EPA. Evidence suggests in the ECOWAS sub-region Nigeria's actions to resist the push by the EC to open up the both the Nigerian economy and the broader ECOWAS economy from the onset by 80 percent as is set out in the EPA did lead to substantial delays in the negotiations. For a period of about two years offers and counter offers were made between the EC and ECOWAS regarding market access. The EPA concluded in by ECOWAS and EU settled on 75 percent market liberalisation not the initial 80 percent sort by the EU.

In addressing factors external and internal to the negotiations of the EPAs that may have informed the responses of Nigeria and South Africa. The emerging evidence points to the economies of the two countries as a major factor these countries considered/had influence on their decision making processes. For Nigeria given that about ninety five percent of their exports into the EU already qualify for quota free duty free access. This fact combined with the fact that Nigeria had applied and failed to be upgraded to the GSP plus scheme meant that for Nigeria the EPA were not seen to offer terms that were much better compared to the prevailing trade terms Nigeria currently has with the EU. The evidence shows that this was compounded by the impact studies that had shown that impact of the EPA will have adverse

effect on the country's economy both in the short and long run implementation of the EPA. The external factor that a large impact for Nigeria was the decline in oil prices that raised questions for Nigerian authorities about being over reliant on the EU as the market for their oil.

What is the impact of the responses of Nigeria and South Africa on the negotiations and how it will influence the stance of regional partners going forward? The evidence to answer this question suggests; there are two cases where the responses of the two leading economies in their respective sub-regions appeared to have shaped their regional partners actions. In the case of Southern Africa after the Botswana, Lesotho and Swaziland had initialled the IEPAs South Africa appeared to be threatening these countries for their actions openly stating that they would take measures to protect themselves from import coming to South Africa via these countries. BLS countries did not ratify the IEPA this is attributable to South Africa due to that it the largest contributor to the SACU and BLS countries rely for a substantially on the SACU funding. In the instance of the West African sub-region the response of Nigeria was necessitated as a direct result of the interim EPAs initialled by Ivory Coast and Ghana. Nigeria responded furiously to the EC accusing them of paying lip service to regional integration. The Interim EPAs were not ratified by Ivory Coast and Ghana. This was due to no small part to the actions of Nigeria.

This argument is supported by facts such as that Nigeria is the largest economy not only in the ECOWAS sub-region but the whole of Africa. This in essence allows Nigeria to put pressure on its neighbouring states through a number of mechanisms. Nigeria is the largest contributor to the ECOWAS initiative; the majority of the trade in goods and services in the sub-region goes through its borders and/or is destined for Nigeria's domestic market. Through the negotiations of the Economic Partnership Agreements Nigeria has insisted on the core and founding objective of ECOWAS which was to establish ECOWAS for regional economic integration and political cooperation. Nigeria stuck to these principles of the Lagos Treaty even when the Ivory Coast and Ghana had signed the interim EPAs with the EU. Similarly for Nigeria intraregional trade has been a major goal to be achieved in the ECOWAS. This point had been argued by the Nigerian Minister of Industry, Trade and Investment, Mr. Olusegun Aganga by inferring to the sub-region objectives as set out in the revised Lagos Treaty, which are basically to liberalise trade among member states through the elimination of tariff and non-tariff barriers, and ultimately achieve an economic and monetary union after successfully going through the process of a Free Trade Area (FTA),

Customs Union (CU) and Common Market. Implicitly, promoting trade and, particularly, intra-regional.[192] For Nigeria it became more important to protect the objective of the Lagos Treaty which the ECOWAS organisation is founded on than to protect its market access to the EU for the short term benefits without having adequately studied the adverse effects that will come with having access to the EU's market especially as a substantially portion of Nigeria trade destined for the EU already qualifies for duty free quota free access to the EU. For the Nigerian state reciprocity would not to be of much benefit to Nigerian exports to the EU but it would prove to be detrimental to the local industries as they would have to compete with EU manufactures for consumers for products not covered under the protected lines agreed to with the EC.

[192] Ukaoha and Ukpe, 2015

Chapter 5

Economic Partnership Agreements between the ECOWAS and SADC sub regions with the European Union a partnership for the future

5.1 Conclusion

After a lengthy negotiations period the Economic Partnership Agreements between the ACP countries particularly in Africa were finally concluded in 2014. The Caribbean and Pacific regions had concluded their negotiations and had started the ratification processes years before Africa concluded their negotiations. The statement that Africa has concluded the EPAs negotiations needs to be clarified for the purposes of this paper. On the continent the negotiations sub-regions have concluded their negotiations with the exception of the Central African sub-region at the time of writing of this paper. This state of events has been attributable to the political instability and violence in the Central African Republic. Moreover the focus of the paper was on Nigeria and South Africa both of these country's respective regional negotiating bodies had concluded their negotiations. The aim of this paper has been to investigate the responses of Nigeria and South Africa to the negotiations process at different stages of the negotiations and what had informed those responses.

Given the asymmetric nature in power relations between the EC and the negotiating regions of the ECOWAS and SADC the study did not focus much on such power relations and discrepancies. However what was evident is the ability of the EC to shape the negotiations. The European Commission had the means and the will to dictate the negotiations for instance the EC at the onset of the negotiations in 2002 had set a dead line for the negotiations to be concluded by 2007. Despite the power asymmetry between the EC and the ACP states the negotiations were virtually concluded in 2014. The EC was able to set the agenda in terms of what items were to be negotiated at what stages of the negotiations period. In the end issues such as Singapore issues were put on the table for negotiation, the principle of reciprocity was a major feature of the negotiations, the most favoured nation clause was another contentious issue negotiated. However less powerful party in the negotiation were able to insist on a number of compromises such the export taxes, MFN clause for South Africa in particular it managed to negotiate GIs and Nigeria managed to upset the process of ratifying the EPA after it announced that it will not be concluding the ECOWAS–EU EPA. It is important to mention that Nigeria as the leading economy and the largest market for EU imports in ECOWAS had decided not to sign the EPA the impact of such a decision is yet to

be determined especially for the ratification and the implementation of the EPA in Economic Community of West African States/West African Economic and Monetary Union

The study made use of process tracing to track the negotiations process between the EC and ACP with particular focus being given to Nigeria's and South Africa's responses to the negotiating process of the Economic Partnership Agreements. The paper began by tracing the history of economic relations between the ACP states and the EU starting from the Yaoundé Conventions, to the Lomé Conventions, to the Cotonou Agreement and finally to the focus on the responses of Nigeria and South Africa on EPAs. The study traced the process of negotiations form the onset of the Economic Partnership Agreements negotiations in September 2002 to January 2015. The findings are summarised as follows. The question whether EPAs negotiations stalled due to the influence and/or responses of Nigeria and South Africa? It can be clearly stated that the negotiations were affected by the manner that South Africa and Nigeria responded to the European Commission. To substantiate this point the negotiations had stalled at different stage of the negotiations process they had stalled due to actions of Nigeria in the West African sub-region and those of South Africa's actions in the Southern African sub-region. In the SADC for instance the negotiations did stalled in 2006 when South Africa wanted to be incorporated to the EPAs negotiations. In ECOWAS Nigeria had been insistent on the protecting its economy from the influx of EU goods. And due to key concern Nigeria had raised and the EC had not address such as development funding amount and tariff lines. Nigeria in end did not conclude an EPA due to outstanding issues that EC had not attended to, to the satisfaction of Nigeria. However, the resulting impasses in the negotiations at different times was not only attributable to the responses of Nigeria and South Africa in resisting pressure of the EU and/or EC put on the individual states within their respective sub regions to conclude the EPA. The delays in the negotiations were caused by structural factors as well in the negotiations process and the concerted efforts of all negotiating parties in the sub-regions at certain points to push more compromises from the EU

In addressing factors exogenous and endogenous to the negotiations of the EPAs inform the responses of Nigeria and South Africa. The emerging evidence points the economies particularly the growth and success of their respective economies of Nigeria and South Africa as a major factor these countries considered/had influence on their decision making. The evidence points to the importance of impact studies regarding the adverse effects of the EPAs had a significantly larger influence of the decisions making processes particularly that of the

Nigerian government. What is the impact of the responses of Nigeria and South Africa on the negotiations and how it will influence the stance of regional partners going forward? The responses of Nigeria and South Africa did have a considerable effect on the negotiating partners within their spheres of influence. Nigeria and South Africa had considerable influence that led to an action not being taken. In the case of Southern Africa after the Botswana, Lesotho and Swaziland had initialled the interim EPAs South Africa appeared to be threatening these countries for their actions openly stating that they would take measures to protect themselves from import coming to South Africa via these countries. This was enough a treat for the BLS countries as for a significant amount of their customs revenues they depended on the SACU collections. BLS in the end did not to implement the IEPAs. In the West African sub-region the response of Nigeria was necessitated as a direct result of the interim EPAs initialled by Ivory Coast and Ghana. Nigeria responded furiously to the EC accusing them of paying lip service to regional integration. The Interim EPAs were not ratified by Ivory Coast and Ghana. This was due to no small part to the actions of Nigeria. Nigeria put emphasises of regional integration, intra-regional trade and economic cooperation in the ECOWAS as those are major objectives of ECOWAS. Nigeria argued that decision to conclude the interim EPAs was counter to the objective of the ECOWAS as well as the stated objectives of the EPAs.

Regardless of the intense moments during the negotiations of the EPAs at least for South Africa the South African government is in the process of rectifying the Economic Partnership Agreement. After the EPA in the Southern African Development Community sub-region was concluded in July it marked a significant shift for South Africa as well as the EU. It was an agreement that points to the future of trade relations as South Africa and the EU moves away from negotiating with each country individual and grouping countries to conclude trade agreements. For Nigeria it the agreement would meant the same thing in terms of negotiating with the EU should they at a later stage decided to join the EPAs. The future for FTA negotiations seem to be shifting from state to state type of agreements to group of state to another groups of states as evidenced by the Economic Partnership Agreements and the Transatlantic Trade and Investment Partnership (TTIP).

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