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## Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations

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### 1. Cooperation under the Lomé Conventions

Cooperation between the European Union and countries in sub-Saharan Africa (South Africa excluded), the Caribbean and the Pacific (at that time not as yet called the ACP Group) started in 1957 with the signature of the Treaty of Rome, which brought the European Economic Community into being. The Treaty provided for the creation of the European Development Funds (EDFs), aimed at giving technical and financial aid to African countries still colonised at the time or with which some Member States of the Community had historical links.

The amendments of the Conventions were linked to the revisions of EDFs which were running over a period of five years. Yaoundé I and Yaoundé II Conventions were entered into with EAMA (Associated African and Malgache Countries) which were linked to the 2<sup>nd</sup> EDF (1964-1969) and 3<sup>rd</sup> EDF (1964-1969) respectively. The review of Yaoundé II gave birth to the **Lomé** Convention I. Since then, the relations were regularly adapted and governed by the revised **Lomé** Conventions from 1975 until 2000. Table 1 below shows the evolution of the Lomé Conventions, durations and characteristics as they evolved.

**Table 1: EU and ACP group Cooperation during Lome Conventions**

Conventions	Date	Duration	Characteristics
<b>Lomé I</b>	<b>Signed 1975</b> <b>4<sup>th</sup> EDF</b>	<b>5 years</b> (1975-80)	Non-reciprocal preferences for most exports from ACP countries to EEC
<b>Lomé II</b>	<b>Singed 1979</b> <b>5<sup>th</sup> EDF</b>	<b>5 years</b> (1980-1985)	The scope did not introduce major changes but was to assist the mining sectors of ACP countries strongly dependent on it
<b>Lomé III</b>	Signed 1984	<b>5 years</b>	The scope shifted from the promotion of

	6 <sup>th</sup> EDF	(1985-1990)	industrial development to self-reliant development on the basis of self-sufficiency and food security.
<b>Lomé IV</b>	<b>1990 – 1995</b> <b>7<sup>th</sup> EDF</b>	<b>10 years</b> <b>(1990-2000)</b>	Great emphasis was put on: the promotion of human rights, democracy and good governance; strengthening of the position of women; the protection of the environment; decentralized cooperation; diversification of ACP economies; the promotion of the private sector; and increasing regional cooperation. Main amendments: <ul style="list-style-type: none"> <li>• The respect for human rights, democratic principles and the rule of law become essential elements of the Convention. This means that ACP countries that do not fulfil these criteria risk the retrieval of allocated funds;</li> <li>• For the first time the EDF was not increased in real terms;</li> <li>• Phased programming is introduced, with the aim of increasing flexibility and improving performances from ACP countries. More attention is given to decentralized cooperation in the form of participatory partnerships including a great variety of actors from civil society.</li> </ul>
<b>Revised Lomé IV</b>	<b>1995 – 2000</b> <b>(8<sup>th</sup> EDF)</b>		

**Lomé IV** was the first **Lomé** to run over a period of ten years. **Lomé IV** was revised during 1994-1995, as the ACP states and the EU experienced major economic and political changes. The ACP states experienced structural changes, while the EU was enlarged and their attention more focused on the East European Countries and Mediterranean partners. This also coincided with international developments such as the conclusion of the Uruguay Round Agreement. The Revised **Lomé** expired in 2000 and provided an opportunity for a thorough review of the future of ACP-EU relationship.

## **2. South Africa's membership of the Lomé Convention**

On 24 April 1997 South Africa became a member of the ACP Group, through its accession to the Fourth Lomé Convention. The decision to join the ACP was based on the Government's commitment to South-South solidarity and the ambition to integrate South Africa into the global system.

Subsequent to acceding to **Lomé IV**, South Africa also acceded to the Georgetown Agreement, which is the agreement of the ACP states. Although South Africa never benefited from the trade preferences extended by the EU to the other ACP countries its membership of the ACP Group enabled South Africa to maintain close interaction with the 79 countries in Africa, the Caribbean and the Pacific on other issues than trade such as political and security issues.

### **3. Cotonou Agreement (Post Lomé Convention)**

Relations between the EU and ACP evolved from the **Lomé** Convention to the Cotonou Agreement. This Agreement was signed on 23 June 2000 in Cotonou, Benin. The Agreement is valid for a 20 years period from 2000 to 2020. It is the most comprehensive partnership agreement between developing countries and the EU. The Agreement was designed to address the shortcomings of the previous conventions. The Cotonou Agreement broadens the scope of EU-ACP partnership while seeking to adapt it to the changing international environment and the deriving challenges. The Agreement entered into force in April 2003 and has been revised in 2005 and 2010 in accordance with the revision clause to re-examine the Agreement every five years.

In respect of trade, the partnership under Cotonou Agreement was characterised by its non-reciprocal trade benefits for ACP states (except South Africa), including unlimited entry to the EC market for 99 per cent of industrial goods and many other products. It was a non-reciprocal trade deal in terms of which the EU offered unilateral access to ACP products without expecting anything in return. It was incompatible with World Trade Organisation (WTO) provisions. The EU was granted a waiver to continue with non-reciprocal trade relations until 31 December 2007. This caused the EU to argue that it had no choice but to enter into reciprocal free trade agreements (FTAs) with the ACP. Since the ACP Group does not have a common

international trade policy and common external tariff vis-à-vis the EU, it was impossible to negotiate one agreement with the all ACP Group. Instead the EU opted for mutual free trade agreements with different regional configurations in the ACP Group. The ambition was to conclude these regional FTAs before the expiry of the waiver at the end of 2007.

South Africa has never been a party to the trade chapter of the Cotonou Agreement and negotiated the Trade, Development and Co-operation Agreement (TDCA) with the EU that entered into force on 1 January 2000.

#### **4. Economic Partnership Agreements (EPAs) groups**

The ACP and the EU negotiations on Economic Partnership Agreements (EPA) were launched on 27 September 2002. It was suggested by the EU that the ACP regional groupings be the basis for EPA negotiations. However, due to multiple and overlapping memberships of countries in several African Regional Economic Communities (RECs), ACP countries were forced into choosing one of the following EPA configurations:

- EU-Cariforum
- EU-Pacific
- EU-ECCAS (consisting of Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, and Sao Tome and Principe)
- EU-ECOWAS (consisting of some Western Africa countries)
- EU-ESA (consisting of some COMESA countries)
- EU – EAC (consisting of the East African Community countries)
- EU-SADC EPA (consisting of Angola, Tanzania, Botswana, Lesotho, Mozambique, Namibia, Swaziland, with South Africa as an observer).

## **5. Overview of the EU-SADC EPA negotiations**

At the beginning of the negotiations, SADC member states decided to join three different EPA configurations:

- i) the SADC EPA Group comprising of Botswana, Lesotho, Namibia, Swaziland (BLNS) as well as Mozambique, Angola and Tanzania ( that decided to leave the SADC EPA and joined the EAC configuration);
- ii) East African Community (EAC) comprising Kenya, Uganda, Rwanda, Burundi and **Tanzania**; and
- iii) East and Southern African Group (ESA) comprising all the other SADC members.

The 5 yearly review of the TDCA coincided with the negotiation of the EU-SADC EPA. SA initially only took part in the EPA negotiations as an observer since SA was not part of the trade chapter of the Cotonou Agreement. SA decided to join the SADC EPA Group negotiations in an attempt to, inter alia, lessen further fragmentation in SADC and harmonise the trade relations between SACU and the EU especially in relation to the common external tariff of SACU. South Africa also wanted to align the TDCA with the EU-SADC EPA and improve on its preferential agricultural market access into the EU.

In February 2006, SADC EPA Group adopted a framework for the negotiation of the EPA. The framework indicated that South Africa should participate in the negotiations and also that SA's tariff commitments under the TDCA should be used as the basis for SACU-EU tariff negotiations, subject to the condition that all BLNS' sensitivities are fully accommodated. The EU took a year to revert to SADC EPA on this framework and finally agreed in early 2007 that South Africa can formally join the negotiations as part of the SADC EPA Group. Due to pressure to conclude market access negotiations before the expiry of the WTO waiver for Cotonou on 31 December 2007, the EU and the SADC EPA group decided to negotiate in two phases. Phase I was to agree on an interim EPA (IEPA) covering trade in goods while Phase II was envisaged to negotiate a full EPA covering also the so-called new

generation issues such as trade in services, intellectual property rights, competition, government procurement, and trade and sustainable development.

In April 2007, the EU offered duty-free quota free access on all products originating from ACP countries negotiating EPAs, excluding South Africa. The DFQF access was scheduled to enter into force immediately after entry into force of the IEPA, which was envisaged to happen on 1 January 2008, with a transitional period for sugar and rice. The transitional period for sugar expired in 2015. South Africa was excluded from this DFQF offer as it was regarded to be more advanced in terms of development and competitive capacities.

On 23 November 2007, Botswana, Lesotho, Mozambique and Swaziland (BLMS) initialled the Interim EPA with the exclusion of Angola, Namibia and SA (ANSA countries). BLMS initialled the IEPA with an intention to secure their DFQF access after 31 December 2007. ANSA countries did not initial the IEPA as the contentious issues which arose during the negotiations were not addressed. The most contentious issues were with respect to market access, rules of origin, textually unresolved issues, e.g. MFN clause, export taxes and agricultural safeguard measures. On 3 December 2007, Namibia initialled the IEPA with the understanding that the contentious issues would be addressed through negotiations towards a full EPA. These countries were able to secure DFQF access into the EU post 31 December 2007 on the basis of initialling the IEPA. South Africa continued to benefit from the reciprocal preferential market access into the EU that was agreed under the TDCA.

Botswana, Lesotho and Swaziland subsequently signed the IEPA on 4 June 2009. Mozambique signed it on 15 June 2009. Namibia did not sign the agreement as their concerns had not been fully addressed. South Africa, which is the major trading partner with the EU in SACU, did not sign the IEPA due to a series of disagreements on some of the key provisions of the text. These were categorized as those that would have a negative development impact, those threatening regional integration and those eroding South Africa's policy space. Angola was not under pressure to sign, as it is benefiting under the EU dispensation for least developed countries,

entitled “Everything but Arms”, in terms of which the EU offers them duty free quota free access on everything, except arms and ammunitions.

The signing of the IEPA by some members of SACU posed a threat to SACU, as the entry into force of the IEPA would have required measures to be put in place to control the movement of EU imports within the Customs Union. In the end Botswana, Lesotho and Swaziland (BLS) did not ratify the IEPA and it therefore never entered into force. BLS decided to wait until the concerns of all the SACU member states were addressed fully and SACU as a whole can implement the agreement. As such, BLS also aligned themselves to ANSA’s concerns, which were later called SADC EPA concerns. These concerns were addressed during the negotiations towards a full EPA. A part of the negotiations towards a full EPA included negotiations on services and investment but South Africa, Namibia and Angola only agreed to cooperation provisions on these areas and did not take part in the substantive negotiations on services and investment.

The EU-SADC EPA was finally initialled by the Chief Negotiators on 15 July 2014 in Pretoria after all the concerns South Africa raised with the IEPA was addressed. The negotiations on services and investment between BLMS and the EU were not yet completed and it was decided that it would be part of a build-in agenda in the Agreement. Subsequent to the initialling, the Agreement went through a legal scrubbing process. The scrubbing was only concluded on the 23<sup>rd</sup> October 2015 and the Agreement was signed on 10 June 2016 in Kasane, Botswana.

The Agreement would need to be ratified by all the SADC EPA Countries. The EU will provisionally implement the Agreement while it is being ratified by all the 28 EU member states. The aim is for the Agreement to enter into force before the expiry of the EU Duty free Quota Free Market Access Regulation 1528 on 1 October 2016, i.e. to ensure that Botswana, Namibia and Swaziland do not forfeit preferential market access into the EU.

## **6. Implications of EPA**

The EPA will establish a mutual free trade area between the 28 member states of the EU and 6 Southern African countries, namely Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland. The EPA will replace the trade chapter in the TDCA. It will bring an end to many of the discrepancies that currently prevail under the different trading regimes between the EU and the SACU countries and will improve the market access for particular agricultural products for South Africa. The EPA will also provide more policies space than what was available to South Africa under the TDCA

### **6.1 Fish Market Access**

The parties have agreed to mutually liberalize fisheries tariff lines over a period of no longer than 9 years after the implementation of the EPA. The fish lines will be liberalised for first time as it was not the case under TDCA. This is something the fishery sector in South Africa has been campaigning for a very long time. This was achieved without any compromise on South Africa's position on EU access to SA's fishing resources. The EU also agreed to start the tariff phase-down vis-à-vis SA on the basis of duties charged under the Generalised System of Preferences (GSP) which is lower than MFN rate, even though SA is no longer able to benefit under the revised EU GSP system that entered into force on 1 January 2014.

### **6.2 Agriculture Market Access acquired under EPA**

Since the agricultural chapter of the TDCA is asymmetrically in favour of the EU, SA has had a very strong resolve to level the playing field and improve its market access into the EU. Under the EPA, South Africa gained improved access into the EU for wine, sugar, ethanol, flowers, some dairy products, fresh fruit, canned fruit, fruit juice and yeast. Some of the major gains to be made by SA are reflected in the table below.

<b>Product</b>	<b>Current treatment under the TDCA</b>	<b>Treatment to be afforded under the EPA</b>
Wine	Quota with zero duty on 50 million litre bottled wine	Quota with zero duty on 110 million litre wine and flexibility on the size of the container
Sugar	EUR33.9 – 41.9/100kg	Quota with zero duty on

Product	Current treatment under the TDCA	Treatment to be afforded under the EPA
		150 000 tonnes
Ethanol	EUR 10.2 – 19.2 /hl	Quota with zero duty on 80 000 tonnes

The EU is going to gain in terms of improved access into SACU for wheat/meslin, sugar confectionary, barley, cheese, pork, cereal based food preparations, butter and ice cream. All the new DFQF market access that was granted by SACU to the EU is linked to an automatic special agricultural safeguard.

### **6.3 Non-agricultural market access (NAMA)**

From a macroeconomic perspective, there wasn't space for SA to gain much. The reason is that under the TDCA, with the exception of 6 aluminium lines, the EU has already liberalized all its NAMA duties vis-à-vis SA. However, the members of the Aluminium Federation of SA were very interested in improving their market access in the EU market. The EU offered to remove the remaining duties, but since they see it as a high value product, they demanded payment from SACU in specific subsectors such as textiles, clothing and carpeting. Since stakeholders in SA were unwilling to grant further preferences to the EU on these products, it was not possible to improve SA's access on aluminium products.

### **6.4 Protocol on Geographical Indications (GIs)**

South Africa also negotiated a bilateral Protocol on Geographical Indications (GIs) with the EU. The key outcome of the GI negotiations is to protect the use of product names currently used by producers in South Africa. As such, names of products such as cheeses (feta) will continue to be used by current producers and would not be affected under the Protocol. Once the Agreement enters into force, the EU is set to receive protection of names for 251 GIs of which cover 120 wines, five beers, 20 spirits and 106 agricultural products (special meats, cheese, olives, etc) while South Africa would receive protection for 105 GI names of which 102 are wine names and three agricultural product names (Rooibos, Honeybush and Karoo Lamb).

## 6.5 EPA improved textual provisions better than TDCA

In addition to new agriculture and fisheries market access, SA also managed to improve TDCA textual provisions as follows:

- EPA rules of origin would now allow for extended cumulation that can facilitate intra-regional trade and industrialisation across the Southern and Eastern Africa region in particular. In this regard it was agreed to allow imports of intermediate products from other ACP countries to be used in the manufacturing of final products to be exported under the preferential conditions agreed in the EPA. This exception to the rule is known as diagonal cumulation. Cumulation is a particularly attractive option for lesser developed parties to an FTA. It enables them to comply with product specific rules of origin that, in the absence of cumulation, would have been difficult, if not impossible, to comply with. Cumulation often has a positive impact on the development of regional value chains and thus on regional economic integration.
- Furthermore, in the case of garments under the EPA rules of origin, there is provision for single stage transformation.
- South Africa was not allowed to impose any new export taxes under the TDCA. The EPA provides a degree of greater flexibility than the TDCA to deploy export taxes under certain circumstances on a maximum of eight products at any given time.
- Standstill clause will not apply to products excluded from liberalization and tariffs on products from EU can be increased as long as margin of preference agreed is maintained. The standstill provision in the EPA will provide the policy space to raise duties vis-à-vis the EU on: a) sensitive products excluded from any of the regimes of tariff phase (the so-called reserve lists); and b) tariff preferences that are expressed as a percentage of the applied MFN rate of duty. This was not the case in the TDCA
- A Bilateral Safeguard Provision that will continue to apply indefinitely on all products subject to liberalization. The Bilateral Safeguard Provision in the TDCA was only available for 12 years and came to an end in 2012.

- An Automatic Specific Agricultural Safeguard agreed on list of products. In terms of this provision a safeguard duty will automatic become applicable if the volume of imports in a year reached a specific level.

## **7. Conclusion**

The terms of the Economic Partnership Agreement that the SADC EPA countries have negotiated with the European Union (EU) are an improvement on South Africa's bilateral agreement with the EU.