

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

**A CRITICAL ANALYSIS OF THE IMPACT OF BREXIT ON THE
SADC-EU EPA**

BY

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**A Mini-Thesis submitted in partial fulfilment of the requirements for the
degree LL.M in the Faculty of Law, University of the Western Cape.**



**UNIVERSITY of the
WESTERN CAPE**

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Date: 06 May 2019

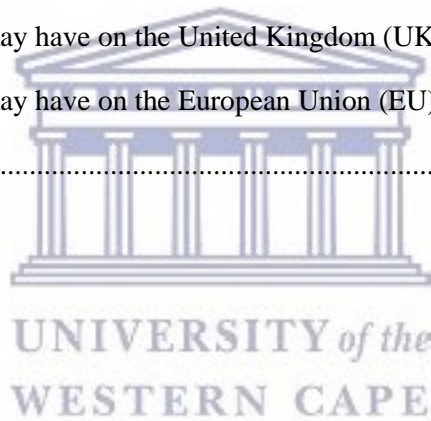


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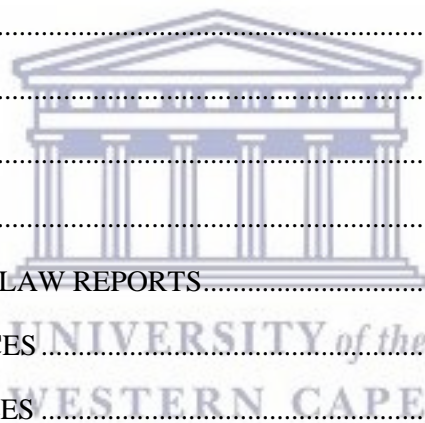


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DECLARATION

I declare that, '*A critical analysis of the impact of Brexit on the SADC-EU EPA*', is my own work and that this work has not been submitted before for any degree or currently being considered for a degree at any other institution and all the sources I have used or quoted have been duly acknowledged as complete references.

QAMANI VONYA



Signed



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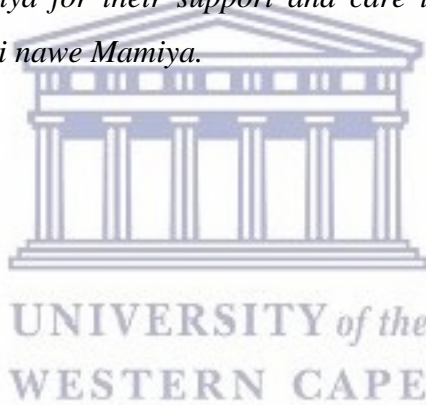
06 MAY 2019

DEDICATION

Firstly, I dedicate this mini thesis to my Lord Almighty who strengthens me. Through the opportunity I have of being alive, I have seen and experienced the grace of Jesus Christ who restores me.

Secondly, I dedicate this mini-thesis to both my late maternal and paternal grandparents. To Mr. and Mrs. Jobela who birthed my mother, thank you for a gift such as uMama wam. Mr. Jobela was known for his love for education and one of his famous sayings were 'Education is a vast inheritance'. To Mr. and Mrs. Vonya who birthed my father, I appreciate that you have given me a father who has been supportive of me and my dreams.

Further, I have to particularly show my gratitude to my older sister, Nkosazana Pamela Vonya for the unconditional love she has shown me since my birth. She has given me a reason and purpose to better myself and work hard to be the best version of myself. Further dedication to my parents, Mr and Mrs Vonya for their support and care they have given me since my inception, ndiyabulela Dlamini nawe Mamiya.



ACKNOWLEDGEMENTS

From the initial time I had decided to register for my LL.M studies until their completion, I have quite a number of persons to acknowledge and thank for my postgrad experience. First and foremost, I have to appreciate the support I have received from my parents, siblings and extended family.

I would like to express my sincere gratitude and appreciation to: My supervisor, Prof Patricia Lenaghan for her positive attitude and guidance. Also for the opportunity she gave me to serve as a Graduate Lecturing Assistant at the University of the Western Cape, Law faculty. I am humbled to have worked under your leadership and guidance.



CHAPTER 1

INTRODUCTION

1.1 BACKGROUND TO THE PROBLEM

The United Kingdom (UK) is one of the largest Member states within the European Union (EU) that receive export goods from developing countries.¹ The UK has successfully voted to exit the EU through a referendum and this may impact the already existing developing countries' markets that depend on their exports to the UK.² On the one hand, the UK has promised that it intends on maintaining the existing trade agreements with most of its trade partners including the Southern African Development Community (SADC)-EU Economic Partnership Agreements (EPA). On the other hand, the UK is concerned of its independence from the EU and at this point in time, it can only be anticipated that, agreements if any, relating to Brexit will only suffice once the entire exiting process has been completed.³

The issue with the UK leaving the EU causes uncertainties for developing countries. These uncertainties have been expressed as being against the progress achieved thus far by the Preferential Trade Agreements (PTA) between the EU and developing countries.⁴ It is the opinion of developing countries that, the UK in trying to succeed with its decision of leaving the EU, it may prioritise reaffirming trade agreements between developed countries to the neglect of developing countries.⁵

The UK Parliament may amend issues such as market access arrangements which the UK once observed while still a Member state of the EU. These amendments may come unprecedented, as Article 50 of the Lisbon Treaty has not been utilised before. Even though the UK promises

¹The UK's Independent Fact-checking Charity, 'Everything you might want to know about the UK's trade with the EU' <https://fullfact.org/europe/uk-eu-trade/> (last accessed 12 October 2017)

² Post-Brexit Trade and Developing countries: Can the UK set the Gold Standard in Development-Friendly Trade Policy?

<http://www.fairtrade.org.uk/~media/fairtradeuk/get%20involved/documents/current%20campaigns/brexit%202017/mps%20brexit%20briefing.pdf> (last accessed 12 October 2017)

³Ntsibande N, 'Brexit will not disrupt UK-SADC trade', <https://www.iol.co.za/business-report/brexit-will-not-disrupt-uk-sadc-trade-10380567> (last accessed 12 October 2017).

⁴ Post-Brexit Trade and Developing countries: Can the UK set the Gold Standard in Development-Friendly Trade Policy?

<http://www.fairtrade.org.uk/~media/fairtradeuk/get%20involved/documents/current%20campaigns/brexit%202017/mps%20brexit%20briefing.pdf> (last accessed 12 October 2017)

⁵ Post-Brexit Trade Report, 'Options for continued and improved market access arrangements for developing countries', Traidcraft, February 2017.

to slightly detour from the existing no tariff policy governed by the EU, the negotiation process and definite outcome of the exit will determine whether the exit will cause drastic economic changes or not.⁶

The economic changes or shift in positions that may affect the EU and the EPAs the EU is party to, such as the SADC would be the incurring of increased tariffs custom duties. When the exit is officiated the UK will no longer be obliged to ascribe to EU measures and tariffs for goods imported into the UK whether directly or indirectly. With increased tariffs, the demand of goods originating from developing countries such as SADC will decrease and would also be more expensive for SADC to export its goods. This may cause a deficit to the economies of developing countries that are dependent on exports of goods to the EU more particularly those goods that were destined for the UK.⁷

In the case where, the UK wishes not to replicate the EU trade agreements, thus leaving without a deal, it will have to create and maintain a multi-complex regulatory trade system outside the EU that may require more administration than previously. This however, may cause delays on the carrying out of duties and regulatory functions of their internal trade department, foreign affairs department and revenue services. The UK national trade department may need more manpower so that they are able to address all trade links which were previously handled by the EU. The EU was able to administer its regional trade department as various Member states provided the Union with different capacities and expertise in carrying out the objectives of the regional trade bloc.⁸

The UK representative on International Trade, Liam Fox, provided some light on the prospects of the PTAs that the UK may apply once outside the EU. Mr Fox said ‘the UK will not necessarily replicate some of the tariff lines it once observed under the EU’, this gives the impression that there may be changes made with regards to how the UK traded with WTO

⁶ Alexandru-Constantin APETROE, CES Working Papers – Vol. X, Issue 3, ‘Making sense of the (post-)Brexit EU: security, stability and the future of EU’s collective security’

https://www.researchgate.net/publication/328853927_Making_sense_of_the_post-Brexit_EU_security_stability_and_the_future_of_EU%27s_collective_security (last accessed 07 October 2017).

⁷ Alexandru-Constantin APETROE, CES Working Papers – Vol. X, Issue 3, ‘Making sense of the (post-)Brexit EU: security, stability and the future of EU’s collective security’

https://www.researchgate.net/publication/328853927_Making_sense_of_the_post-Brexit_EU_security_stability_and_the_future_of_EU%27s_collective_security (last accessed 07 October 2017).

⁸ Post-Brexit Trade and Developing countries: Can the UK set the Gold Standard in Development-Friendly Trade Policy?

<http://www.fairtrade.org.uk/~media/fairtradeuk/get%20involved/documents/current%20campaigns/brexit%202017/mps%20brexit%20briefing.pdf> (last accessed 12 October 2017)

signatories whilst in the EU and when officially it is no longer an EU Member state. This further implies that, there may be an imposition of further tariffs by the UK as a developed country and developing countries.⁹

The basis of observation is because the UK will not be obligated to follow through with the EU's approach in dealing with developing countries, as it would no longer be Member of the EU. The only time where an increase in tariffs on goods imported or exported to the UK may be experienced is once the UK has enforced its exit from the EU.¹⁰ Nevertheless, the UK is obliged to apply the World Trade Organisation (WTO) principles such as the Most Favoured Nation (MFN) Treatment principle and the Generalised Scheme of Preferences (GSP) system when engaging in trade with developing countries.

The MFN is found in the General Agreements on Tariffs and Trade (GATT); where;

‘Article I:1 of GATT provides for WTO Members to extend MFN treatment to like products of other WTO Members regarding tariffs, regulations on exports and imports, internal taxes and charges, and internal regulations.¹¹ In other words, “like” products from all WTO Members must be given the same treatment as the most advantageous treatment accorded the products of any state.’¹²

Regarding the GSP, the first United Nations Conference on Trade and Development (UNCTAD) in 1964, proposed that all developing countries be granted preferential tariff treatment by developed countries. This means that goods coming from developing countries will be given preference so that they may allow for the acceleration of development and growth of developing countries' economies in the global trade scene.¹³

Since the initiation of Britain exiting the EU (Brexit), ministers responsible for trade in the UK and SADC region have been in talks in an attempt to agree on the best possible way to curb the foreseen negative impact of Brexit. One of the solutions that has been identified is the replication of existing trade terms of the SADC-EU EPA. Further, there is a perception that the

⁹ Amaro S, 'The UK will not 'cut and paste' EU trade deals after Brexit, says trade chief' <https://www.cnbc.com/2017/10/03/brexit-the-uk-will-not-cut-and-paste-eu-trade-deals-liam-fox-says.html> (last accessed 07 October 2017).

¹⁰ Jones E, 'Brexit opportunity or peril trade small and poor developing economies' Global Economic Governance Programme, University of Oxford.

¹¹ Part II Chapter 1 Most-Favoured-Nation Treatment Principle www.meti.go.jp/english/report/downloadfiles/gCT0212e.pdf (last accessed 10 October 2017).

¹² Part II Chapter 1 Most-Favoured-Nation Treatment Principle www.meti.go.jp/english/report/downloadfiles/gCT0212e.pdf (last accessed 12 October 2017).

¹³ UNCTAD, Final Act and Report of the Conference, 1st sess, 35th plen mtg, annex A, UN Doc E/CONF.46/139 (1964) General Principle 8.

UK is trying to redeem itself from its ‘weakened autonomy’ caused by the increased imports it receives from EU Member states compared to what the UK exports to other EU Member states. This is one of a few determining factors which is said to have weighed on the Brexit vote.¹⁴ Another factor is that of supranationalism, where the UK wants to seize and exercise its sovereign trade powers for the first time since acceding to the EU, as it will not be obliged to duplicate EU trade agreements whether in part or wholly. Even though it may be predicted that the trading landscape may not change drastically by Brexit, however even the slightest change may impact trade partners of the EU.¹⁵

1.2 SIGNIFICANCE OF THE PROBLEM

It is important that the impact of Brexit on SADC be attended to and researched, collectively by academics so that SADC may have a database of literature. This may be used in addressing issues of regional integration and international trade concerning SADC. The impact of Brexit can only be predicted at the moment as negotiations are currently ongoing. The intention of the UK in instituting Article 50 of the Lisbon Treaty to exit the EU, raises uncertainties on how the UK will maintain the trade relations currently in place; once it has ceased to be an EU Member state.¹⁶

At this point in time as previously mentioned, the UK has the two options to leave the EU and the most detrimental to developing countries would be leaving the EU without a deal or without replicating trades agreements that are already existing. In anticipating a no-deal Brexit, mechanisms that may be useful for developing countries in so that they do not experience the harsh implications of Brexit need to be identified and for the developing countries’ economies to be preserved as far as possible include safeguard measures.¹⁷

Firstly, it will be beneficial to identify the primary issues that SADC has faced in the past, is currently facing and may face post-Brexit as this may assist developing countries in making a

¹⁴ Crisp J and Wallace T, ‘UK exports to the EU surge on weaker pound’ <http://www.telegraph.co.uk/business/2017/08/17/uk-exports-eu-surge-weaker-pound/> (last accessed 12 October 2017)

¹⁵ Alex Hunt & Brian Wheeler, BBC News, ‘Brexit: All you need to know about the UK leaving the EU’ <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 20 October 2017).

¹⁶ Burns C, Jordan A, (et el), ‘The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?’ (2016) page93

¹⁷ Crisp J and Wallace T, ‘UK exports to the EU surge on weaker pound’ <http://www.telegraph.co.uk/business/2017/08/17/uk-exports-eu-surge-weaker-pound/> (last accessed 12 October 2017)

more informed decision in respect of Brexit. Secondly, in advancing contingency plans for SADC to survive any negative effects of Brexit; such studies are required so that SADC may have data available to their disposal in addressing similar or related matters in the future. Thirdly, to be able to embrace any opportunities Brexit may have for the community. And lastly, to critically analyse trade relations between SADC and the EU in so that to gain insight on approaches that the two groups may find useful in enhancing trade development during times of uncertainty and instability of sensitive industries of trade.¹⁸

1.3 RESEARCH QUESTION(S)

This section will break unbundle the research questions into two categories, firstly, the main overarching research question and secondly, the ancillary research questions that will directly contribute to addressing the main overarching research question.

1.3.1 Main overarching research question

How is Brexit most likely to affect the SADC-EU EPA?

1.3.2 Ancillary research questions

1. How the relationship has developed over the years to get to where it is currently, taking into account that the UK opting to exit the EU?
2. Secondly looking at SADC background and how trade relations have grown between SADC and EU, including development of the treaties which made such a trade relationship to exist. Further looking at how the relationship will most likely be affected by Brexit.
3. Thirdly, what is the preferred or most suitable PTA approach, terms and conditions, which may best suit the UK-SADC relationship after Brexit, is completed.

¹⁸ Crisp J and Wallace T, 'UK exports to the EU surge on weaker pound'
<http://www.telegraph.co.uk/business/2017/08/17/uk-exports-eu-surge-weaker-pound/> (last accessed 12 October 2017)

1.4 RESEARCH METHODOLOGY

In this mini-thesis the focus will be on the relationship the EU have with the UK as a Member state.

The sources used in constructing the research will be based on published work from the EU, SADC and UK. Material such as news reports, research reports, journals, international journals, papers prepared on the relevant topic and other research conducted by institutions that are operating in any of the three regions. Reason for this choice is because the Brexit topic is new and a wide variety of sources will assist in constructing a well-balanced observation of the effects Brexit will have on SADC.

An analysis of the data collected will be conducted to attempt to figure out what viewpoints the authors of such data adopted. Further, how the relationships between EU, SADC and the UK are discussed in their works and how will that data be useful in conducting my own research and conclusion on the EU, SADC and the UK relationship.

1.5 CHAPTER OUTLINE

The research contained in this mini-thesis is divided into five chapters with each chapter focusing on a specific portion of the research topic.

1.5.1 Chapter 1: Introduction

This is the introductory chapter, where a discussion on the background and significance of the problem is takes place. It further formulates research questions needed to answer the problem statement. The research methodology adopted for this research is also discussed.

1.5.2 Chapter 2: European Union.

The objective of this chapter is to illustrate the background of the European Union (EU) and how Britain exiting the EU may impact both the UK and the EU. It will investigate and understand where the EU comes from, how it was made possible for its Member states to opt out and where it was headed in light of the United Kingdom (UK) exiting it. .¹⁹

¹⁹ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 04 February 2019).

1.5.3 Chapter 3: Southern Africa Development Community.

The focal point of this chapter is the elaboration of the history of the Southern Africa Development Community (SADC), on its establishment, timeline on its commitments and the trade relationship that exists between itself and the European Union (EU). Further, how South Africa may be impacted by Brexit as it is the gateway Member state to direct foreign investment in the regional trade arrangement (RTA). And how then SADC may go about preserving the interests of the Economic Partnership Agreement it is party to with the EU.²⁰

1.5.4 Chapter 4: Preferential Trade Agreements in terms of World Trade Organisation rules.

The main focus of this chapter is to look into the rules of the World Trade Organisation (WTO) and how Preferential Trade Agreements (PTA) may be applied by the European Union (EU), the United Kingdom (UK) and Southern Africa Development Community (SADC) post Britain exiting the European Union (Brexit).²¹

1.5.5 Chapter 5: Conclusion and Recommendations

In this chapter, its main purpose is to consolidate the research conducted in the previous chapters. In trying to encapsulate the impact Britain exiting the European Union (Brexit) may have on the Southern Africa Development Community (SADC) - European Union (EU) Economic Partnership Agreements (EPA), highlighting those SADC industries which are most likely to be affected by Brexit.²²

²⁰ World Economic Forum, '9 mega-trends shaping the future of Africa' <https://www.weforum.org/agenda/2015/05/9-mega-trends-shaping-the-future-of-africa/> (Last accessed on 07 June 2018)

²¹ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

²² Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 20 January 2019).

CHAPTER 2

THE EUROPEAN UNION

2.1 INTRODUCTION

The objective of this chapter is to illustrate the background of the European Union (EU) and how Britain exiting the EU may impact its trade partners. It is important to investigate and understand where the EU comes from and where it was headed in light of the United Kingdom (UK) exiting it. This move by the UK will impact the aspirations the EU had set for itself and its trade partners.²³

The aim is to look at the interests of the EU, enacted treaties particularly looking at those which made it possible for its Member states to exit the EU. Since the UK chose to exit the EU, it is important to identify the mechanisms made available for a Member state to take such a decision. Further to look at what may have caused the UK to be so determined in its mission to eventually choose to exit the EU.²⁴

The EU has been attracting and still is attracting more European countries to accede to it. The decision by the UK to exit it raises high concerns as to whether the EU is really beneficial to its Member states what may have been the driving force behind the UK's decision taking into consideration the unsettled world economic environment.²⁵

Other issues to be addressed include how Brexit will affect the UK economy and the EU in general. The EU is a RTA that gives hope to developing countries and by Brexit taking place, uncertainties have risen leaving many of its stakeholders uneasy. This results stakeholders unaware whether the EU will further crumble and whether their economy will impacted and to what extent if vulnerability will exist.²⁶

²³ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 04 February 2019).

²⁴ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 04 February 2019).

²⁵ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 04 February 2019).

²⁶ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 04 February 2019).

2.2 BRIEF HISTORY AND INTRODUCTION TO THE EUROPEAN UNION (EU)

A brief history and background of the inception of the European Union (EU), its current position in world trade and its aspirations will be investigated in light of the Britain exiting the European Union (Brexit) negotiations taking place.

In 1923, the Pan European Union (PEU) society was formed just after World War One (WWI) and is the oldest European unification movement that was established by the manifesto of Paneuropa. This was before the initial proposal of unifying the European continent being finalised and this establishment was for the organised community of the East and West of Europe. Its aim and purpose was to unify the European continent and for, the PEU to have supranational authority over its Member states in an attempt to minimise any chances of a war erupting again..²⁷

Along the line additions to the European Community took place. The Single European Act that is a treaty was signed by the European Community governments. This treaty provided for the creation of a single market, which allowed people, goods, capital and services to move freely within the European Community jurisdiction..²⁸

2.2.1 The European Union (EU) as we know it today

It is important to reflect on the European Union (EU) as we know it today, in so that we may be able to point out the main aspects which are relevant when its Member states opt to exit the EU.

During the 1990s a treaty on the European Union also known as the Maastricht Treaty was next to be entered into. In 1992 the Maastricht Treaty was signed by the Member states which would create what we know today as the EU. The following year of 1993 the Single Market was completed and was geared for the advancement of EU rights which included the freedom of movement of goods, services, capital and people..²⁹

²⁷ Daniel C. Villanueva, Richard von Coudenhove-Kalergi Pan-Europa as the Elusive “*Object of Longing*”, University of Nevada – Las Vegas, Rocky Mountain Review, 2005.

²⁸ The history of the European Union, http://www2.aueb.gr/statistical-institute/european-citizens/history_en.pdf (Last accessed on 28 May 2018)

²⁹ Wilde R, Development of the European Union – A Timeline - <https://www.thoughtco.com/development-of-the-european-union-a-timeline-1221596> (Last accessed on 26 May 2018).

Article 2 of Maastricht comprises of values which include the respect of human dignity, freedom, democracy, equality, the rule of law and particularly respecting the human rights of persons belonging to minority groups. These are some part of the requirements that were laid down in 1993 in Copenhagen, Denmark and are known as the Copenhagen criteria. This is a criterion of the EU Membership that many Eastern Europe countries and Member states have to comply with in order to be admitted into or maintain their Membership within the EU respectively. This approach was focused at the promotion of the EU values by its Membership, in so that countries apply more democratic methods in governing their respective countries.³⁰

In the past few years the goals the EU were to make itself more democratic, more efficient and better able to address global problems, such as protection of human rights and climate change, with one voice translating to its unity. Currently, the European Union is an economic and political union made up of the 28 member states. These Member states are reinforced by the Treaty of Lisbon that has defined the terms of cooperation amongst each other to make joint decisions on policy areas of shared interest. The EU as the collective of the Member states has decision-making power ‘exclusive competence’ over certain policy areas, but shares competences over others.³¹ A controversial event to date that occurred within the EU was in 2016, where the United Kingdom (UK) voted to leave the Union.³²

This action by the UK was one not anticipated even though there is an instrument put in place to validate a Member state from exiting the EU. Article 50 of the Lisbon Treaty being invoked by the UK as one of the largest Member states of the EU raised economic and political concerns. This has brought about uncertainty on the unity and continued relations amongst the existing Member states of the EU and also with other external trade agreements the EU has interests in.³³

³⁰ Nozar W, ‘The EU’s enlargement method’, Directorate General Enlargement, http://ec.europa.eu/enlargement/taiaex/dyn/create_speech.jsp?speechID=28410&key=97c14a5cd8653b919c8b9a08ff836517 (Last accessed on 30 May 2018).

³¹ Evalueserve, ‘Brexit basics - How the EU works’, KPMG International, 2017.

³² Wilde R, Development of the European Union – A Timeline - <https://www.thoughtco.com/development-of-the-european-union-a-timeline-1221596> (Last accessed on 31 May 2018).

³³ Hunt A and Wheeler B, ‘Brexit: All you need to know about the UK leaving the EU’, <http://www.bbc.com/news/uk-politics-32810887> (Last accessed on 31 May 2018).

2.3 THE ORIGIN AND PROCEDURE OF ARTICLE 50 OF THE TREATY OF THE EUROPEAN UNION (TEU)

It is important to understand the background of how it was made possible for Member states of the EU to be able to opt out of the EU, if they so wish. Its origin, how its prospects were viewed and why Article 50 was introduced in the first place are important for purposes of this mini-thesis.

Article 50 of the Treaty on European Union amended the Lisbon Treaty and introduced a procedure for the voluntary withdrawal from the EU. Requirements in terms of Article 50 are that an individual national government/parliament must be guided by their own constitutional mandate in initiating the withdrawal. The national parliament of the Member state must vote for their EU representatives to vote for the Member state to withdraw itself from the EU and its institutions.³⁴

The Member state's national constitutional law must continue to be compatible with the substantive protections of EU constitutional law as it is a requirement of entering the EU, and so applies even when exiting the EU.³⁵ The Member state in its EU perimeters is given a mandate by national parliament to withdraw from the EU, in taking the matter forward it must then notify the EU Council so that it may consider the matter, also observe and draw up negotiating guidelines.³⁶

For finalisation of the withdrawal process, the consent of the EU Parliament has to be obtained. This consent must to be a qualified majority vote/ two-thirds majority; only after this vote the EU Council may conclude the exit agreement. During the negotiations of Brexit, the exiting Member state may not take part in the discussions regarding its exit from the EU Council or Council of Ministers.³⁷ This is difficult to comprehend as the exiting Member state, as the concerned party would be reasonably be expected to have a right to engage and participate in all activities relating to its decision to leave the EU.

³⁴ Miller V, *'In brief: leaving the European Union'*, House of Commons Library, International Affairs and Defence Section, 2011.

³⁵ Eeckhout P and Frantziou E, *'Brexit and Article 50 TEU: A Constitutionalist Reading'*, UCL European Institute, 2016.

³⁶ Miller V, *'In brief: leaving the European Union'*, House of Commons Library, International Affairs and Defence Section, 2011.

³⁷ EPRS, Members' Research Service, 'Article 50 TEU: Withdrawal of a Member State from the EU', European Union, 2016, [http://www.europarl.europa.eu/ReqData/etudes/BRIE/2016/577971/EPRS_BRI\(2016\)577971_EN.pdf](http://www.europarl.europa.eu/ReqData/etudes/BRIE/2016/577971/EPRS_BRI(2016)577971_EN.pdf) (Last accessed on 01 June 2018).

Quite a number of national constitutional courts found it as fit for Member states to be able to file a referendum to the EU when applying Article 50 of TEU.³⁸ This is informed on the notion that the decision by a Member state in exiting the EU would illustrate the existence of that Member state having its national sovereignty intact.³⁹ In the *Island of Palmas case* the concept of Sovereignty was described in the following terms;

“Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.”⁴⁰

2.3.1 The procedure of Article 50 of the Treaty of the European Union (TEU)

The procedural aspect of Article 50 of TEU is executed in a manner where a notification of withdrawal by a Member state is sent to the EU Council stipulating its intention to exit the EU. The Member state may submit this notification at any given time to the EU Council. This notification must take place after the Member states’ national parliament has passed a vote to exit the EU and then a referendum being filed with the EU Council.⁴¹

Once the notification is served on the EU Council, draft guidelines for the negotiation process of the exit would follow which are presented to the EU delegations of the other remaining 27 Member states. The Member state applying to exit the EU is also not entirely involved in the drawing up of the guidelines for the exiting negotiation process on that particular matter. The future trade relations between the EU and the exiting Member state are dealt with in this process, to result in a less drastic impact, causing a smoother transition taking place once the Member state is outside the EU.⁴²

³⁸ Santos and M v Secretary of State for Exiting the European Union (CO/3281/2016 and CO/3809/2016) (the “Article 50 case”)

³⁹ The Maastricht ruling of the German Federal Constitutional Court of 12 October 1993 The Czech Constitutional Court ruling on the Lisbon Treaty of 03 November 2009

⁴⁰ Daniel-Erasmus Khan, Max Huber as Arbitrator: The Palmas (Miangas) Case and Other Arbitrations, The European Journal of International Law Vol. 18 no. 1 © EJIL 2007

⁴¹ European Council of the European Union, ‘European Council (Art. 50) guidelines for Brexit negotiations’, <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/> (Last accessed on 01 June 2018).

⁴² European Council of the European Union, ‘European Council (Art. 50) guidelines for Brexit negotiations’, <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexit-guidelines/> (Last accessed on 01 June 2018).

Negotiations after notification must take place within a two-year timeframe. Since the UK triggered Article 50 in March 2017, it is then scheduled to leave the EU by the end of March 2019. However, the two years lapses without the negotiation process being established or finalised, in another scenario the Member state would automatically exit the EU. This may and was avoided, in terms of Article 50 (3) of TEU, as the two-year timeframe was extended where consensus between the EU Council and the Member state wishing to exit the EU is obtained. And in this case, such consensus was ascertained.⁴³

While Article 50 of the TEU is initiated and currently underway as it was extended, it is important to unpack how the negotiations of the Article 50 are being conducted. Further it is important to focus on the issues which seem to be highlighted by trade partners and identify the advantages and disadvantages which are said exist since the UK has notified the EU of its intention to exit the EU.⁴⁴

2.4 BRITAIN EXITING THE EUROPEAN UNION (BREXIT) NEGOTIATIONS

It is crucial to know how the EU had created the opting out option within its treaties and further how then the UK has utilised this instrument in so that it can fulfil its intention. And further, since the UK had passed a vote to exit the EU, to understand how the negotiations is conducted up until finality.

Article 50 of TEU only provides for the notification procedure and not the substantive issues relating to the exit arrangement for EU Member states wishing to exit the EU. However the Member state has a limited role in the negotiation of the future relationship between itself and the EU.⁴⁵

As provided previously there are negotiation guidelines that the EU Council must establish. When the EU negotiation guidelines have been defined, the President of the EU Council would then present the framework for the negotiations to the EU Commission. Further, it also

⁴³ EPRS, Members' Research Service, 'Article 50 TEU: Withdrawal of a Member State from the EU', European Union, 2016,

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577971/EPRS_BRI\(2016\)577971_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577971/EPRS_BRI(2016)577971_EN.pdf) (Last accessed on 01 June 2018).

⁴⁴ European Council of the European Union, 'European Council (Art. 50) guidelines for Brexit negotiations', <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines/> (Last accessed on 01 June 2018).

⁴⁵ The Government's Approach, 'Ireland and the negotiations on the UK's withdrawal from the European Union', Irish Government Publication, 2017

determines the position and principles of the EU so that all participants are in the clear when proceeding with the negotiations.⁴⁶

It has been deliberated that the exit guidelines need to be updated so that they may meet the interests of the EU at all particular times. This is caused by the notion that losing a Member state such as the UK will affect the EU adversely. It is thus an important role for the EU to work on amendments to the guidelines on an on-going basis during the discussions of the future trade relationship between the EU and UK.⁴⁷

It has also been said that both the EU and the UK aspire for a smooth transition arrangement during the discussions taking place on Brexit. To also give certainty and continuity of the rights of both natural and juristic persons whose rights exist during and more importantly after UK's membership within the EU lapses.⁴⁸ Negotiations that have taken place between the EU Council and the UK have been directed on looking at the more administrative functions and framework of Article 50 of TEU. These include, such as the timelines of the negotiation process, the structure of the this process and the importance of highlighting the urgent issues which are of interests for both the EU and the UK.⁴⁹

According to treaties of the EU, the EU Commission will take up its role of being the EU's negotiator in the withdrawal process. The EU Commission is made up of 28 Commissioners, one Commissioner from each EU Member state, the EU Council is made up of the Head of States who will be directly involved throughout the entire negotiating process facilitating it accordingly. On the contrary, the UK as the exiting Member state and as previously stated is not permitted to partake in the decision-making process of the withdrawal including the voting for the final exit agreement.⁵⁰

⁴⁶ Telegraph Media Group Limited, *'In full: The EU's draft guidelines for Brexit negotiations'*, <https://www.telegraph.co.uk/news/2017/03/31/full-eus-draft-guidelines-brexite-neqotiations/> (Last accessed on 01 June 2018).

⁴⁷ The Government's Approach, *'Ireland and the negotiations on the UK's withdrawal from the European Union'*, Irish Government Publication, 2017

⁴⁸ The Government's Approach, *'Ireland and the negotiations on the UK's withdrawal from the European Union'*, Irish Government Publication, 2017

⁴⁹ Lang A, McGuinness T and Miller V, *'Brexit: the July negotiations'*, Briefing paper, House of Commons Library, 2017.

⁵⁰ Lang A, McGuinness T and Miller V, *'Brexit: the July negotiations'*, Briefing paper, House of Commons Library, 2017.

This gives the impression that the UK would also have a limited representation that would to some extent lobby for the interests of the UK during Brexit negotiations.⁵¹ However, the contrary is maintained as the view of the UK not participating in the Brexit negotiations is confirmed by European Union ministers who have expressly rejected a demand by the UK to have a continued opinion over EU policy during a Brexit transition period.⁵² Thus, only the remaining 27 Member states of the EU will proactively participate in the negotiations and the approval of the final exit agreement between the EU and the UK.⁵³

2.4.2 The implementation of Brexit

It is important to investigate as to how the UK went about initiating and intended implementing Brexit. With Brexit vote taking place there may be various other reasons as to why Member states may want to exit the EU or any other RTA in future. The experience of the UK is one precedent that may be used for future reference.⁵⁴

There are two approaches that are to be considered when implementing the Brexit decision; these are of the Hard and Soft Brexit approach. On the one hand, Hard Brexit is supported by some parliamentarians who approve of the exit with no deal. Hard Brexit would mean that the negotiation would lead to the UK giving up full access to the Single Market and to the Customs Union of the EU. Further, it is proposed that it would give the UK full control over its borders, so that it may be able to conclude new trade agreements and also be able to apply its national laws to the exclusion of the supranationalism principle of the EU.⁵⁵

This move is seen by many as a transgression to the World Trade Organisation (WTO) rules as it is anticipated that the UK will not be entirely progressive in applying WTO principles and promoting its values when concluding trade agreements in the future.⁵⁶ The International Trade

⁵¹ European Commission, Political leadership https://ec.europa.eu/info/about-european-commission/organisational-structure/political-leadership_en (Last accessed on 06 August 2018).

⁵² Jacopo Barigazzi, Maïa de La Baume, David M. Herszenhorn and Annabelle Dickson, 'EU to UK: You won't set rules during Brexit transition', <https://www.politico.eu/article/eu-ministers-uk-gets-no-say-over-blocs-rules-during-brexit-transition/> (Last accessed on 06 August 2018).

⁵³ The Government's Approach, 'Ireland and the negotiations on the UK's withdrawal from the European Union', Irish Government Publication, 2017

⁵⁴ Wessel R A, 'Consequences of Brexit for international agreements concluded by the EU and its member states', <https://www.utwente.nl/en/bms/pa/research/wessel/wesselconf15.pdf> (Last accessed on 08 August 2018).

⁵⁵ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁵⁶ Lang A, McGuinness T and Miller V, 'Brexit: the July negotiations', Briefing paper, House of Commons Library, 2017.

Secretary of the UK, Liam Fox has provided that the UK would benefit from Brexit. This view is seen to be supported by notion that as it will regain its power over majority of its trade with the rest of the world. Many political and business leaders, even those of Germany have shared similar views which support the approach of Hard Brexit more than any other approach considered for the final exit agreement.⁵⁷

On the other hand, Soft Brexit is considered as an approach where the UK's relationship with the EU would not significantly change. Soft Brexit means that goods and services would be exchanged between the UK and the EU in the same or similar manner which already exists for the all membership of the EU. Either through tariff-free or duty-free goods where there will be no border checks. Soft Brexit will be close as possible with the already existing trade arrangements which the UK is signatory to, by virtue of being an EU Member state.⁵⁸

Soft Brexit would mean that the UK would lose any form authority over the EU institutions but would remain with an unfettered access to the EU Single Market. Countries such as Iceland, Liechtenstein and Norway are examples of the Soft Brexit approach who are not necessarily EU Member states but have access to the Single Market by being part of the EU Economic Area (EEA).⁵⁹

Since these above-mentioned countries have been given access into the EU's Economic Area (EEA); in reciprocation these countries must make contributions into the EU budgets and must accept the four freedoms of movement of goods, services, capital and people. Further, these countries are also subject to the EU law through the Luxembourg-based, European Free Trade Association (EFTA) Court. The EFTA is the Court of Justice of the European Free Trade Association States; it is a supranational judicial body that is responsible adjudicating over these three EFTA members who are also members of the EEA.⁶⁰

⁵⁷ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁵⁸ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁵⁹ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁶⁰ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

If the UK prefers Soft Brexit, it means that it would have to respect and observe the four freedoms recognised in so that it maintains its access to the EU. Many UK parliamentarians are in favour of Soft Brexit, as they raise issues that the UK needs to have continued and further tightened relations with the EU as it is of national interest that an uninterrupted Brexit transition takes place.⁶¹

Some UK politicians opposing Hard Brexit state that if Soft Brexit does not take place, a harsher effect will impact on its stabilised national economy capabilities in performing its duties and functions it has built thus far. Other views include the currency of the UK Pound Sterling experiencing volatile reaction from the world stocks. It is perceived at this stage that a more pleasant transition not impacting a harsh removal of the UK from the EU will be most probable to mitigate any negative effects of Brexit.⁶²

In efforts of mitigating negative effects of Brexit on external trade relations such as the SADC also need to be observed. Whilst the UK is a Member state of the EU, countries that mostly benefited from the EU through WTO inspired economic development and the betterment of their trade industries are those from former sub-Saharan African, Caribbean and Pacific (ACP).⁶³

2.5 THE IMPACT BREXIT MAY HAVE ON THE UNITED KINGDOM (UK) AND THE EUROPEAN UNION (EU)

It is important to analyse the immediate reaction of Brexit by the UK and EU. This will assist in identifying those areas which may impact those trade partners of the UK and those of the EU, either directly or indirectly.⁶⁴

The UK has initiated Brexit to achieve its purpose to exit the EU as mandated by its citizens. The EU has not taken this lightly as it goes against its aspired goals and mission. It can also be

⁶¹ Wessel R A, 'Consequences of Brexit for international agreements concluded by the EU and its member states', <https://www.utwente.nl/en/bms/pa/research/wessel/wesselconf15.pdf> (Last accessed on 08 August 2018).

⁶² Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁶³ Steve Peers, 'The EU or the Commonwealth: a dilemma for the UK – or a false choice?' EU Law Analysis, Expert insight into EU law developments <http://eulawanalysis.blogspot.com/2015/11/the-eu-or-commonwealth-dilemma-for-uk.html> (Last accessed on 02 June 2018)

⁶⁴ Ernst & Young LLP 'EY ITEM Club Special Report on the Labour Market' [https://www.ey.com/Publication/vwLUAssets/ey-item-club-special-report-on-labour-may-2017/\\$FILE/ey-item-club-special-report-on-labour-may-2017.pdf](https://www.ey.com/Publication/vwLUAssets/ey-item-club-special-report-on-labour-may-2017/$FILE/ey-item-club-special-report-on-labour-may-2017.pdf) (Last accessed on 17 June 2018)

viewed that Brexit to some extent will isolate the UK's exports and imports as it will no longer be a Member state of the EU. This has brought mounting pressure on the UK government and parliament in ensuring a smooth transition, where little to no interruption taking place when Brexit negotiations are complete. Whether, when Brexit is finalised it, will have an exit deal or not.⁶⁵

2.5.1 The impact Brexit may have on the United Kingdom (UK)

In breaking down the experiences of the UK, it is to look deeper into the effects Brexit has caused to the UK economy. Further, how the UK has ultimately reacted and what measures they anticipated to take into account when preserving its economy even with the rise of uncertainty with on the matter.⁶⁶

Since the inception of Brexit, the United Kingdom (UK) consumers have not experienced a pleasant shopping time. This is due to prices in shops increasing as an effect of the rapid rise in rates. This is the result of a weak pound sterling that has amounted to the cost of imported goods to the UK to increase and wages not sufficiently increasing to meet desired living standards.⁶⁷

Workers of the UK have demanded wage increases but growth of such wages are evident by the low percentage of unemployment on the other hand immigration to the UK has resulted for many to witness less people in the workplaces compared to those looking for employment.⁶⁸ Immigration is said to be caused by those nationals running away from their homelands based on various reasons such as political unrest and maladministration of their governments.⁶⁹

⁶⁵ Ekeke A C, 'The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

⁶⁶ Richard Partington, Independent, 'UK economy in 2018: steady growth tempered by Brexit politics' <https://www.theguardian.com/business/2017/dec/31/uk-economy-in-2018-steady-growth-tempered-by-brexit-politics> (Last accessed on 18 June 2018).

⁶⁷ Katie Allen, The Guardian, 'Retailers warn on weak pound and blows to consumer confidence' <https://www.theguardian.com/business/2016/oct/11/retailers-warn-weak-pound-blows-consumer-confidence-british-retail-consortium> (Last accessed on 17 June 2018).

⁶⁸ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

⁶⁹ Ernst & Young LLP 'EY ITEM Club Special Report on the Labour Market' [https://www.ey.com/Publication/vwLUAssets/ey-item-club-special-report-on-labour-may-2017/\\$FILE/ey-item-club-special-report-on-labour-may-2017.pdf](https://www.ey.com/Publication/vwLUAssets/ey-item-club-special-report-on-labour-may-2017/$FILE/ey-item-club-special-report-on-labour-may-2017.pdf) (Last accessed on 17 June 2018)

The UK has also been recorded to have the worst wage growth compared to other Organisation for Economic Co-operation and Development (OECD) countries. The OECD was established in 1961 and is constituted as a forum of about 34 industrialised countries, which have aims in the developing and promotion of economic and social policies. Its main purpose is to

‘Build strong economies in its member countries, improve efficiency, home market systems, expand free trade, and contribute to development in industrialised as well as developing countries’.⁷⁰

The UK’s worst wage growth projections are the results of the inflation rate and how some business are reluctant to revisit or even attempt solidifying their position due to the Brexit initiation and negotiations which are highly opposed by other EU countries.⁷¹ However, the UK has been experiencing a good record of job security and employment opportunities in the past. This is anticipated to come to an end because of Brexit and perceptions which seem to be against Brexit as it is also opposed by national business, those businesses indirectly conducting business with the UK and other trade partners of the EU.⁷²

The number of persons who are employed in the UK since the year 2012 has now decreased and it is further anticipated to lose more just over time if the Brexit negotiations do not count in favour of either the EU or the UK.⁷³

In its attempts to ease the pressure on UK households, the UK state have tried not to increase interest rates, this however will be determined by how talks between the UK and EU are progressing. Hopefully, positive prospects are resulted in these Brexit negotiations if not, the pound sterling will suffer the most which would in turn impact the UK households negatively.⁷⁴ The main aim of the UK government is to ensure a smooth transition before and after Brexit is

⁷⁰ Richard Partington, Independent, ‘UK economy in 2018: steady growth tempered by Brexit politics’ <https://www.theguardian.com/business/2017/dec/31/uk-economy-in-2018-steady-growth-tempered-by-brexit-politics> (Last accessed on 18 June 2018).

⁷¹ Ekeke A C, ‘The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter’ http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

⁷² Ben Chu, Independent, ‘The chart that shows UK workers have had the worst wage performance in the OECD except Greece’ <https://www.independent.co.uk/news/business/news/uk-workers-have-had-the-worst-wage-growth-in-the-oecd-except-greece-a7773246.html> (Last accessed on 17 June 2018).

⁷³ Crisp J and Wallace T, ‘UK exports to the EU surge on weaker pound’ <http://www.telegraph.co.uk/business/2017/08/17/uk-exports-eu-surge-weaker-pound/> (last accessed 12 October 2017)

⁷⁴ Department of Trade and Industry, Republic of South Africa ‘Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations’ https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

finalised. This is to the benefit of the UK households, so that they may have a fixed rate deal rather than perpetuate uncertainties which would lead to economic unrest and strife for those living in the UK below the breadline.⁷⁵

2.5.2 The impact Brexit may have on the European Union (EU)

There are various aspects in which the EU will be impacted by Brexit. These include socially, economically, politically and institutionally. However, at this point in time, the impact of Brexit can only be anticipated as negotiations have not been finalised and implemented. There are a couple of issues that this mini-thesis will look at for purposes illustrating the uncertainty experienced by the EU in respect of Brexit.⁷⁶

These issues include the EU's budget, Defence and foreign affairs, free movement of persons, the geographical size of the EU, immigration between the EU and the UK, its policies and trade relations with UK.⁷⁷

The EU budget will be affected by Brexit, as the UK's contribution to the EU will decrease. The UK in 2016 contributed about 19.4 billion euros towards the EU budget, it is then obvious that the EU budget will be significantly affected and restricting and cutting costs on certain initiatives to fill in the void caused by Brexit.⁷⁸ In terms of the Defence and foreign affairs, the EU will be hampered as the UK is one of two Member states that has military powers that comprise of intelligence capabilities with interconnected relations and network of diplomacy. With one less Member state, this may leave the EU in an unfavourable position.⁷⁹

In respect of free movement of persons, most of the people migrate around the EU because of employment commitments; this is an aspect of the EU policy which needs particular attention in so that Brexit when in transition, the rights and interests of labour are duly considered. At this point in time the EU is uncertain as what exactly will happen, however the worst can be

⁷⁵ Partington R, Independent, 'UK economy in 2018: steady growth tempered by Brexit politics' <https://www.theguardian.com/business/2017/dec/31/uk-economy-in-2018-steady-growth-tempered-by-brex-it-politics> (Last accessed on 18 June 2018).

⁷⁶ Barker A, 'The Brexit political declaration: the key points', <https://www.ft.com/content/c6edb7bc-ec0a-11e8-8180-9cf212677a57> (Last accessed on 17 June 2018)

⁷⁷ Alex Barker, 'The Brexit political declaration: the key points', <https://www.ft.com/content/c6edb7bc-ec0a-11e8-8180-9cf212677a57> (Last accessed on 17 June 2018)

⁷⁸ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 17 June 2018).

⁷⁹ Chu B, Independent, 'The chart that shows UK workers have had the worst wage performance in the OECD except Greece' <https://www.independent.co.uk/news/business/news/uk-workers-have-had-the-worst-wage-growth-in-the-oecd-except-greece-a7773246.html> (Last accessed on 17 June 2018)

imagined, in that where privileges that are country enjoyed by the labour force may cease to exist if the EU and the UK do not robustly deliberate on the issue.⁸⁰ The geographical size of the EU will decrease as the UK is constitutes about 15% of the of the EUs current population meaning that the decrease of this percentage will also affect the size of the EU. This will give it less ground and jurisdiction to cover.⁸¹

Immigration between the EU and the UK is likely to be impacted by Brexit. This is by way of access to the UK by EU citizens who may in future be required to us visas and passports when travelling into the UK. The free movement of persons will be curtailed leading to more administration for travelling and boarder authorities of the UK.⁸²

With regards to the EU and its policies, they will be a bit relaxed now as the UK will no longer be an obstacle in passing notions that are for the greater good of the Union. Previously, the UK had many objections to proposed policies and was actually active in deliberating for the interest of its own national citizens, however this will change as its influence and presence in the EU will diminish. The opposition by the UK to proposed policies by the EU caused many delays to them being passed and implemented.⁸³

The trade relations with UK will to some extent not be so optimistic as it may be wished by those with high hopes. Even though any threats may be lessened, however the EU Member states with close proximity to the UK, the likes of the Republic of Ireland and Northern Ireland will experience the immediate impact of Brexit on their goods and the ripple effect that the UK will experience once it is no longer an EU Member state.⁸⁴

2.6 CONCLUSION

The most distinctive body with respect to the UK is the EU. It is of importance then to give regard to the introduction and background of the EU as a regional trade arrangement. In doing

⁸⁰ Barker A,' The Brexit political declaration: the key points', <https://www.ft.com/content/c6edb7bc-ec0a-11e8-8180-9cf212677a57> (Last accessed on 17 June 2018)

⁸¹ Hunt A & Wheeler B, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 17 June 2018).

⁸² Barker A,' The Brexit political declaration: the key points', <https://www.ft.com/content/c6edb7bc-ec0a-11e8-8180-9cf212677a57> (Last accessed on 17 June 2018)

⁸³ Hunt A & Wheeler B , 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 17 June 2018).

⁸⁴ Chu B, Independent, 'The chart that shows UK workers have had the worst wage performance in the OECD except Greece' <https://www.independent.co.uk/news/business/news/uk-workers-have-had-the-worst-wage-growth-in-the-oecd-except-greece-a7773246.html> (Last accessed on 17 June 2018)

so, will illustrate how it was formed, where it has been and how it has been able to survive till this day, taking into account the developments that have taken place since its establishment.⁸⁵

Further, since Brexit is underway, it is in particular Article 50 of the Lisbon Treaty that gave rise to such action being possible. It is then of interest to investigate the origin of Article 50 and to understand its premise and application in terms of EU law. With Brexit being put to action, certain requirements that are found in Article 50 are to be satisfied. Firstly, it is expected that such an exit by any EU Member state may not be sparingly made. It is then important for proper exit negotiations to take place amongst the EU structures. These EU structures must come up with feasible resolutions which must be taken into account and applied within the prescripts of EU law and accordingly to the determined Brexit negotiations.⁸⁶

Since the UK is the first Member state of the EU to leave the Union, for purposes of this mini-thesis it is important to establish the role each EU institution plays the Brexit negotiations process. To also establish what effect do these negotiations give to the implementation of the final Brexit deal.⁸⁷

In looking at the process in which will take place for Brexit, it will be beneficial then to look at the impact Brexit will have the UK and the EU. Further, how these trade relations may be analysed in tracking the trade relationship between the EU and the UK..⁸⁸

It can be drawn from the experience of Brexit thus far, that the handling of its withdrawal negotiations, the UK applying a more objective approach in engaging all its trade partners and stakeholders will assist in a more conducive process, beneficial for all parties. The UK has to

⁸⁵ Graham Gudgin and Ken Coutts, 'Did EU Membership Accelerate UK Economic Growth?' <https://www.socialeurope.eu/eu-membership-accelerate-uk-economic-growth> (Last accessed on 09 August 2018)

⁸⁶ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁸⁷ Crisp J and Wallace T, 'UK exports to the EU surge on weaker pound' <http://www.telegraph.co.uk/business/2017/08/17/uk-exports-eu-surge-weaker-pound/> (last accessed 12 October 2017)

⁸⁸ Keith Campbell, 'Brexit set to change SA's bilateral economic relationship with the UK', http://www.engineeringnews.co.za/article/brexit-set-to-change-sas-bilateral-economic-relationship-with-the-uk-2017-03-03/rep_id:4136 (Last accessed on 09 August 2018).

take into account the interests of its current and prospective trade partners who may experience either a positive or negative impact from terminating its EU membership.⁸⁹

Further, Brexit will inevitably affect the interests of trade partners in SADC, and those interests of the WTO. Looking further to how SADC and the WTO rules should likely be addressed, so that a smooth transition, with little to no interruption taking place to the economies of the developing countries of SADC and broadly to that of the WTO rules.⁹⁰



⁸⁹ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

⁹⁰ Exxaro Africa, 'Special Report: The impact of 'Brexit' on Africa', Business Risk Management Admin, <https://www.exxafrica.com/special-report-the-impact-of-brexit-on-africa/> (Last accessed on 04 June 2018).

CHAPTER 3

SOUTHERN AFRICA DEVELOPMENT COMMUNITY

3.1 INTRODUCTION

The focal point of this chapter is the elaboration of the history of the Southern Africa Development Community (SADC), on its establishment, timeline on its commitments and the trade relationship that exists between itself and the European Union (EU). It is important to focus on these issues, so that the core principles and aspirations of SADC may be identified and further relating them to those of the EU.⁹¹

Further, in trying to understand the current trade agreements in place between the EU and SADC it is important to grasp the background from the Lomé Conventions to the establishment of the Cotonou Agreements. Since the EU and SADC trade relationship has been in existence prior the establishment of both the RTAs. It is important then to look into how, in terms of the World Trade Organisation (WTO); the two RTAs had continued this trade relationship after the codification of treaties relevant in this regard.⁹²

Since Britain exiting the European Union (Brexit) is underway, it is also important to give regard to how Brexit will impact on the SADC-EU Economic Partnership Agreement (EPA). As there has been a consistent trade relationship between the EU and SADC; Brexit will firstly impact itself as the UK and ultimately the EU (See Chapter 2.5), which will directly or indirectly impact its trade partners such as SADC.⁹³

⁹¹ World Economic Forum, '9 mega-trends shaping the future of Africa'
<https://www.weforum.org/agenda/2015/05/9-mega-trends-shaping-the-future-of-africa/> (Last accessed on 07 June 2018)

⁹² Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'
http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

⁹³ Manuel Guilherme Júnior, 'Comparison of Regional Economic Communities in Africa – The Case of SADC'
https://www.researchgate.net/publication/280702468_WAI-ZEI_Paper_No_22_Comparison_of_Regional_Economic_Communities_in_Africa_-_The_Case_of_SADC (Last accessed on 07 June 2018).

What will be the reaction of the EU-SADC trade relationship? Further, looking at how SADC should attempt in the addressing the initial effects of Brexit and preserving the interests of the EPA.⁹⁴

It will be beneficial for this mini-thesis to investigate the role played by South Africa as SADC Member in the SADC-EU EPA and how its economy has reacted to Brexit and how it will attempt preserving its interests and those of SADC as a whole. Further how SADC will go about in preserving benefits of its trade with the EU.⁹⁵ Since South Africa is notably the most active Member state in the SADC region.⁹⁶

3.2 THE HISTORY OF SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC)

In dissecting the Southern Africa Development Community (SADC) as a regional trade agreement (RTA), it is important to understand its background, aims and mission. Further, try to and contrast SADCs' purpose and how it will either be advanced further or reversed by Brexit taking place.⁹⁷

In Lusaka, Zambia on 1 April 1980, nine heads of states formed the organisation originally known as the Southern African Development Co-ordination Conference (SADCC). It was the adoption of the Lusaka Declaration, which brought this organisation about.⁹⁸ The SADCC's unique approach was to concentrate on promoting co-operation in the area of infrastructure and

⁹⁴ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'
http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

⁹⁵ Manuel Guilherme Júnior, 'Comparison of Regional Economic Communities in Africa – The Case of SADC'
https://www.researchgate.net/publication/280702468_WAI-ZEI_Paper_No_22_Comparison_of_Regional_Economic_Communities_in_Africa_-_The_Case_of_SADC (Last accessed on 07 June 2018).

⁹⁶ Mengesha Yayo Negasi, 'Trade Effects of Regional Economic Integration in Africa: The Case of SADC', Services Sector Development and Impact on Poverty Thematic Working Group, 2009.

⁹⁷ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'
http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

⁹⁸ Department of Foreign Affairs, Republic of South Africa, Southern African Development Community (SADC)
<http://www.dirco.gov.za/foreign/Multilateral/africa/sadc.htm> (Last accessed on 17 August 2018)

economic development. The SADCC was formed based on objectives that would see development within the region.⁹⁹

These objectives were the reduction of Member state dependence, an example would be South Africa as it was and still is the most growing economy in the region and the promotion of active Member state in their respective resources in the implementation of national, interstate and regional policies.¹⁰⁰ This also included getting involved in concerted action in so that the region's trade and development activity would attract the international community in cooperation within the SADCC framework, in its strategy and goals for economic liberation.¹⁰¹

The transformation of SADCC to SADC was due to the thorough consultative process which was attended by the region's leaders, in the year 1992. The Heads of State and governments signed the SADC Declaration and Treaty. Article 2 of the SADC Treaty established SADC and its Member states were represented by their Head of State and government or by duly authorised persons such as Ministers.¹⁰² This was based on their quest of obtaining economic integration and development in the region. In practice, SADCs' primary activities were, dealing with the co-ordination of members' development initiatives and assistance in raising funds for these projects. South Africa joined SADC in 1994 after it had transitioned to a democratic state and abandoned its unjust and anti-human rights laws of Apartheid.¹⁰³

In essence, the real vision of SADC is the full economic integration of the Southern Africa region and trade liberalisation.¹⁰⁴ Issues such as imports from the EU that overtake regional partners' intra-regional exports, the lack of skills, capital to establish and operate refined modern communication systems, and small business communities that do not allow financially practical business publications, are some the challenges affecting African RTAs are some of

⁹⁹ Department of Foreign Affairs, Republic of South Africa, Southern African Development Community (SADC) <http://www.dirco.gov.za/foreign/Multilateral/africa/sadc.htm> (Last accessed on 17 August 2018)

¹⁰⁰ Department of Foreign Affairs, Republic of South Africa, Southern African Development Community (SADC) <http://www.dirco.gov.za/foreign/Multilateral/africa/sadc.htm> (Last accessed on 17 August 2018)

¹⁰¹ Mengesha Yayo Negasi, 'Trade Effects of Regional Economic Integration in Africa: The Case of SADC', Services Sector Development and Impact on Poverty Thematic Working Group, 2009.

¹⁰² Stergomena Lawrence Tax, 'The SADC Success Stories', https://www.sadc.int/files/8914/4007/4304/SADC_Success_Stories_final_English_PDF_3.pdf (Last accessed on 17 August 2018)

¹⁰³ Manuel Guilherme Júnior, 'Comparison of Regional Economic Communities in Africa – The Case of SADC' https://www.researchgate.net/publication/280702468_WAI-ZEI_Paper_No_22_Comparison_of_Regional_Economic_Communities_in_Africa_-_The_Case_of_SADC (Last accessed on 07 June 2018).

¹⁰⁴ Negasi M Y, 'Trade Effects of Regional Economic Integration in Africa: The Case of SADC', (2009).

the issues that have an impact on the level and pace in which much aspired regional development being unfulfilled through the different RTAs on the African continent.¹⁰⁵

3.2.1 A timeline on the commitments and trade of Southern Africa Development Community (SADC)

It is important to identify achievements and developments that have been obtained thus far by SADC. How these commitments have shaped and assisted SADC as a RTA to continue with its goals and mission intact, even during trying political and economic times? Further, how the UK and the EU correlate to SADC in respect of its goals and mission.¹⁰⁶

A more detailed document about the obligations of SADC is provided for in the Regional Indicative Strategic Development Plan (RISDP) of 2003. This tactical strategic plan was said to articulate the roadmap for SADC's integration and provided further details concerning the establishment of a Free Trade Area by 2008, a Customs Union in 2010, a Common Market in 2015, Monetary Union in 2016 and the introduction of a Single Currency in 2018.¹⁰⁷ This approach by SADC is one to gradually grow the RTA and is inspired by the EU as it is an exemplary RTA which has shown commitment in developing its membership as a whole.

Currently, the RISDP is focused on goals that are set for the period from the year 2015 until 2020. The implementations of these interests are being effectively observed, as proactivity will increase development and standard of living of the population in the region. However, the occurrence of Brexit has caused some uncertainties with the development of the RTA as most of its development is dependent on trade with the likes of the EU.¹⁰⁸

In terms of the transport industry in the intra-regional trade of SADC, the sum of all South African imports from SADC countries is less relative to its exports to other SADC Member states; imports were less than 35% of export values in 2015.¹⁰⁹ Over the past couple of years there has been an improvement regarding trade amongst SADC countries and other African countries. Increases are evident with the figures provided in sources such as the SADC Facts

¹⁰⁵ Negasi M Y, 'Trade Effects of Regional Economic Integration in Africa: The Case of SADC', (2009).

¹⁰⁶ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'
http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁰⁷ Hartzenberg T, 'Regional Integration in Africa', (2011).

¹⁰⁸ SADC - Revised Regional Indicative Strategic Development Plan 2015-2020 and the Role of the Private Sector, First Annual South Africa Business Forum, Botswana (2015).

¹⁰⁹ Thando Vilakazi and Anthea Paelo, 'Understanding intra-regional transport', WIDER Working Paper 2017/46

& Figures that investigate trade activity in the region. This cannot be said about extra-regional trade taking place between SADC and the EU. This is because the UK, one of the major EU Member states elected to exit the Union which has hampered even the previous stabilised trade fluctuations between the two RTAs.¹¹⁰

In terms of intra-regional trade of SADC, products such as petroleum oils, agricultural products, electricity and some clothing and textile products dominate. In terms of exports of SADC to the rest of the world particularly the EU, products such as coal, ferrochromium, manganese ores, platinum, as well as precious metals and diamonds, resource manufactured goods, mainly for the automotive industry, clothing, textiles and tobacco dominate this aspect of SADC exports. These goods may be divided up according to their demand by the EU and the UK. Brexit will decrease the goods destined for the EU and such decline will be translated in the exports the UK will demand post-Brexit.¹¹¹

In terms of extra-African trade, SADC has more trade exports to the Asian Pacific Market than the EU market. Between the years 2000 and 2010, exports from SADC directed to the Asian Pacific Economic Cooperation (APEC) was at 45%, the EU was at 27% and with the rest of the world was at 15%. In respect of intra-African trade, SADC is trading more amongst its Member states than with other African countries. Between 2000 and 2010, intra-SADC was at 10% and with the rest of Africa was at 3%.¹¹²

Even though more than 80 percent of Africa's exports are still intended for outside markets, with the likes of the EU and APEC making up for more than 50 percent of this total. The likes of South Africa and Botswana are able to keep trade activity with SADC Members and that of other African RTAs afloat.¹¹³ Africa as a whole, imports more than 90 percent of its goods from outside the continent, despite having the potential of providing trade within the continent however capacity constraints dictate such revelations.¹¹⁴

¹¹⁰ SADC Facts & Figures, <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/> (Last accessed on 17 August 2018).

¹¹¹ SADC Facts & Figures, <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/> (Last accessed on 17 August 2018).

¹¹² SADC Facts & Figures, <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/> (Last accessed on 17 August 2018).

¹¹³ Lawrence Tax S, 'The SADC Success Stories', https://www.sadc.int/files/8914/4007/4304/SADC_Success_Stories_final_English_PDF_3.pdf (Last accessed on 17 August 2018)

¹¹⁴ Hartzenberg T, 'Regional Integration in Africa', (2011).

In terms of SADC, a significant share of imports received from each regional economic community including the EU was meant for a few individual countries that are within SADC. Figures show that, about 66 percent of imports are meant for at least four countries, namely – South Africa (21 percent), Zambia (18 percent), Zimbabwe (17 percent), and Mozambique (11 percent).¹¹⁵ When observing the African demographics of trade, SADC includes three of the top five most competitive countries in sub-Saharan Africa namely, South Africa, Mauritius and Botswana. This information portrays SADC as the most active regional economic community overall on the African continent. This is also informed by the fact some SADC Member states derive their trade policies from the EU Member states who are former colonisers of the developing countries within SADC.¹¹⁶

3.3 THE BACKGROUND OF THE TRADE RELATIONSHIP BETWEEN THE EUROPEAN UNION (EU) AND THE SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC)

In this segment of the mini-thesis, it is of importance to investigate the history between the EU and African countries trade relationship, particularly SADC. This will assist in drawing the bigger picture in trying to understand how those trade relationships have been; what obstacles were faced by the parties and what solutions were applied, for the survival of a continued trade relationship. Further, to analyse the most appropriate approach to observe for the EU and SADC in light of Brexit.

During the 1960's as most colonies of Britain and France had recently gained their independence.¹¹⁷ In 1963, the European Economic Community (EEC) together with 8 African Associated States (AAS) which majority of them were former French colonies concluded trade agreements. These two groups signed the Yaoundé Convention that came in operation in 1964. The Convention was in existence for a period of 5 years that was later replaced by the Yaoundé II until 1975.¹¹⁸

¹¹⁵ International Monetary Fund Direction of Trade Statistics (DOTS), February (2011)

¹¹⁶ Jan Vanheukelom and Talitha Bertelsmann-Scott, 'The Political Economy of Regional Integration in Africa, The Southern African Development Community (SADC) Report' 2016 <https://ecdpm.org/wp-content/uploads/ECDPM-2016-Political-Economy-Regional-Integration-Africa-SADC-Report.pdf> (Last accessed on 17 August 2018)

¹¹⁷ Macki Sissoko, Louis Osuji and William Cheng, 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade', The African Economic & Business Review, Vol. 1, No. 1, 1998.

¹¹⁸ Sissoko M, Osuji L and Cheng W, 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade', The African Economic & Business Review, Vol. 1, No. 1, 1998.

The purpose of the Yaoundé I was to advance the trade goals of the Rome Treaty which were to expand trade and for the economic development of world trade generally. The Yaoundé II was an extension of the Yaoundé I. It had minor changes that were implemented, an example being the elimination the Common External Tariff (CET) that was previously applied in the Yaoundé I.¹¹⁹

As the UK joined the EU in the year 1973, it terminated special trade links it had with most of its Commonwealth countries, these trade links were replaced by the UK joining the EU. This meant that the UK could no longer conclude trade agreements directly with the Commonwealth countries. This meant that it had to follow the channels provided by the accession into the EEC to conclude any type of agreement with any third party following the governance principles of supranationalism. Supranationalism gave the EEC authority to conclude trade agreements on behalf of the UK.¹²⁰

In 1975 was the Lomé Convention (Lomé I) signed preceded two other Lomé Conventions (Lomé II and III). The Lomé Convention extended the application of the previous treaties by introducing the system of non-reciprocity that was requested by the AAS. It had provided the AAS with a greater access to the EU markets. Since the UK is a former coloniser, many of its former colonies regained their political independence and, were able to rebuild their economies. There also was a substantive trade relationship with the UK and the rest of the world in particular.¹²¹

In affording developing countries a duty-free entry of their goods into the EEC market did not mean that this was on a reciprocal basis. This approach was based on the 10 year waiver that was extended on a more permanent basis allowing for the Enabling Clause.¹²² This was an attempt to work more on accelerating economic growth of those developing countries more specifically, former colonies. By the waiver being in place and non-reciprocity being practiced,

¹¹⁹ Sissoko M, Osuji L and Cheng W, 'Impacts of the Yaoundé and Lomé Conventions on EC-ACP Trade', The African Economic & Business Review, Vol. 1, No. 1, 1998.

¹²⁰ Christopher Booker, 'What if Britain HADN'T joined the EU?' <http://www.dailymail.co.uk/news/article-426827/What-Britain-HADNT-joined-EU.html> (Last accessed on 09 August 2018).

¹²¹ Steve Peers, 'The EU or the Commonwealth: a dilemma for the UK – or a false choice?' EU Law Analysis, Expert insight into EU law developments <http://eulawanalysis.blogspot.com/2015/11/the-eu-or-commonwealth-dilemma-for-uk.html> (Last accessed on 02 June 2018)

¹²² Constantine Michalopoulos, 'The role of special and differential treatment for developing countries in GATT and the World Trade Organisation', <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.195.1951&rep=rep1&type=pdf> (Last accessed on 15 July 2018)

this would drive for those developing country's domestic industries to be established and ultimately be actively competitive in international trade in the long run.¹²³

For simplicity and ease of trade within trade agreements such as the Lomé Convention, there are cumulation provisions which give benefit to regional trade blocs that consist of developing countries. An understandable definition of cumulating provisions mean that imported goods to or from the EU or SADC may be classified as local goods of the receiving country or regional trade bloc.¹²⁴ This is dependent on whether those said goods are further processed in the receiving country or regional trade bloc Member state. These goods should not be confused with those that may require being upgraded by the receiving country for such imported goods to meet the minimum quality standards of the receiving country.¹²⁵

In counteracting the non-reciprocal principle introduced by the Lomé Convention non-ACP countries that were not part and parcel of the non-reciprocal arrangement contended that non-reciprocation of market access between the EU and ACP countries had an unfair advantage to ACP countries which amounted to discrimination of their economies as it did not promote fair competition between the two groups. It argued further, that the non-reciprocity arrangements went against the WTO law as *'reciprocity is a traditional principle of GATT/WTO, but is practicable only between developed nations due to their roughly matching economies'* and in this case, treatment afforded to ACP countries should have been also afforded to countries roughly matching those economies, being non-ACP countries.¹²⁶

Further, disputes such as the EU and Latin American Bananas producers highlighted issues of non-reciprocity. Latin American banana producers with the support of the United States of America opposed the waiver afforded to ACP countries banana producers' exports to the EU. The basis of the opposition is that, the said waiver was discriminatory towards the Banana industry of Latin America as compared to its counterparts, the ACP Banana industry that

¹²³ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

¹²⁴ SADC-EU EPA Outreach South Africa 'SADC-EU Economic Partnership Agreement - Regional Integration in Africa' https://sadc-epa-outreach.com/images/files/SADC_EU_EPA_Regional_Integration_February_2018.pdf (Last accessed on 08 June 2018)

¹²⁵ SADC-EU EPA Outreach South Africa 'SADC-EU Economic Partnership Agreement - Regional Integration in Africa' https://sadc-epa-outreach.com/images/files/SADC_EU_EPA_Regional_Integration_February_2018.pdf (Last accessed on 08 June 2018)

¹²⁶ The World Trade Organization, 'Principles of the trading system', https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (Last accessed on 04 June 2018)

enjoyed the non-reciprocity benefits of its exports into the EU.¹²⁷ This led to the non-reciprocity principle being reviewed considering the waiver and it was found just that a reciprocal approach to be applied between the EU and ACP countries going forward.¹²⁸

The move from non-reciprocity to reciprocity of trade agreements between the EU and ACP countries was in progress and this dispute is one that actually made the Cotonou Agreement materialise.¹²⁹ The Cotonou Agreement was set to be in operation for a period of twenty years as it took over from where the Lomé Convention IV had left off in the year 2000. With the conclusion of the Cotonou Agreement, came a PTA which has been viewed to develop trade relations between the EU and ACP countries, this was the adoption of the Economic Partnership Agreement (EPA).

The EPA is an instrument focused on a more reciprocal trade partnership developed by the Cotonou Agreement; this approach is compatible with the WTO law.¹³⁰ By the EPA replacing the non-reciprocal trade preferences of the Lomé Convention IV, proved that, the latter was no longer viewed as compatible to WTO law unlike the EPA. The EPA is anticipated to reduce poverty and achieve economic growth for the ACP countries through strengthened trade relations with the EU on a reciprocal basis.¹³¹

In respect on the reciprocal principle being applicable, a SADC-EU EPA was concluded that observes this approach. A major player Member state within SADC, the Republic of South Africa has shown to have intricate trade ties with the EU and UK respectively. By Brexit taking place will most likely impact South Africa which may indirectly impact SADC to experience economic constraints. The South African Rand currency experiencing some volatility based on the credit ratings which have downgraded its economy as non-investment grading which led to

¹²⁷ Banana wars case study, 'Explain why the EU and USA were in a dispute over the trade in bananas', <http://www.markedbyteachers.com/as-and-a-level/geography/banana-wars-case-study.html> (Last accessed on 07 July 2018).

¹²⁸ Hoekman B, Rollo J, Wilkinson and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

¹²⁹ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹³⁰ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹³¹ Drakes M, 'Getting to Know the EPA', Caribbean Regional Negotiating Machinery (CRNM) on the subject of the Economic Partnership Agreement (EPA) between African, Caribbean and Pacific States and Europe, (2007)

investor confidence declining and further hampered by allegations of corruption and state capture, where allegations loom that, the private sector inappropriately interfered with obtaining government contracts.¹³²

3.3.1 The impact Brexit may have on the Southern Africa Development Community (SADC) - the European Union (EU) Economic Partnership Agreement (EPA)

By particularly focusing on the SADC-EU EPA and how Brexit has affected it and how it has responded thus far, will assist in identifying the most likely position or approach the EPA may consider once the Brexit negotiations have been finalised.¹³³

The EU and SADC countries, which are made up of SACU Member states, the BLNS, Mozambique and Angola had negotiated trade agreements between each other and such negotiations were concluded in 2014.¹³⁴ This partnership agreement was finalised and concluded in 2016, it also had various prospects which seemed to be beneficial to all parties to it. The now known SADC-EU EPA was provisionally applied between the EU, SACU and the BLNS; this depended primarily on the ratification by all EU Member states.¹³⁵

The call by the UK to exit the EU has raised concerns for one of the EU's major trade partners, SADC. SADC Member states South Africa, Botswana and Namibia to name a few, are mainly concerned of the impact of Brexit will have on the RTAs' export trade. These include their exported goods market that is covered in the SADC-EU EPA and that may be abandoned by once Brexit is finalised.¹³⁶

At first, the EU had suggested the inclusion of a 'Regional MFN Clause' that would be beneficial for future trade agreements with third party countries/trade blocs. This would address the practical aspects and the extension of the MFN treatment of SADC and SACU Member

¹³² Exxaro Africa, 'Special Report: The impact of 'Brexit' on Africa'', Business Risk Management Admin, <https://www.exxafrica.com/special-report-the-impact-of-brexit-on-africa/> (Last accessed on 04 June 2018).

¹³³ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹³⁴ Ekeke A C, 'The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

¹³⁵ Taku Fundira, 'Implementing the SADC EPA – challenges and impact', Tralac, (2017).

¹³⁶ European Commission, 'Countries and regions, Southern African Development Community (SADC)' <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 18 June 2018)

states by the EU.¹³⁷ SADC has concerns on the preference in certain goods which it had no previous export taxes on; or those which were less significant. Once Brexit is finalised, export duties may actually increase towards SADC and SACU Member states but may either be stable if may not substantially decrease the trade surplus for the UK directly and EU indirectly.¹³⁸

In the SADC-EU EPA it was negotiated that South Africa would for a limited period of twelve years, impose export taxes on a number of mineral export goods destined for Europe. These export taxes were at predetermined rates by both the EU and SADC.¹³⁹ Since SADCs' major sector agriculture may be majorly affected by Brexit it would be advisable to enforce safeguards measures to ease any pressure felt by the agriculture industry..¹⁴⁰

The reason for safeguards being suggested is that various agricultural goods will require particular attention thus it may not be as preferable for the EU and SADC agricultural sectors at the moment. This position may change once Brexit is finalised. However, there are safeguards that were concluded in the SADC-EU EPA and these safeguards will operate in a manner to prevent the hampering of the SADC agricultural sector by EU goods.¹⁴¹ Goods from the EU may be anticipated to increase or be consistent even though the UK would have exited the EU. The EU has in light of this, eliminated subsidies to several agricultural goods which are exported to SADC. This may allow for the UK to take a different position of subsidising its agricultural goods in an attempt to preserve its local agricultural sector.¹⁴²

In terms of trade in services, SADC Member states except for South Africa were inclined in negotiating the opening of their respective services markets to the EU. Even though some Member states had not signed the trade on goods agreement, they have however, shown interest in the continuation of negotiations with the EU.¹⁴³ This is for the parties to observe a more

¹³⁷ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹³⁸ Fundira T, 'Implementing the SADC EPA – challenges and impact', Tralac, (2017).

¹³⁹ Ekeke A C, 'The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

¹⁴⁰ Fundira T, 'Implementing the SADC EPA – challenges and impact', Tralac, (2017).

¹⁴¹ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁴² Fundira T, 'Implementing the SADC EPA – challenges and impact', Tralac, (2017).

¹⁴³ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'

practical deal which would include trade in services and other related fields such as competition regulation, investment and government procurements.¹⁴⁴

For those countries that may not experience significant growth due to Brexit, can only hope to attract benefits from the SADC-EU EPA, this may be possible if they align their national economic and trade development policies with that of the SADC-EU EPA.¹⁴⁵ Trade relations between EU and SADC are optimistic even though there may be under a lot of scrutiny and have experienced volatility in the past. The essence of the EPA is to promote the expansion of trade between the two regional trade blocs.¹⁴⁶

In being able to clearly investigate or determine the impact of Brexit on the SADC-EU EPA, it is vital for a consistent research and monitoring programme to be established. This programme would be useful in its attempt to highlight the positive effects and prevent any negative effects it may have either directly or indirectly to the trade activity already established.¹⁴⁷

3.3.2 Attempts in the addressing the initial impact Brexit may have on the Southern Africa Development Community (SADC) - the European Union (EU) Economic Partnership Agreement (EU)

It is important to investigate the steps SADC-EU EPA has taken thus far in addressing the effects of Brexit which it has experienced. By the EPA being proactive rather than reactive, will determine its willingness to preserve its industries from threats and expand on opportunities provided by Brexit.¹⁴⁸

http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁴⁴ Fundira T, 'Implementing the SADC EPA – challenges and impact', Tralac, (2017).

¹⁴⁵ Fundira T, 'Implementing the SADC EPA – challenges and impact', Tralac, (2017).

¹⁴⁶ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'

http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁴⁷ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁴⁸ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'

http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

Bodies such as the German Development Cooperation have conducted a workshop titled ‘*Anchoring Sustainability in the Framework of the EU EPA’s*’, this is one example of the attempts of trying to understand the issues Brexit may cause on trade between the EU and all its trade partners through their respective EPA’s signed.¹⁴⁹ This workshop was aimed at guiding the creation of the project focusing on the implementation and monitoring of EPA’s in cooperation with its trade partners from various parts of the world including the SADC region.¹⁵⁰

Organisations such as Tralac had taken part in the workshop and highlighted some issues of concern that are anticipated, being the effects of Brexit. These concerns are made up of South Africa’s reluctance to negotiate trade in services unlike other Member states of SADC.¹⁵¹ The South African Trade and Industry national department Minister, Rob Davies stated that, the differences in opinion of the issue of trade in services amongst SADC and SACU Member states will cause a division on trade policies and interests which would broadly affect relations amongst SADC and SACU Member states.¹⁵²

Issues discussed were the EU’s standards, quality compliance and assurances, that are said to be one of concerns for small businesses in the SADC and SACU region. The EU standards are said to be high and costly to satisfy, majorly for ACP countries, SADC and SACU in particular, as they are still developing.¹⁵³ This is evident in that, their small businesses barely open shop after 3 years of establishment. As for SADC, the certification of the EU standards, quality compliance and assurances does not allow for SADC small businesses to benefit extensively from the SADC and SACU economies as their main role is to facilitate trade for these said regions.¹⁵⁴

¹⁴⁹ Ekeke A C, ‘The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter’ http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

¹⁵⁰ Fundira T, ‘Implementing the SADC EPA – challenges and impact’, Tralac, (2017).

¹⁵¹ Department of Trade and Industry, Republic of South Africa ‘Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations’ https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁵² Fundira T, ‘Implementing the SADC EPA – challenges and impact’, Tralac, (2017).

¹⁵³ Wroblewski J, ‘Assessment of the Economic Partnership Agreement between South Africa and the European Union’ http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁵⁴ Fundira T, ‘Implementing the SADC EPA – challenges and impact’, Tralac, (2017).

The changes to market access on the SADC-EU EPA are one that is predominantly contentious between SACU and SADC Member states and the EU. With regards to the BLNS and Mozambique, they have total duty free access to the EU market, whilst the EU in the market of SACU and Mozambique has 86% and 74% duty free access respectively. South Africa has 99% duty free access into the EU market.¹⁵⁵ A market which in the recent past and currently is of interest, is that of the South African fisheries, where the EU and South Africa have agreed for no longer than 9 years to liberalise its fisheries tariffs lines, this action will be administered through the GSP system rather than the MFN.¹⁵⁶ Such effects should be addressed by a bilateral agreement, which will preserve any percentage that will fall short when the UK is outside of the EU.

In terms of the rules of origin, this conception under the SADC-EU EPA is made to support the increasing of goods that are produced from a number of SADC countries in so that it promotes intra-regional trade ties amongst SADC Member states.¹⁵⁷ This does not lessen the benefit of such goods being exported to the EU duty free. The one requirement for rules of origin is the 'direct transportation' of goods from original importer to exporter, this has then been replaced with a principle of non-alterations. This allows for the movement of such exported goods to be moved, stored, and divided in another country other than the original exporter's territory.¹⁵⁸ This has the potential of expanding the trade activity of many trade partners other than those within the SADC-EU EPA. The UK was part of this as some goods from SADC were destined for it would be affected and a bilateral agreement should be placed in a better position to address this issue, so that Brexit is not gravely felt by SADC goods destined for the UK no longer enter the EU.

¹⁵⁵ Willemien Viljoen, 'From the TDCA to the SADC-EU EPA – the significant changes' <https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-eпа-the-significant-changes.html> (Last accessed on 20 January 2019).

¹⁵⁶ Viljoen W, 'From the TDCA to the SADC-EU EPA – the significant changes' <https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-eпа-the-significant-changes.html> (Last accessed on 20 January 2019).

¹⁵⁷ Baatweng V "'BREXIT" harmless to SADC-EU EPA' https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 31 January 2019).

¹⁵⁸ Viljoen W, 'From the TDCA to the SADC-EU EPA – the significant changes' <https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-eпа-the-significant-changes.html> (Last accessed on 31 January 2019).

3.4 THE REPUBLIC OF SOUTH AFRICA (RSA) BEING THE GATEWAY TO FOREIGN DIRECT INVESTMENT TO SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC) REACTION TO BREXIT

It is important to refine the role that South Africa plays within the SADC-EU EPA. This will assist in determining the influence and strength of South Africa's economy in its attempt in preserving the interests of the entire SADC region. If South Africa conducts itself in a manner that considers its fellow Member states, the interests of SADC-EU EPA may be preserved at a greater position. If it acts for its domestic industries then SADC interests will not be preserved per se.¹⁵⁹

In the past, the EU had not accepted action by South Africa of implementing safeguards on its poultry industry in a positive manner. However, South Africa contends that the putting in place of safeguards is to preserve its poultry industry that will inevitably benefit not just South Africa but also other SADC Member states.

Previously, the UK had strong ties with South Africa. South Africa has notably the largest economy and industries within the SADC region. With its size, it is the driving force behind the SADC's trade and economy. This puts South Africa at a higher expectation by its fellow Member states, in so far as being committed to grow the economy of the RTA, to benefit not just itself but the RTA as a whole. It is important to analyse and establish whether how Brexit will impact South Africa and ultimately impacting SADC as a whole.¹⁶⁰

An agreement of Brexit, will require renegotiation and major parts of its terms be revisited to secure a smooth transition. This may take two or more years, as the Brexit negotiation process has been extended and is expected come to its completion by the end of 2019.¹⁶¹ South Africa has a significant role within the Southern African Customs Union (SACU) as a Member state. Since there are trade agreements between SACU and the UK by virtue of being an EU Member

¹⁵⁹ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'
http://dSPACE.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁶⁰ Christopher Booker, 'What if Britain HADN'T joined the EU?' <http://www.dailymail.co.uk/news/article-426827/What-Britain-HADNT-joined-EU.html> (Last accessed on 09 August 2018).

¹⁶¹ Exxaro Africa, 'Special Report: The impact of 'Brexit' on Africa'', Business Risk Management Admin, <https://www.exxafrica.com/special-report-the-impact-of-brexit-on-africa/> (Last accessed on 04 June 2018).

state, these trade agreements need to be renegotiated to maintain a relative trade relationship that would have existed prior to the UK exiting the EU.¹⁶²

Since South Africa is the major trade player in SADC and SACU, the South African national Trade and Industry ministry has offered UK companies continued duty-free access into the SADC and SACU market even after Brexit. This decision is informed by Brexit taking place and the ministry trying to maintain the already existing trade relations between SACU, SADC and the UK. This is an attempt to mitigate any negative effects that may arise between the finalisation of Brexit and the finalisation of renegotiation of bilateral trade agreements between the UK, SACU and SADC.¹⁶³

Further, South Africa is one of the beneficiaries that the UK offers financial assistance to. This practice by the UK may decline and would negatively impact on the financial assistance that South Africa has received in the past. A suitable approach would be for a mutual co-operation and trade arrangement established and successfully maintained by the UK and South Africa in turn benefiting SADC and SACU indirectly.¹⁶⁴

This projection may affect trade agreements between SADC, SACU and the EU, such as the SADC- EU EPA. Exports between South Africa and the UK may drastically decrease over the next few months until new trade terms are defined. The EU's Common Agricultural Policy is one feature that may directly affect the SADC and SACU agricultural exports into the UK market via the EU.¹⁶⁵

In trying to curb any negative impacts of Brexit on SADC and SACU, it is ideal for the leaders of the economic community and customs union to be more proactive in engaging the EU and UK in addressing their concerns and uncertainties as issues of interests and urgency. These engagements should be directed in lessening the interruption which will be caused by Brexit. Since the period of the two years of the withdrawal negotiations should be observed.¹⁶⁶

¹⁶² Exxaro Africa, 'Special Report: The impact of 'Brexit' on Africa'', Business Risk Management Admin, <https://www.exxafrica.com/special-report-the-impact-of-brexit-on-africa/> (Last accessed on 04 June 2018).

¹⁶³ Gibb R, 'The Impact of Brexit on South Africa', Strengthening Africa's economic performance, The Brenthurst Foundation, 2016

¹⁶⁴ Exxaro Africa, 'Special Report: The impact of 'Brexit' on Africa'', Business Risk Management Admin, <https://www.exxafrica.com/special-report-the-impact-of-brexit-on-africa/> (Last accessed on 04 June 2018).

¹⁶⁵ Gibb R, 'The Impact of Brexit on South Africa', Strengthening Africa's economic performance, The Brenthurst Foundation, 2016

¹⁶⁶ Tralac, 'Are the Brexit options for retaining SADC-EPA Benefits becoming clearer?', <https://www.tralac.org/discussions/article/12826-are-the-brexit-options-for-retaining-sadc-epa-benefits-becoming-clearer.html> (Last accessed on 04 June 2018).

The UK has shown the willingness to negotiate new trade deals however concerns arise as to whether the UK will prioritise developed countries to the detriment of developing countries such as South Africa. Reasons for concerns is that, more development is required for ACP countries compared to countries such as USA, those of Europe and Asia particularly China.¹⁶⁷ If the UK neglects to maintain or attempt to soothe the transition with the ACP countries, this will not assist the world economy to recover from Brexit but it may perpetuate backtracked under development of ACP countries, leading to stagnant or no economic progress at all.¹⁶⁸

If the UK is then proactive in concluding these trade agreements with ACP countries, then the perceived pro-development and good governing politics of the UK will be witnessed by the world. This will allow most ACP countries to renegotiate better standing trade agreements with the UK and also the attempt of striving for ACP countries to be able to advance the social and economic development they have achieved thus far.¹⁶⁹

South Africa's dominance in the African continent is more evident in the financial markets. The South African financial market, which comprises of banks, long- and short-term insurers, private sector pension funds, mutual funds, participation mortgage bond schemes and mining and industrial finance houses make out South Africa as the only African state and SADC Member state to have a well-functioning, independent and specialised financial institutions those listed on the South African stock market, the Johannesburg Stock Exchange (JSE).¹⁷⁰

The JSE dominates the capital markets in the African continent and SADC region, being capitalised with an amount of about \$280 billion and with a daily turnover of \$7 billion. The JSE also provides increased financial services for international settlements for a number of countries within the SADC region. Even though South Africa has a well-functioning and dominant financial market on the continent, its political leadership has not been reflected in a positive light.¹⁷¹ This has led to SADC Member states and the region being impacted negatively from this experience. The impact has not just been experienced by the political sphere alone,

¹⁶⁷ Keith Campbell, 'Brexit set to change SA's bilateral economic relationship with the UK', http://www.engineeringnews.co.za/article/brexit-set-to-change-sas-bilateral-economic-relationship-with-the-uk-2017-03-03/rep_id:4136 (Last accessed on 09 August 2018).

¹⁶⁸ Bond, 'The impact of Brexit on UK and EU international development and humanitarian policy', Views from UK and European civil society, 2017.

¹⁶⁹ Bond, 'The impact of Brexit on UK and EU international development and humanitarian policy', Views from UK and European civil society, 2017.

¹⁷⁰ Chris Stals, 'The Role of Financial Co-operation in the Development of the Southern African Development Community (SADC)', Harvard Institute for International Development, (1997)

¹⁷¹ Stals C, 'The Role of Financial Co-operation in the Development of the Southern African Development Community (SADC)', Harvard Institute for International Development, (1997)

but also in the economic sphere, which caused instability and hinder the progress already achieved by SADCs' integration programme.¹⁷²

3.5 SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC) PRESERVING BENEFITS OF THE ECONOMIC PARTNERSHIP AGREEMENT (EPA)

The continued lifespan of the SADC-EU EPA is determined by the strides both the EU and SADC are willing to take before Brexit is officiated and also once the UK has left the EU. Since SADC is a developing countries RTA, it would be reasonably expected for it to act in a speedy manner to secure its trade interests with the UK and other WTO countries.¹⁷³

There are two approaches that may be utilised which are also compatible under WTO law, in the establishment of a PTA. A PTA may be concluded, either through Article XXIV of GATT or through the Enabling Clause. The difference between the two mechanisms is evident on their notification to the WTO for their establishment respectively.¹⁷⁴ For the establishment of a PTA under the Enabling Clause, the said proposed PTA must be notified to the WTO and be directed at benefiting particularly developing and least developed countries trade. However, under Article XXIV of GATT since its scope and application is general, as both developed and developing countries, may notify the WTO on the establishment of a PTA regardless of contracting parties in the proposed trade arrangement.¹⁷⁵

The application of the Enabling Clause is not as general as Article XXIV; the Enabling Clause specifically deals with preferential treatment of developing and least developed countries in particular.¹⁷⁶ SADCs' main objectives as a developing countries RTA are similar to those observed and preferred by the Enabling Clause, which are to bring economic development and

¹⁷² Stals C, 'The Role of Financial Co-operation in the Development of the Southern African Development Community (SADC)', Harvard Institute for International Development, (1997)

¹⁷³ Richard Partington, Independent, 'UK economy in 2018: steady growth tempered by Brexit politics' <https://www.theguardian.com/business/2017/dec/31/uk-economy-in-2018-steady-growth-tempered-by-brexit-politics> (Last accessed on 18 June 2018).

¹⁷⁴ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁷⁵ Van den Bossche P, Zdou W, 'The Law and Policy of the World Trade Organization', Cambridge University Press, New York, (2013)

¹⁷⁶ South Centre, 'Article RTICLE XXIV and RTAS: How much wiggle room for developing countries', (2008).

the inclusion of developing countries into the multilateral trading system.¹⁷⁷ The EU as one of the groups referred to as developed countries has taken upon itself to further the goals of the Enabling Clause but at the same time, strengthening its trade relations with both SADC and individual developing countries such as South Africa not to the exclusion of the developed countries entirely.¹⁷⁸

Some advantages that SADC have sourced as ‘developing countries’, is the acceleration of economic growth in the past decades since its establishment. This has shown through infrastructure development as the most active SADC Member state, South Africa has reached a point of being competitive with other countries within the EU.¹⁷⁹ The goals, which SADC aimed to achieve by 2020, have also been refined to try to be particular in the aspired development in the future. Regarding safeguard measures, this has given developing countries the opportunity to preserve their domestic industries temporarily so that they could capacitate and improve where necessary for a fair chance to have those industries competitive in the bilateral and/or multilateral trading systems.¹⁸⁰

In the past, through the Lomé Convention, the EU was not obliged to reciprocate any benefit from trade arrangements between itself and developing countries such as SADC. However the Cotonou Agreement changed that stance as it has been shown through recent figures that the EUs’ exports to SADC have increased compared to the previous non-reciprocity era.¹⁸¹

Some mishaps that have affected SADC have been the slower growth rate of intra-regional trade caused by major players given more attention rather than assisting those, countries who are struggling to find methods of maintaining industries that have potential. The increased imports from EU have added to the issues of intra-regional trade being negatively affected.

¹⁷⁷ Department of Trade and Industry, Republic of South Africa ‘Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations’ https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁷⁸ Marna Kearney, ‘Assessing Development Strategies to Achieve the MDGs in the Republic of South Africa’, United Nations Department for Social and Economic Affairs (2011).

¹⁷⁹ Ekeke A C, ‘The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter’ http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

¹⁸⁰ Department of Trade and Industry, Republic of South Africa ‘Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations’ https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁸¹ Kearney M, ‘Assessing Development Strategies to Achieve the MDGs in the Republic of South Africa’, United Nations Department for Social and Economic Affairs (2011).

Issues such as fair competition are not necessarily being realised due to SADC industries that are not as advanced or equipped unlike those of the EU.¹⁸²

The issue of not addressing vulnerable domestic industries within SADC on the threat caused by EU imports in due course, has been one hurdle SADC has somewhat neglected to foresee. This is caused by SADC not effectively enforcing measures to preserve the existence of such industries.¹⁸³ A disadvantage for the EU is that it then experiences safeguard measures that are put up by SADC, this causes EU to either divert that particular product or retain it within its community. This causes an oversupply within its borders or may have to negotiate new trade agreements in trying to remedy the effects of safeguard measures imposed by SADC.¹⁸⁴ The Enabling Clause is there to give opportunity to developing countries by opening a door for such countries to enter the multilateral trading system without giving developed countries the gap to exploit developing countries. Developing countries have more advantages than disadvantages by the leaning towards concluding a PTA in terms of the Enabling Clause.¹⁸⁵

However, Brexit creates uncertainties and its effects still being speculated, looking at the trade relations between EU and SADC, it is positive to say that the objectives of the 1979 Enabling Clause are enforceable and serves its purpose in allowing developing countries to form PTAs with developed countries.¹⁸⁶ Further, developed countries also give substance to the Enabling Clause by objectively applying its objects and by giving developing countries access to the multilateral trading system.¹⁸⁷ Brexit will cause the UK to either conclude agreements with individual countries/Member states of the SADC which will run concurrently with those of the

¹⁸² Amos S, 'The role of South Africa in SADC regional integration: the making or braking of the organization', *Journal of International Commercial Law and Technology* Vol. 5, Issue 3 (2010)

¹⁸³ Ekeke A C, 'The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

¹⁸⁴ Kearney M, 'Assessing Development Strategies to Achieve the MDGs in the Republic of South Africa', United Nations Department for Social and Economic Affairs (2011).

¹⁸⁵ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁸⁶ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁸⁷ Kearney M, 'Assessing Development Strategies to Achieve the MDGs in the Republic of South Africa', United Nations Department for Social and Economic Affairs (2011)

EU. What should be focused on should be a smooth transition that will eliminate any prospects of interruptions to trade agreements already existing once Brexit is finalised.¹⁸⁸

Even with the achievements obtained thus far, Brexit has precedential effect on the culture of exiting developed countries trade blocs. This brings about an outlook that, the UK and other developed countries may opt to conclude bilateral trade agreements than to be signatories' of regional trade blocs' agreements.¹⁸⁹ Further, Brexit could be implemented in a manner which will create little to no interruptions; this can only be anticipated at the moment as no real or tangible trade agreement that has been concluded by the UK since the initiation of Brexit.¹⁹⁰

3.6 CONCLUSION

It is an ideal position for SADC and the EU to maintain their current trade relationship position or improve it, in light of Brexit. It also should be considered, that the creation of further PTAs or bilateral trade agreements, to secure a much greater market access for developing countries into developed countries markets is ideal.¹⁹¹ Putting place preventative measures for Brexit in respect of SADC to ease on future negative impacts is crucial.¹⁹²

Concerns raised by SADC and the EU which include the stability of their trade agreements and the conclusion of further trade agreements post-Brexit need to be addressed in a robust manner, where the UK is not entirely excluded.¹⁹³ It is important in answering the question of the impact of Brexit, to look at the history of SADC, the timeline of the commitments and trade of SADC in relation to the history of the EU, SADC and the UK trade relationship.¹⁹⁴

¹⁸⁸ Tralac 'Some implications of Brexit for UK-African relations' <https://www.tralac.org/news/article/10089-some-implications-of-brexit-for-uk-african-relations.html> (Last accessed on 18 June 2018).

¹⁸⁹ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁹⁰ Tralac 'Some implications of Brexit for UK-African relations' <https://www.tralac.org/news/article/10089-some-implications-of-brexit-for-uk-african-relations.html> (Last accessed on 18 June 2018).

¹⁹¹ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

¹⁹² Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁹³ Partington R, Independent, 'UK economy in 2018: steady growth tempered by Brexit politics' <https://www.theguardian.com/business/2017/dec/31/uk-economy-in-2018-steady-growth-tempered-by-brexit-politics> (Last accessed on 18 June 2018).

¹⁹⁴ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union'

Further, in looking at the background of the Lomé Convention to the Cotonou Agreements, will assist in establishing how the current EPA between SADC and the EU is governed.¹⁹⁵ In reasoning for the impact of Brexit on the EPA that exists between the EU and SADC is of utmost importance. Since the UK being a Member state of the EU and a major one at it, the occurrence of Brexit will impact the SADC-EU EPA.¹⁹⁶

Investigating as to what approaches that the EPA partners have chosen to follow and how South Africa as the most active and biggest economy in SADC has been affected may assist to decipher the eventual result of the Brexit impact.¹⁹⁷ This is important because it has been shown that, even with Brexit occurring, how SADC attempts in the addressing the initial effects of Brexit and how it should go about preserving the interests of the EPA.¹⁹⁸ It is important then to look at the available avenues which the trade partners may choose from and apply provided by the WTO for its signatories in circumstances relevant in this regard as Brexit is going through successfully.¹⁹⁹



http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁹⁵ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

¹⁹⁶ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

¹⁹⁷ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

¹⁹⁸ Partington R, Independent, 'UK economy in 2018: steady growth tempered by Brexit politics' <https://www.theguardian.com/business/2017/dec/31/uk-economy-in-2018-steady-growth-tempered-by-brexit-politics> (Last accessed on 18 June 2018).

¹⁹⁹ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

CHAPTER 4

PREFERENTIAL TRADE AGREEMENTS IN TERMS OF WORLD TRADE ORGANISATION (WTO) RULES

4.1 INTRODUCTION

The main focus of this chapter is to look into the rules of the World Trade Organisation (WTO) and how Preferential Trade Agreements (PTA) may be applied in the occurrence and finalisation of Britain exiting the European Union (Brexit).²⁰⁰ The United Kingdom (UK) has two options when negotiating for Brexit; it may agree on the replication of existing trade agreements of the EU or it may agree to leave the European Union (EU) without a deal. This means that the UK would have to negotiate new trade agreements with all its prospective trade partners. It is then important to observe the appropriate approaches which the EU may have at its disposal.²⁰¹

It will further be beneficial to elaborate on the Most-Favoured-Nation (MFN) principle as a median to facilitate trade and economic development for WTO Member states, between developed countries and developing countries. This will assist in understanding the trade relationship between the EU, UK as developed countries on the one hand and on the other hand, Southern Africa Development Community (SADC) as a trade bloc of developing countries.

It is of interest to address matters of trade interruption that may be caused by Brexit. This may be tackled by devising a new Generalised Scheme of Preferences (GSP) between the UK and SADC. It is also of interest to look at how the Enabling Clause finds relevance in this regard. To further investigate the preferential trade relationship between the UK and the Republic of South Africa (RSA) as the powerhouse of economic activity in the region in an attempt to understand the current atmosphere of the trade relationship.

Lastly to identify the prospects of the Brexit effect on Southern African Customs Union (SACU) and SADC, its advantages and disadvantages and how safeguard measures may be

²⁰⁰ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

²⁰¹ Robert Hunter-Wade, 'Why free trade has costs for developing countries', <https://www.ft.com/content/29526d98-09cb-11da-b870-0000e2511c8> (Last accessed on 20 July 2018).

utilised as a trade remedy for SADC in the circumstance so that trade facilitation and economic development may be achieved.²⁰²

4.2 MOST-FAVOURLED-NATION (MFN) PRINCIPLE

The integration of developing countries into the multilateral trading system has been one of the major objectives aimed at by the General Agreement on Tariffs and Trade (GATT) or the World Trade Organisation (WTO).²⁰³ The GATT gave rise to the WTO in 1995 and now the WTO administers its agreements of which the GATT has identified that Commonwealth governments' developments are dependent upon their inter-relations in terms of trade through proactively participating in world trade. It is in their collective capacities and interests to raise each Commonwealth government's standards of living, ensuring full employment of its citizens, residents and the growth of income of households which in turn is effective for increasing the demand of trade in goods and achieving sustainable development.²⁰⁴

Further, the GATT looks to increase the utilisation of natural resources; this then would give effect to the expansion of production and the exchange of goods by Commonwealth countries and the rest of the world. This ideal is seen to be possible through collective engagements of countries in a reciprocal and mutually advantageous manner. This would be through trade arrangements that are directed at lessening trade barriers and eliminating discriminatory treatment amongst Commonwealth countries and the international community as a whole.²⁰⁵

The WTO observes two main non-discrimination obligations; these are the Most Favoured Nation (MFN) treatment obligation contained in Part 1 of Article I of the 1994 GATT, and the National Treatment Obligation (NTO) contained in Part 1 of Article III of the 1994 GATT.²⁰⁶ For purposes of this mini-thesis, only one non-discrimination obligation will be briefly discussed and that is the MFN; which prohibits one country from discriminating between other countries. The MFN obligations' main purpose is to ensure all WTO Members have an equal

²⁰² Kearney M, 'Assessing Development Strategies to Achieve the MDGs in the Republic of South Africa', United Nations Department for Social and Economic Affairs (2011).

²⁰³ Peter Van den Bossche, Werner Zdou, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013).

²⁰⁴ Text of the General Agreement on Tariffs and Trade, Geneva, 1986
https://www.wto.org/english/docs_e/legal_e/gatt47.pdf (Last accessed on 07 July 2018)

²⁰⁵ Text of the General Agreement on Tariffs and Trade, Geneva, 1986
https://www.wto.org/english/docs_e/legal_e/gatt47.pdf (Last accessed on 07 July 2018)

²⁰⁶ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

opportunity to import from or export to, other WTO Members or any other country.²⁰⁷ An exception to the MFN principle would be the GSP system, which is a mechanism used to increase the role played by developing countries in international trade.

The GSP is a system that is put into practice, where non-reciprocal preference is afforded by developed countries to developing countries and least developing countries. This system involves the reduced in tariffs or duty-free entry of goods manufactured or part thereof, exported by beneficiary countries being developing countries to the markets of donor countries being developed countries.²⁰⁸

When desiring on to enter into any trade arrangement with a WTO Member country, such prospects must be notified to the WTO. Notification to the WTO can be made through Exceptions to the rule of Non-discrimination Article XXIV of GATT or through the Enabling Clause.²⁰⁹ The Enabling Clause is not necessarily the same as Article XXIV; this is with respect to notifying the WTO for the establishment of a custom union, free trade area, preferential trade agreement and/or regional trade agreement. The Enabling Clause specifically allows developed countries to initiate trade agreements with developing countries and also for developing countries to conclude Preferential Trade Agreements (PTAs) amongst themselves.²¹⁰

For the GSP to be operational it has to be authorised by the Enabling Clause, which allows for a prolonged exemption for developed countries to grant preferential tariff treatment to goods originating from developing countries and least developed countries.²¹¹ If a developed country adopts a GSP without obtaining authorisation through the Enabling Clause, the MFN obligation would be breached by that particular Member state of the WTO.²¹²

²⁰⁷ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

²⁰⁸ Generalized System of Preferences (GSP)
<http://industry.govmu.org/English//DOCUMENTS/THE%20GENERALIZED%20SYSTEM%20OF%20PREFERENCES.PDF> (Last accessed on 07 July 2018).

²⁰⁹ Elenor Lissel, Safeguard measures in Multilateral and Regional Trade Agreements, Lund University, (2015).

²¹⁰ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

²¹¹ Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, GATT BISD, 26th Supp, 203, GATT Doc L/4903 (1979) (Multilateral Trade Negotiations Decision, adopted on 28 November 1979) ('Enabling Clause') 1.

²¹² Marrakesh Agreement, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex 1A (General Agreement on Tariffs and Trade) 1867 UNTS 190, art I ('GATT 1994'). The GATT 1994 incorporates by reference the provisions of GATT 1947, Art 1.

The Enabling Clause is not as broad as Article XXIV, it specifically deals with preferential treatment of developing and least developed countries only.²¹³ When notifying the WTO under the Enabling Clause, the proposed agreement must, in essence benefit developing and least developed countries trade. However, for Article XXIV this is not a requirement for notification, as developed and developing countries can notify the WTO under Article XXIV for trade agreements being granted regardless of contracting parties in the proposed trade arrangement.²¹⁴ The Enabling Clause states in relevant paragraphs, the following: (Para 1 - 3(b))

- 1) Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.²¹⁵
- 2) The provisions of paragraph 1 apply to the following:
 - c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;²¹⁶
- 3) Any differential and more favourable treatment provided under this clause:
 - a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;
 - b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis.²¹⁷

The cause of the Enabling Clause GSP approach is that developing and least developed countries are provided with additional tariff preferences that are beneficial but are not automatically bestowed to all developing countries but on a conditional basis; that they adhere

²¹³ South Centre, 'Article XXIV and RTAS: How much wiggle room for developing countries', (2008).

²¹⁴ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

²¹⁵ Tokyo Round Agreements, Treatment of Developing Countries, 'Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries', 191 (L/4903) Decision of 28 November 1979.

²¹⁶ Tokyo Round Agreements, 'Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries', (1979) 191

²¹⁷ Tokyo Round Agreements, 'Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries', (1979) 191

to qualified environmental and labour standards.²¹⁸ Further, tariffs that are reduced are also available to developing and least developed countries that have instituted measures to combat illegal substances such as the production of illegal narcotics and the trafficking of such substances giving reference to the ‘Drug Arrangements’ which are observed by WTO Member countries.²¹⁹

With that said, the UK in future may observe the conclusion of a PTA with SADC in the case it leaves the EU without a deal. At this moment it is ideal for the UK to lean more on using the Enabling Clause to secure the future trade relationship it had with SADC. .²²⁰ In its quest to regain its national grip of its trade with the world, the UK has to adhere to WTO concepts such as the Enabling Clause taking into account circumstances of its potential future trade partners. For the UK to be able to advance their trade with developing countries and concluding further bilateral trade agreements, it will have to revise its past position and use all reasonable opportunities the interested.²²¹

4.3 DEVISING A NEW GENERALISED SCHEME PREFERENCES (GSP) BETWEEN THE UNITED KINGDOM (UK) AND THE SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC)

As part of an approach to encourage developing countries trade, the first United Nations Conference on Trade and Development (UNCTAD) in 1964, proposed that all developing countries be granted preferential tariff treatment from developed countries.²²² In this case the EU, more especially the UK, since it is exiting the EU should consider prioritising PTAs that will benefit the developing and least developing countries. These would include developing countries generally however, for purposes of this mini-thesis, SADC is the benefiting RTA which would be given an opportunity to continue or improve its already established trade relations with the UK.²²³

²¹⁸ Council of the European Union, Council Regulation No 2501/2001 [2001] OJ L 346/1 (‘GSP Regulation’)

²¹⁹ Council of the European Union, Council Regulation No 2501/2001 (2001)

²²⁰ House of Lords, Select Committee on Economic Affairs, ‘The Impact of Economic Sanctions’, Volume II: Evidence, 2nd Report of Session 2006–07

²²¹ House of Lords, Select Committee on Economic Affairs, ‘The Impact of Economic Sanctions’, Volume II: Evidence, 2nd Report of Session 2006–07

²²² UNCTAD, Final Act and Report of the Conference, 1st sess, 35th plen mtg, annex A, UN Doc E/CONF.46/139 (1964) General Principle 8.

²²³ Bernard Hoekman, Jim Rollo, Rorden Wilkinson and L. Alan Winters, UK trade with developing countries after Brexit, The UK Trade Policy Observatory, University of Sussex, 2016.

WTO requirements placed on preferential trade arrangements

Further, to align the trade arrangements between the parties in so that they reflect the reciprocity principle of the WTO. By the adherence to the reciprocity principle the trade agreements would then be compatible with WTO law.²²⁴ The Preamble of the WTO Agreement stipulates as follows,

‘WTO Members pursue the objectives of higher standards of living, full employment, growth and economic development by: entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade.’²²⁵

In observing the GSP at its inception, a 10-year waiver on the application of Article XXVI of the GATT 1947 was put into operation. It is the ‘Acceptance, Entry into Force and Registration of the GSP’ that granted the waiver in the year 1971.²²⁶ Before the expiry of the waiver, the GATT 1947 contracting parties to the WTO decided to adopt the GSP on a more permanent basis. This decision was taken in 1979 and was titled ‘Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries’ it also became known as the Enabling Clause was applied.²²⁷²²⁸ This provision aims to highlight the agreements that may be notified under the Enabling Clause and also included in the Enabling Clause are safeguard measures.

Safeguard measures are mechanisms that may be put in place in a case where a country or countries foresee a threat or experience an injury to their domestic industries. There are different safeguard measures that may be applied and relevant for their respective industries. These safeguard measures are there to lessen any negative impact which the threatened or injured country’s domestic industry may experience detrimental results. The threatened or injured country may put up safeguard measures to preserve or stop any further injury or threat to the said domestic industry.

²²⁴ Van den Bossche P, Zdou W, ‘The Law and Policy of The World Trade Organization’, Cambridge University Press, New York, (2013)

²²⁵ Van den Bossche P, Zdou W, ‘The Law and Policy of the World Trade Organization’, Cambridge University Press, New York, (2013)

²²⁶ Generalized System of Preferences, GATT BISD, 18th Supp, 24, GATT Doc L/3545 (1971) (Waiver Decision, adopted on 25 June 1971) (‘1971 Waiver Decision’)

²²⁷ Paragraph 1 of the Enabling Clause as provided above states- ‘contracting parties may accord differential and more favourable treatment to developing countries ‘notwithstanding’ Article I of the GATT 1947’

²²⁸ Tokyo Round Agreements, ‘Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries’, (1979) 191

As mentioned previously, this is in terms of the differential and more favourable treatment to developing countries which applies to preferential tariff treatment afforded to developing countries in accordance with the GSP as laid down in Article 2(a) of the GATT.²²⁹

Despite the MFN obligation of Article, I:1 of the GATT 1994; para 1 of the Enabling Clause allows Members of WTO to provide, differential and more favourable treatment to developing countries. The Enabling Clause is being viewed to operate as an 'exception' to Article I:1 of the GATT 1994.²³⁰ Furthermore, the Enabling Clause guarantees that, to the point where there may be a conflict between measures under the Enabling Clause and that of the MFN obligation in Article I:1; the Enabling Clause, as the more specific rule and accommodative instrument, would prevail over Article I:1.²³¹

In addressing the conflict, it is provided that the consistencies of a challenged measure of Article I: 1 should first be examined when determining such a conflict and, if inconsistent, it should then be decided whether the measure is nevertheless justified by the Enabling Clause. Nonetheless, it is only possible to apply one provision at a time as the Enabling Clause does not completely exclude the applicability of Article I:1 vice-versa.²³²

As mentioned previously, the MFN is grounded on the notion of treating all WTO Members with the same treatment when granting any privileges or advantages regarding like products and services. However, under the Enabling Clause, developing countries can also form regional or inter-regional preferential arrangements amongst themselves in accordance with Article 2(c) of the GSP.²³³ As for PTAs, the Enabling Clause affords its regional members an advantageous treatment with regards to trade, to the exclusion of non-contracting parties. This can be viewed as a detour from one of the core MFN principles of a multilateral trading system however is justifiable in terms of the WTO law by operation of the Enabling Clause.²³⁴

There are about three exemptions for the formation of a PTA in terms of WTO law. Firstly, with regards to the MFN obligation relates to the establishment of a PTA for trade in goods.

²²⁹ Council of the European Union, Council Regulation (2001) ('GSP Regulation' Art 2(a))

²³⁰ Appellate Body report on European Communities – conditions for the granting of tariff preferences to developing countries, para. 90.

²³¹ WTO, Committee on Trade and Development, Legal note on regional trade arrangements under the Enabling Clause, WT/COMTD/W/114, (13 May 2003), para 5

²³² Appellate Body report on European Communities – conditions for the granting of tariff preferences to developing countries, (EC – Tariff Preferences), WT/DS246/AB/R, (7 April 2004), paras 101-102

²³³ Council of the European Union, Council Regulation (2001) ('GSP Regulation' Art 2(c))

²³⁴ UNCTAD/DTL/TLB/2011/1 'Trade Facilitation in Regional Trade Agreements'

Secondly, the other two exemptions are found in Article XXIV of GATT as it allows for preferential treatment in the creation of a customs union and/ or a free trade area. Lastly, that the Enabling Clause, allows for the preferential treatment of products that originate from developing countries and facilitates PTAs in the trade in goods.²³⁵

It is possible that the Enabling Clause would serve to authorise PTAs among developing countries even if the requirements of Article XXIV are not fully satisfied. This is because the Enabling Clause is not as broad as Article XXIV, but particularly focuses on developing countries. Even when invoked, the relevant provisions of the Enabling Clause could be viewed as law governing a specific subject matter within WTO law, with respect to PTAs on goods between developing countries and those developed countries.²³⁶

For the establishment of a PTA a body that authorises such, the Committee on Regional Trade Agreements (CRTA) must ensure the transparency of all PTAs. There are two approaches that may be utilised in the conclusion of PTAs this is through Article XXIV and the Enabling Clause. PTAs falling under Article XXIV are notified to the Council for Trade in Goods (CTG) and PTAs under the Enabling Clause are notified to the Committee on Trade and Development (CTD) this includes PTAs falling under paragraph 2(c) of the Enabling Clause.²³⁷

The Enabling Clause only covers trade in goods, so there is no equivalence if developing countries want to notify an agreement that involve trade in services. However, Article V of the General Agreements of Trade in Services (GATS) does cater for the needs of developing countries concerning trade in services as compared to Article XXIV of the GATT dealing with the contrary; the trade in goods.²³⁸ For an example, an introduction to customs unions notification is made under Article 2(c) of the Enabling Clause as such action exclude the regulation of trade in services. Brexit will impact both trade in goods and services, as none is excluded in relation to trade between the EU and SADC. Even though the EPA may give regard

²³⁵ UNCTAD/DTL/TLB/2011/1 'Trade Facilitation in Regional Trade Agreements'

²³⁶ WTO, Committee on Trade and Development, Legal note on regional trade arrangements under the Enabling Clause, (2003), para 5

²³⁷ WTO, Transparency mechanism for Regional Trade Agreements, Decision of 14 December 2006, WT/L/671, (18 December 2006), para E18

²³⁸ A Burrows, 'WTO Agreements – General Agreement on Trade in Services (GATS)' Director, Services Trade and Negotiations Section, Department of Foreign Affairs and Trade, Canberra, Australia (1998)

to trade in goods, however trade in services cannot be entirely excluded as it forms part of the broader trade relation between the two RTAs.²³⁹

4.3.1. The United Kingdom (UK) and the European Union (EU) Preferential Treatment to Commonwealth countries such as the Southern Africa Development Community (SADC)

As previously stated that countries that are former colonies of the UK are also known as Commonwealth, have in the past enjoyed some level of preferential treatment where their goods had market access in the UK. The UK, since joining the EU its market access decreased with regards to Commonwealth and its goods were directed into the European Single Market.²⁴⁰ Considering the size of the EU this meant that non-former colonies or non-Commonwealth countries did not enjoy the same preferential treatment calling in lesser access for such countries. Those former colonies of the EU Member states enjoyed the preferential treatment even though it had a decreased market access, and the Lomé Convention extended benefits to all ACP countries even those who were not former colonies.²⁴¹

Even though there has been a negative connotation attached to Brexit taking place however the UK has adopted the optimistic view that Brexit will allow for the ability to equalise the market access and preferential treatment of all developing countries irrespective of their history. This does not in any way suggest that the UK may neglect its former colonies, as it is the UK's mission to continue providing preferential treatment to its Commonwealth countries.²⁴²

It has been expressed by Commonwealth countries that by Brexit taking place, they will no longer enjoy the differential and preferential treatment once afforded to them by the UK in the past.²⁴³ Further, that new negotiations based on concluding arrangements for the benefit of the entire developing countries would be a more reasonable approach. It is then upon the UK government to prepare itself for the anticipated engagements, notwithstanding those

²³⁹ UNCTAD 'Training package on regional trade agreements'
<https://edisciplinas.usp.br/mod/resource/view.php?id=38971> (Last accessed on 15 July 2018).

²⁴⁰ Francine McKenzie, 'Trade between Canada, Australia, New Zealand, South Africa, and Britain 1920-1973: the End of the Settlement Era', XIVth International Economic History Congress, (2006).

²⁴¹ Bernard Hoekman, Jim Rollo, Rorden Wilkinson and L. Alan Winters, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

²⁴² Peter Draper and Razeen Sally, 'Developing Country Coalitions in Multilateral Trade Negotiations: Aligning the Majors?' The South African Institute of International Affairs, (2005).

²⁴³ Olayinka Bandele and Rashmi Banga, 'Brexit: Challenges and Opportunities for Jamaica and Other CARIFORUM Countries', Trade Competitiveness Briefing Paper, Commonwealth Secretariat, 2017.

agreements already existing and EU trade arrangements with developing countries that it may be replicated.²⁴⁴

Challenges that have been raised in terms of EPAs approach have not necessarily been addressed. The SADC-EU EPA is the only regional EPA in Africa that has recently been operational since February 2018, however not all SADC Member states are part of this EPA but are however negotiating to be part of other African EPAs.²⁴⁵ It is also reported that this EPA is the only EPA that has been signed and implemented; other EPAs have implementation issues that have not yet been addressed.²⁴⁶

As previously discussed, trade arrangements between the EU Member states and their former colonies had been formalised through the preferential treatment instruments such as the Lomé Convention. As for third party developing countries, who were non-former colonies of the EU Member states, in addressing preferential treatment was governed by the GSP and GSP+ regimes applied to Least Developing Countries (LDC), which included the Everything But Arms (EBA) initiative.²⁴⁷

As also discussed previously, the GSP at first offered all developing countries who have acceded to the WTO a non-reciprocal preferential treatment to developed countries markets. Even though GSP is said to be beneficial to developing countries, but there are limitations as to the commercial activities of developing countries.²⁴⁸ One of the limitations is that not all its products are given market access into the developed countries. All goods that were in direct competition with those of developed countries could most likely experience the limitation.²⁴⁹

In 2014, there was reformation of the GSP system which saw the decline of the geographical application of the scheme but it is said that this was to increase and improve its degree of

²⁴⁴ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016. PLEASE COMPARE THE USE OF NO FIRST NAMES HERE WITH THE REFERENCES ABOVE – CONSISTENCY – YOU NEED TO DO THE SAME THROUGHOUT

²⁴⁵ European Commission, Southern African Development Community (SADC), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 20 July 2018)

²⁴⁶ Francois-Xavier Merrien, Economic Partnership Agreements between the EU and the African, Caribbean and Pacific group of countries: New governance or new dependency? The perspective of the world review, Vol 1 No 1 (2009)

²⁴⁷ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

²⁴⁸ Stephen Greenberg, Anne Marie Thow and Mafaniso Hara, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

²⁴⁹ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

preference of its beneficiaries.²⁵⁰ It has also been viewed that LDC have the worst chance of experiencing a substantial economic growth and the application of the GSP+ allows for deeper access of LDC goods into the developed countries markets. However, those goods should be exclusive from arms or any such material used in the manufacturing of arms as per the EBA initiative.²⁵¹

Over the years, the EU development policies have evolved and there are three imperatives inclusive in its policies. These imperatives may be useful for the UK to choose from; when it applies the prospects of Brexit.²⁵² Firstly, it is suggested that developing countries should be prioritised and not particularly focus on those goods from already developed countries. Whatever trade arrangements and policies to be passed by the UK legislature should bear in mind the issues and trade prospects of majority developing country's economic and social needs. This would be to the benefit of the parties in the trade agreement as the UK and developing countries would forge competent trade relations that may be parallel to the EU trade policies.²⁵³

Secondly, all the current and prospective trade arrangements that the UK is or will be party to, need to be in accordance with the rules of WTO/GATT as this would bring about growth to the interests of international trade and already achieved goals. Observing the MFN principle, GSP system and or the Enabling Clause in trying to mend the drift occurring amongst its membership caused by the eventual exit of the UK from the EU would have to be critical and bold in actions preventing such anticipation.²⁵⁴

Thirdly, on whether some or most developing countries would be able to have the capacity to transition from the previously practiced non-reciprocal trade regimes to one that will require reciprocity of all active trade partners. This should also highlight the negotiations and other issues which should be addressed regarding preferences afforded to former colonies of the UK

²⁵⁰ Greenberg S, Marie Thow A and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

²⁵¹ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

²⁵² John Bachtler, Iain Begg, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

²⁵³ Robert Hunter-Wade, 'Why free trade has costs for developing countries', <https://www.ft.com/content/29526d98-09cb-11da-b870-00000e2511c8> (Last accessed on 20 July 2018).

²⁵⁴ Bonapas Onguglo, Taisuke Ito, 'How to make EPAs WTO compatible? Reforming the rules on regional trade agreements' European Centre for Development Policy Management, Discussion Paper No 40 (2003)

such as SADC.²⁵⁵ This is because the RTA/SADC has been able to transition even though individual Member states of SADC have not picked up market activity compared to their counterparts Member states, such as South Africa and Namibia alike. Those developing countries that are not former colonies of the UK have not entirely solidified trade ties with the UK either prior its accession to the EU nor whilst the UK was a Member state of the EU.²⁵⁶

4.3.2. The United Kingdom (UK) and the Republic of South Africa (RSA) Preferential Trade relationship.

During the UK's prime Minister, Theresa May's working visit to South Africa, she expressed the UK's intention to replicate the SADC-EU EPA once Brexit is finalised. The EPA has proven to afford South Africa and other Southern African Customs Unions (SACU) Member states greater market access into the EU and this is what the UK hopes to also experience by its replication of the EPA. The replication seeks to strengthen the already existing trade ties between SACU, SADC and the UK economy.²⁵⁷

This decision by the UK is based on the optimistic governing of the said SACU and SADC Member states. Having democratic states that observe human rights, the rule of law and the majority electorate views gives the UK the hope that this will allow the will of those citizens of SACU and SADC to prevail. By the occurrence of Brexit, it is viewed that the replication of the SADC-EU EPA will allow South Africa, the major economy in the region to be able to negotiate parallel bilateral trade agreements.²⁵⁸ Also for similar trade deals with the UK on goods already covered in terms of the EPA.²⁵⁹

The replication of the EPA is said to allow Brexit to have a much less disruptive effect when Brexit is finalised. Since with the EU, those trade deals concluded prior some Member states acceded to it, not being renegotiated; this allows for this approach to be considered when Brexit is in motion. The South African, department of Trade and Industry has also expressed their

²⁵⁵ Peter Draper, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', ECIPE Research Fellow, June (2007).

²⁵⁶ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

²⁵⁷ Davis G, 'May: UK to replicate EU's economic partnership with SACU, Mozambique' <https://ewn.co.za/2018/08/28/may-uk-to-replicate-eu-s-economic-partnership-with-sacu-mozambique> (Last accessed on 29 August 2018).

²⁵⁸ Gerhard Erasmus, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

²⁵⁹ Davis G, 'May: UK to replicate EU's economic partnership with SACU, Mozambique' <https://ewn.co.za/2018/08/28/may-uk-to-replicate-eu-s-economic-partnership-with-sacu-mozambique> (Last accessed on 29 August 2018).

position on the talks between the UK and themselves. However, there is no hard or complete trade deal that has been concluded and signed by the relevant parties.²⁶⁰

It is yet to be seen that companies operating in South Africa would be willing to heed the call of the current South African president, Cyril Ramaphosa to seek opportunities in light of Brexit and the volatile economic climate in South Africa. Even though South African businesses may be reluctant to entertain Brexit, there are those issues facing the South African economy such as the slow economic growth that needs to be tackled not just by the business sector.²⁶¹ However the market activity of businesses operating within South Africa, have made gains and have chosen to rather keep those profits in their businesses bank accounts than to invest in the country. This is caused by the uncertainty caused by the South African government and state, being alleged to have being plagued with corruption and being captured by individuals.²⁶²

Ramaphosa has called on these businesses to invest back into the country, so that this may allow to some extent the alleviation of poverty and the creation of employment opportunities. It is Ramaphosa's mission since being in office, honouring the objective to increase investments into South Africa, based on his 'Renewal Agenda' which he has since preached since his appointment.²⁶³ Both foreign and local investments are highly encouraged by the South African president. The governing political party, the African National Congress (ANC) has emphasised on investments and how this view may cure some of many South African economic problems which include the slow economic growth rate and the high unemployment rate.²⁶⁴

It is terms and conditions which may be observed by the two leaders, South Africa being the current chairing Member state of SADC that will determine the prospects of the trade agreements to be concluded between the UK and SADC. By accepting current challenges faced by the UK and SADC and engaging extensively with stakeholders on those challenges, and also finding workable or practical solutions may yield for greater results for both SADC and

²⁶⁰ Marianne Merten 'Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade' <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

²⁶¹ Merten M 'Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade' <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

²⁶² Merten M, 'Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade' <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

²⁶³ Mahlatse Mahlase, 'Mixed success for Ramaphosa on 3-country investment drive', <https://www.news24.com/Columnists/MahlatseGallens/mixed-success-for-ramaphosa-on-3-country-investment-drive-20180718> (Last accessed on 29 August 2018).

²⁶⁴ Merten M, 'Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade' <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

the UK in light of Brexit. It is thus important in investigating the impact Brexit will have on SADC and SACU collectively.²⁶⁵

4.4. THE PROSPECTS OF THE BREXIT IMPACT ON THE SOUTHERN AFRICA CUSTOMS UNION AND SOUTHERN AFRICA DEVELOPMENT COMMUNITY

There has been an analysis that has been compiled by the Overseas Development Institute (ODI) which anticipates a series of implications of Brexit on developing countries. With the different trade ties between the UK and ACP countries, whether through concluded bilateral agreements or with the UK within the EU as a Member state; Brexit has complex implications to be experienced, some may be advantageous and some not so much.²⁶⁶

These implications would be visible in international trade, financial markets, investments, economic development and migration. In the recent past, Brexit has threatened the currency and stock exchange markets of the United States of America, the US Dollar. The USA trade has since fluctuated, highlighting the greater impact Brexit will have on emerging markets such as that of SADC.²⁶⁷ With the experience of Brexit, the UK has also seen a decrease to the value of the pound sterling, a decrease to its GDP and these results ultimately affect exports from SADC entering the UK. These results further affect SADC in that they would negatively impact the economies of those SADC Member states that have preexisting trade challenges and will be furthered by the lessened exports.²⁶⁸

If the decrease in value of the pound sterling continues, it would further decrease the aid the UK has in the past afforded to SADC. If it plummets any further then a greater impact would be felt by the economies and trade of developing and least developed countries.²⁶⁹ How can future trade agreements and effects of Brexit be evaluated post Brexit? This task entails the identification of the alteration those new trade deals would bring, compared to the current ones.

²⁶⁵ Merten M, 'Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade' <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

²⁶⁶ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

²⁶⁷ Draper P, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', ECIPE Research Fellow, (2007).

²⁶⁸ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

²⁶⁹ Draper P and Sally R, 'Developing Country Coalitions in Multilateral Trade Negotiations: Aligning the Majors?' The South African Institute of International Affairs, (2005)

And further, how the EU will try to harmonise the mishaps of Brexit in transitioning to an era when the UK is outside the EU.²⁷⁰

It is anticipated that South Africa is amongst the African economies that would be prone to trade and economic disruptions caused by Brexit. This view is based on the fact that a lot of South African companies are dually listed on the London Stock Exchange and also the Johannesburg Stock Exchange.²⁷¹ By this, the South African Rand is bound to react mostly negatively to Brexit as experience shows the US Dollar and British Pound Sterling reacted to Brexit. Further, the South African Rand is more liquid and more vulnerable to immediate outward capital flows compared to the Dollar and Pound.²⁷²

Due to these anticipated disruptions by Brexit, the UK would also be affected, as outward and inward investments of the UK could decline as already experienced, existing and prospective investors would be reluctant to invest in the UK.²⁷³ This could also be the result of the UK no longer being the Member state of the EU; those EU emphasisers would not be so ready to support the UK in its exit. Further, the UK would not have easy access to the EU market as previously when it was still within the EU in the case where Hard Brexit is preferred. It is then important to look at the advantages and disadvantages of Brexit effect on the SADC and SACU collectively.²⁷⁴

4.4.1 The advantages and disadvantages of Brexit effect on Southern Africa Customs Union (SACU) and Southern Africa Development Community (SADC)

The attempt by the SADC-EU EPA to investigate the Brexit effects on the SADC economy can be broken down into three sections; firstly, it is by the configuration of issues extending to trade in goods market access; secondly, the regulatory perspective of trade; and thirdly, the

²⁷⁰ William Norton, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

²⁷¹ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa> (Last accessed on 20 July 2018).

²⁷² Fabricius P, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa> (Last accessed on 20 July 2018).

²⁷³ Fabricius P, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa>(Last accessed on 20 July 2018)

²⁷⁴ Fabricius P, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa> (Last accessed on 20 July 2018).

implication of both the above-mentioned issues for regional economic integration in Sub-Saharan Africa.²⁷⁵

Brexit has the potential of creating multiple trade agreements or may elect to stay in those it is a signatory to as a Member state of the EU. If the former is implemented it would mean that the SADC-EU EPA issues would be multiplied by virtue of the UK securing new trade agreements and not necessarily trying to minimise the issues already faced by SADC and SACU Member states through the replication of existing trade agreements.²⁷⁶

If the latter approach is implemented than an improvement in problem analysis and solving of existing issues would be ideal in trying to maintain good trade relations within the EPA and also, other external trade partners.²⁷⁷ This would be in light of goals of the WTO of having strengthened trade ties amongst countries who are signatory to the WTO as this will create trade and substantiate on goals which have been achieved thus far.²⁷⁸

It has been observed that there are two interconnected challenges that need particular attention with the consequence of the SADC-EU EPA.²⁷⁹ Firstly, it is the overwhelming supply-side constraints, and secondly addressing market access constraints that still exists. An important analysis SADC development challenges points clearly to the need for SADC countries to adopt a structural agenda, backed up with appropriate resources.²⁸⁰

It is then important to observe the advantages and disadvantages of the Brexit effect on SACU and SADC taking into consideration the above mentioned factors. This will assist in identifying the appropriate resolution which will be applicable to the circumstances at that particular time.

²⁷⁵ Draper P, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', (2007).

²⁷⁶ Tralac 'Op-Ed: The impact of Brexit on South Africa' <https://www.tralac.org/news/article/10910-op-ed-the-impact-of-brexit-on-south-africa.html> (Last accessed on 18 June 2018).

²⁷⁷ Ekeke A C, 'The potential effect of the economic partnership agreements between EU and Africa on Article 22 of the African Charter' http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602017000200007 (Last accessed on 21 August 2018)

²⁷⁸ Tralac 'Op-Ed: The impact of Brexit on South Africa' <https://www.tralac.org/news/article/10910-op-ed-the-impact-of-brexit-on-south-africa.html> (Last accessed on 18 June 2018).

²⁷⁹ Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

²⁸⁰ Draper P, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', ECIPE Research Fellow, June (2007).

4.4.1.1 The prospective advantageous of Brexit on Southern Africa Customs Union (SACU) and Southern Africa Development Community (SADC)

There seems to be anticipated negative impact of Brexit however; it is not just restricted to that as there may be anticipated opportunities as well. These anticipated opportunities include the capital flows between trade partners, the conclusion of independent bilateral agreements, the reduced price competitiveness and the specialisation gap. Each of the four factors will be briefly discussed below.

4.4.1. (a) Capital flows

The move by the UK to exit the EU will assist the UK to revive trade ties it once had with its former colonies also known as the Commonwealth countries. This may be beneficial for African RTAs such as SADC as most of its Member states do qualify as Commonwealth countries. This will lead to SADC gaining more market access to the UK in the finance and investment industry and expand their ground on the EU. With Brexit taking place will allow SADC to gain financial information and projections that will be useful in developing its own national and interstate financial coordination.^{281 282}

4.4.1. (b) Independent bilateral agreements

Concluding more flexible trade agreements that are most favourable for those developing countries to participate effectively in international trade is one way of viewing possible trade arrangements to take place post-Brexit.²⁸³

This will be seen as a continuation of trade relations between the UK and its trade partners. In the case of Hard Brexit, it will most likely occur that independent bilateral agreements between SADC, the EU and the UK may be prompted in so that they lessen any negative impact that

²⁸¹ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

²⁸² Aldridge Tinotenda Dirwayi, Applied Treasury Management, Banking Department, National University of Science and Technology 2019, [file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20\(1\).pdf](file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20(1).pdf) (Last accessed on 24 April 2019)

²⁸³ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

would be experienced where no attempts are made in bridging the gap before Brexit is finalised and post-Brexit.²⁸⁴

When Brexit is officially concluded the trade relations between the UK and SACU and SADC countries will inevitably be affected. It is thus important that the next trade arrangements between the UK and SACU and SADC countries is beneficial to its parties and imminent economic and trade development is witnessed by SACU and SADC countries.²⁸⁵ It is viewed that, for Commonwealth countries it will be easier to cooperate and forge strong trade relations. This is based on the fact that they would revive past trade relations and have derived most of their influence in law from the UK. This includes their administrative aspects and common law.²⁸⁶

How South Africa has responded to Brexit thus far is that, the Trade and Industry, Minister Rob Davies, has offered companies operating in South Africa that originate from the UK, some security and a continued place of business in the country.²⁸⁷ This can be seen as an opportunity by South Africa to strengthen its trade relations with the UK and its businesses post Brexit. It is evident by this express intention of the Minister that future trade relations between South Africa and the UK are to most definitely important and protected by South Africa.²⁸⁸

Further, there are talks taking place between the EU, SACU and Mozambique. These talks are aimed at concluding further trade agreements between the parties and the anticipated prospects of future trade relations to be established and solidified due to the occurrence of Brexit.²⁸⁹ This is directed on the need to minimise the Brexit effect, this may include the replication of some

²⁸⁴ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

²⁸⁵ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

²⁸⁶ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

²⁸⁷ Dirwayi A T, Applied Treasury Management, Banking Department, National University of Science and Technology 2019, [file:///C:/Users/QamaniV/Downloads/AfCTA and Brexit - Feasibility study and%20\(1\).pdf](file:///C:/Users/QamaniV/Downloads/AfCTA%20and%20Brexit%20-%20Feasibility%20study%20and%20(1).pdf) (Last accessed on 24 April 2019)

²⁸⁸ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexit-means-for-africa> (Last accessed on 20 July 2018).

²⁸⁹ Xinhua, 'South African Customs Union, EU start talks on new economic partnership agreement with post-Brexit Britain' http://www.xinhuanet.com/english/2018-06/26/c_137281381.htm (Last accessed on 24 July 2018)

SADC-EU EPA terms and conditions as a measure of importance in the avoidance of Brexit and the disruptions it will cause to world trade.²⁹⁰

The UK and SACU have been engaging regarding the proposal similar texts and/or replication of the SADC-EU EPA. The essence of the engagement is surrounded around whether the parties are to either maintain or slightly revise the SADC-EU EPA text to suit the needs of both parties post Brexit. In the course of these engagements, it has also been considered that the Cotonou Agreement would be abandoned when concluding trade agreements with the UK.²⁹¹ This is due to the fact that the trade agreements the UK was party to by virtue of its membership to the EU may no longer be applicable to it as the UK would cease to be a Member state of the EU. On the same breath, it would be reasonable to consider that more bilateral and or replicated trade agreements are to be concluded in the future as engagements are on-going. These aspired trade agreements would only be formalised once both parties agree and conclude mutually beneficial trade terms post Brexit.²⁹²

4.4.1. (c) The reduced price competitiveness

When Brexit is implemented, the UK will cease to be the EU's Member state. This will cause the separation of prices between products of the UK and the EU. This will create an opportunity for African goods to be able to compete with EU prices when the UK considers importing goods whether to favour those of the EU or SADC. There may also be changes to the commodity prices this may occur when the UK exports cheaper goods to the developing countries being SADC.²⁹³

The existing trade links between SACU, the EU and the UK have been long in operation; these include the exports of beef, table grapes and wine from both SACU and SADC destined for the EU and UK. In respect of the SADC-EU EPA, to consolidate a definite trade deal took a lengthy

²⁹⁰ Xinhua, 'South African Customs Union, EU start talks on new economic partnership agreement with post-Brexit Britain' http://www.xinhuanet.com/english/2018-06/26/c_137281381.htm (Last accessed on 24 July 2018)

²⁹¹ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

²⁹² Xinhua, 'South African Customs Union, EU start talks on new economic partnership agreement with post-Brexit Britain' http://www.xinhuanet.com/english/2018-06/26/c_137281381.htm (Last accessed on 24 July 2018)

²⁹³ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

10-year period to be concluded.²⁹⁴ With new trade terms being anticipated by SADC for the UK, allows for the opportunity for SADC to have an advantage to negotiate for its goods to be exported to the UK without affecting EPA terms. Trade in goods have been prioritised in the EPA, but in future engagements, trade in services and other trade related matters are to be included in the EPA's expansion discussions and later documents.²⁹⁵

4.4.1. (d) The specialisation gap

Many SADC semi-produced goods are sent to the EU for completion of the manufacturing process. The same applies to the UK, as some of its industries could only produce goods not to their finality. This will allow for the UK to look elsewhere other than the EU for its semi-produced goods to be finalised. This will give an opportunity for the likes of SADC industries to infiltrate the UK market further in its mission of trying to mold its infant industries.²⁹⁶

Once the UK and South Africa (RSA), SADC's major player, trade relations is tightened post Brexit, the trade of the SADC-EU EPA may continue as per normal. Even with anticipated economic interruptions, there may be significant decline in goods that entered the EU destined for the UK.²⁹⁷ As RSA is progressive in its industrial sector, Brexit will allow it to explore avenues which were previously held up by the EU. The investments said to be made by foreign countries may assist in developing the manufacturing industries in so that RSA. This may enable RSA to process goods from raw materials up until there are suitable final products ready to be put on shelves.²⁹⁸

It is also anticipated that South Africa and the rest of SADC may enjoy a greater market access into the EU compared to the market access the UK will gain in the EU, post Brexit. This will

²⁹⁴ Dirwayi A T, Applied Treasury Management, Banking Department, National University of Science and Technology 2019, [file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20\(1\).pdf](file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20(1).pdf) (Last accessed on 24 April 2019)

²⁹⁵ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

²⁹⁶ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

²⁹⁷ Dirwayi A T, Applied Treasury Management, Banking Department, National University of Science and Technology 2019, [file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20\(1\).pdf](file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20(1).pdf) (Last accessed on 24 April 2019)

²⁹⁸ Fabricius P, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/foq-in-the-channel-what-brexit-means-for-africa> (Last accessed on 20 July 2018).

be evident and determined by the finalised Brexit agreement and those trade agreements the UK will look into concluding with the EU post Brexit.²⁹⁹

With regards to the EPA, it has been proposed that an effective management strategy to be executed where development can be boosted through the creation of jobs that in turn will create income, increasing the consumer buying power and will stimulate the growth rate for SADC and the EU.³⁰⁰ The EPA obliges both the EU and SADC to open its market for EPA partners to import goods to the EU, thus barriers to trade will be reduced reciprocally. It would be in the advantage of SADC then to take the opportunity granted in the EPA and further being involved with the UK post Brexit in so that it draws for interests that will advance its industries and .³⁰¹

4.4.1.2 The prospective disadvantageous of Brexit on Southern Africa Customs Union (SACU) and Southern Africa Development Community (SADC)

It has been observed that there are two interconnected challenges that need particular attention with the consequence of the SADC-EU EPA.³⁰² Firstly, it is the overwhelming supply-side constraints, and secondly addressing market access constraints that still exists. An important analysis of ACP countries development challenges points clearly to the need for ACP countries to adopt a structural agenda, backed up with appropriate resources.³⁰³

It is important to look at the prospective disadvantageous impacts Brexit may have on the already achieved milestones by the SADC-EU EPA and what should be expected by SADC in trying to minimise negative impacts of Brexit.³⁰⁴ Once the UK formally exists the EU, even

²⁹⁹ Fabricius P, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/foq-in-the-channel-what-brexit-means-for-africa> (Last accessed on 20 July 2018).

³⁰⁰ Dirwayi A T, Applied Treasury Management, Banking Department, National University of Science and Technology 2019, [file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20\(1\).pdf](file:///C:/Users/QamaniV/Downloads/AfCTA_and_Brexit_-_Feasibility_study_and%20(1).pdf) (Last accessed on 24 April 2019)

³⁰¹ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

³⁰² Department of Trade and Industry, Republic of South Africa 'Briefing to the Parliamentary Committee on the Evolution of EU-ACP Relations and the Economic Partnership Agreement (EPA) Negotiations' https://www.thedti.gov.za/parliament/2016/Evolution_EPA_negotiations.pdf (Last accessed on 21 August 2018).

³⁰³ Peter Draper, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', ECIPE Research Fellow, June (2007).

³⁰⁴ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

though the interruption to trade activity is anticipated to be minimal it cannot be left at such. It is also drawn from such, that the UK will have enough time negotiating with SACU and SADC to conclude a trade agreement parallel to the EPA which would be evident that an optimistic transition is possible at taking place. Currently, time is going against such negotiations such talks cannot be concluded within the scheduled timeframe, due to extensiveness of the trade agreements and uncertainties to be ironed out.³⁰⁵

4.4.1.2. (a) *Lack of confidence and uncertainty*

It is without doubt that the SADC-EU EPA will be left with one less EU Member state to trade with, this should not come as a surprise that Brexit is happening. But the question of the degree of certainty is on the approach applied thus far by Brexit.³⁰⁶ The UK by suggesting express, clear and direct solutions and being open to discuss related matters may ease the pressure felt by the world economies. That may or may not affect trade between the EU and the UK directly but may ultimately affect SACU and SADC. The more interesting part of Brexit and those it may affect is how economic stability will be maintained in the mist of its unfolding events and how the mood of uncertainty will be addressed.³⁰⁷

The UK is trying its best to keep an optimistic view that anything relating to Brexit is above board. This can only be evident to outsiders where negotiations of bilateral trade agreements are actually taking place between the UK and other trade blocs, until then, no one can be sure of what the UK is securing. Uncertainty and doubt is bound to exist within various trading circles and leaders around the world. This may only be resolved where the UK takes full responsibility and action on the matter.³⁰⁸ By the recent state visits to ACP countries, the likes of South Africa and Kenya, UK Prime Minister Theresa May has attempted in one way to ensure that engagements relating to trade and maintaining economic developments in the midst of Brexit does take place.³⁰⁹

³⁰⁵ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³⁰⁶ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³⁰⁷ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

³⁰⁸ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³⁰⁹ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

The participation of interested parties will allow the maintenance of a consistent economic growth even when the decline of the value of the pound sterling has been witnessed in the stock exchange markets.³¹⁰

Even though it is anticipated that in the near future or within approximately 24 months Brexit negotiations would have been finalised, it cannot be said that the UK has the capacity to conclude its bilateral post Brexit trade agreements by this time.³¹¹ In the end, comprehensive and practical new trade agreements with the rest of the ACP countries more especially SACU and SADC has to be seen taking place. It should be the aim of the UK to work proactively in concluding the Brexit negotiations so that an agreement primarily focusing on an official post Brexit strategy may be drafted, negotiated and concluded immediately after the Brexit withdrawal is finalised.³¹²

This would mean that bilateral trade agreement negotiations should be taking place alongside the Brexit negotiations. These negotiations can be put into two categories; the negotiations initiated amongst EU Member states by virtue of the UK notifying the EU through Article 50 of TEU and those negotiations taking place after the UK has officially left the EU. The latter, will in most possibility include delegates of the UK and all current and prospective trade partners, SACU and SADC being part of such trade partners.³¹³

In their attempt in tackling discrepancies caused by the uncertainties of Brexit, SADC and SACU should engage the UK and the EU in looking for solutions to prevent and/or lessen post Brexit disruptions and loss of market access. As it is so much the UK's decision to exit the EU however its trade partners SACU and SADC must play a role to save any prospects of good trade relations left between themselves and the UK.³¹⁴ The predicted severe disruptions to take place based on recent past experiences of Brexit on the world trade markets should be evidence enough for all interested parties to act in a manner that will lessen any negative effects caused

³¹⁰ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

³¹¹ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³¹² Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

³¹³ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³¹⁴ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

thus far. These said predicted disruptions include the loss of market access within the EU and the UK by African RTAs, taking into consideration the SADC-EU EPA.³¹⁵

The best approach which the UK may apply on Brexit would be that of clarity. Clarification and seeking meaningful that when they require any insight on a matter, their prospective and current trade partners may assist in a robust manner in the negotiations for new bilateral trade agreements. This would address any opportunities and interests which may be commonly shared and those individually aspired to by negotiating parties.³¹⁶

4.4.1.2. (b) *Decreased exports to the EU and loss of market access*

Since the application of the EPA, SADC exports to EU have not substantially increased compared to the total imports received from the EU. The SADC Member states through lessening the barriers of trade has increased the access of EU exports to SADC and this is greater than the number of SADC exports in the EU.

UK Prime Minister further offered Africa as a whole an additional investment amount of 4 Billion British pounds that should be aimed at assisting African governments improving their economies. She reiterated that by the additional financial support to Africa, her administrations' prospects were for the UK to be the number one investor in Africa by 2022. This may be made possible by the UK's private sector investing billions into African economies particularly its bigger RTAs, SADC and EAC.³¹⁷

In terms of the SADC-EU EPA, for its implementation to take place, a Joint Council which comprises of SADC and EU Member states in terms of Article 100 and 101 must oversee and administer this process.³¹⁸ By Brexit taking place, it is mandatory that technical discussions are to be partaken by the SADC-EU EPA Joint Council. As expected, Brexit will affect its constituency of 27 other EU Member states and SADC, unraveling achievements obtained thus far by the implementation of the EPA as at its inception, Brexit was not anticipated.³¹⁹

³¹⁵ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexit-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

³¹⁶ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

³¹⁷ Marianne Merten 'Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade' <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

³¹⁸ Article 100 and 101 of the EU-SADC EPA, Official Journal of the European Union, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf (Last accessed on 20 July 2018).

³¹⁹ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

With the Brexit vote succeeding there is a view that the withdrawal agreement between the remaining 27 Member states and the UK should include a mechanism on how the UK also exits the EPA.³²⁰ This should also give insight to parties of the EPA particularly SADC as the developing countries RTA with substantial trade ties with the EU and UK. Article 114 of the TEU further is relevant in this regard as the UK would need to give written notice of its intention to formally denounce its part from the SADC-EU EPA.³²¹ Once the UK has given this notice, it then would have to suspend application of those agreements it would have separately negotiated or those its negotiations are not yet complete, pending the formal Brexit process being finalised.³²²

4.4.1.3 Synopsis of the advantages and disadvantages of Brexit effect on Southern Africa Customs Union (SACU) and Southern Africa Development Community (SADC)

Although at the moment the negatives outweigh the positive. Issues of Uncertainty, lack of confidence by investors, prospective loss of market access and stringent trade terms for the UK outweigh the benefit of SADC /SACU gaining market access, and even the investments to be made by the UK do not in any way put rest the issues which are of concern not only to SADC but the entire world trade community. There are anticipated opportunities in trade in goods relating to the SADC-EU EPA where market access afforded to the BLNS and Mozambique goods into the EU will now be split to also forge trade relations with the UK Industries likely to benefit from this optimistic view will be the agricultural and fisheries market, this market is mainly made up of canned fruits, fisheries products, flowers, sugar and wine.³²³

With the revisiting of the various trade agreements, all thanks to Brexit, the EU in its diminished membership may gain a much more tangible market access into SACU. With SACU also having concluded a bilateral agreement with Mozambique, which is one of the countries outside SADC this may be advantageous for the EU more than the UK.³²⁴ Theresa May also reiterated the UK's intention to invest further in Africa, stating that Brexit will allow

³²⁰ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³²¹ Article 114 of the EU-SADC EPA, Official Journal of the European Union, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf (Last accessed on 20 July 2018).

³²² Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

³²³ European Commission, Southern African Development Community (SADC), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 20 July 2018)

³²⁴ European Commission, Southern African Development Community (SADC), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 20 July 2018)

for the UK to deepen and strengthen its global partnerships. This gives hope to such countries but the looming uncertainty of the Brexit negotiations can only be dealt with, when the actual bilateral trade agreements are concluded.³²⁵

It is important to further and thoroughly so, discuss safeguard measure that may be relevant and utilised by the SADC as a trade mechanism so to preserve the RTAs interests of its industries. These safeguard measures will address issues or parts thereof, of the trade relationship between the UK, the EU and SADC. It is inevitable that Brexit will cause some trade interruption and thus may be detrimental to all parties however for SADC, things may be dire as it is a developing countries' trade bloc and it would be advisable and important for it to preserve the already achieved economic goals and trade advancement.

The delay by SADC to achieve its regional trade goals has been seen to be caused by leadership ideologies that do not serve its nations interests in good faith, hence the still existing allegations of corruption and incapacities of its institutions amongst other things.³²⁶ In terms of overcoming supply-side constraints, it requires the strengthening of investment in infrastructure and market supportive regulatory frameworks. In addressing market access constraints, it requires trade in goods liberalisation.³²⁷ Trade liberalisation is the removal or reduction of trade barriers between countries on the basis that, having a free exchange of goods between the EU and SADC, in respect to manufactured goods. The EPA agenda that is finds support of the EU, particularly focuses on the inclusion of core infrastructure services, investment protection, and fair competition regulatory policy.³²⁸

Further, the World Bank has dwelled on the issue of easing trade regulations which is increasingly important for business in a globalised world. This is based on the fact that unnecessary paperwork, difficult customs procedures, inefficient port operations, and inadequate infrastructure are some of the hurdles that led to additional costs and delays for

³²⁵ Reuters and AFP, 'Britain supports 'legal' land reform in SA, says Theresa May' <https://www.timeslive.co.za/politics/2018-08-28-britain-supports-legal-land-reform-in-sa-says-theresa-may/> (Last accessed on 29 August 2018)

³²⁶ Jephias Mapuval; Loveness Muyengwa-Mapuvall, 'The SADC regional bloc: What challenges and prospects for regional integration?' Law democr. Dev. Vol.18 Cape Town (2014)

³²⁷ Wroblewski J, 'Assessment of the Economic Partnership Agreement between South Africa and the European Union' http://dspace.nwu.ac.za/bitstream/handle/10394/9867/Wroblewski_JM.pdf;jsessionid=8C902C6E2C74BB19ACBAD15F407B6FD1?sequence=1 (Last accessed on 20 August 2018).

³²⁸ Draper P, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', (2007).

exports and imports of SADC.³²⁹ This inevitably affects the regions' trade negatively and this does not bring progress to the original purpose of having a RISDP, as the important objective of the RISDP is to reduce the transaction costs of trade.³³⁰

4.5 TRADE REMEDIES AVAILABLE FOR SOUTHERN AFRICA DEVELOPMENT (SADC) IN RELATION TO THE BREXIT EFFECT

For purposes of this mini-thesis it is important to consider all instruments that are relevant and which may be of benefit to parties involved. Since the analysis is based on the Brexit effect on the SADC-EU EPA, it is then proper to consider what trade remedies; particularly SADC has at its disposal to mitigate the negative effects of Brexit.

The UK has the two options; to leave the EU with a deal or without replicating trades agreements that already exist. In anticipating a no-deal Brexit, mechanisms that may be useful for SADC in so that they do not experience the harsh implications of Brexit need to be identified. Further, for the SADC economies to be preserved as far as possible by trade remedies serving a particular purpose.³³¹

One of the optimistic mechanisms used by WTO to protect trade more specifically domestic trade of a Member country, is the enforcement of safeguards measures. Safeguard measures have always been made available under the Article XIX of GATT.³³² In terms of the WTO, a Member country may enforce 'safeguards' to restrict imports of a product on a temporal basis. This would protect a specific domestic industry from an increase of imports of any product which is causing, or threatening to cause a serious injury to the domestic industry of the importing country.³³³

However, safeguard measures were occasionally applied and in the past, some governments preferred to protect their industries through "grey area" measures also known as "voluntary" export restraint arrangements which were used on products such as cars, steel and

³²⁹ Vanheukelom J and Bertelsmann-Scott T, 'The Political Economy of Regional Integration in Africa, The Southern African Development Community (SADC) Report' 2016 <https://ecdpm.org/wp-content/uploads/ECDPM-2016-Political-Economy-Regional-Integration-Africa-SADC-Report.pdf> (Last accessed on 17 August 2018)

³³⁰ Hartzenberg T, 'Regional Integration in Africa', (2011).

³³¹ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³³² Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

³³³ DS98: Korea – Dairy, Definitive Safeguard Measure on Imports of Certain Dairy Products, (1999)

semiconductors.³³⁴ The WTO safeguards agreement broke new ground in prohibiting “grey area” measures and setting time limits known as the ‘sunset clause’ on all safeguard measure actions.³³⁵ Safeguard measures with regards to RTAs are only applicable for a customs union such as SACU and cannot be utilised in a Free Trade Area i.e. SADC.

Regional safeguard measures within the African RTAs are a mechanism used to preserve certain industries that have or will experience a serious injury due to imports from either outside the RTA or within it.³³⁶³³⁷ The application of safeguards is established where there is competition of ‘like’ products from elsewhere in the world and are in some instances viewed to be almost too good than those produced locally. These ‘like’ products may be imported in large quantities but the cost or selling price of such merchandise may be lower than the price of a ‘like’ product produced locally.³³⁸

There is no violation of WTO trade rules when putting up safeguard measures, as they are viewed as a mechanism with a practical effect on world trade. These safeguard measures are not applied on a permanent basis as they are permitted to allow for an opportunity for those threatened industries to grow overtime through the ‘sunset clause’. For safeguard measures to be sustained there must be a serious injury to, or a threat to cause a serious injury that must be alleged by the importing country’s industry.³³⁹

4.5.1 The existence of safeguard measures as a trade remedy of the WTO

In the context of SADC, it has shown over the years an increase of imports from the EU, and the major benefactor within the SADC region being South Africa. South Africa is also noticeably the Member state with the most population within the SADC region.³⁴⁰ This is explainable as South Africa makes up more than 50 per cent of the trade activity within

³³⁴ Norton W, ‘Mitigating the impact of tariffs on UK-EU trade’ Civitas (2017).

³³⁵ Article 5 of Agreement on Safeguards, Application of Safeguard Measures

³³⁶ Robert Teh, Thomas J. Prusa and Michele Budetta, ‘Trade remedy provisions in regional trade agreements’, In *Regional Rules in the Global trading System*, Cambridge University Press (2009).

³³⁷ Elenor Lissel, ‘Regional Safeguard Measures: An Incentive to sign Regional Trade Agreements without taking into consideration the special needs for Developing Countries’, Lund University (2011).

³³⁸ Robert Teh, Thomas J. Prusa and Michele Budetta, ‘Trade remedy provisions in regional trade agreements’, In *Regional Rules in the Global trading System*, Cambridge University Press (2009).

³³⁹ Van den Bossche P, Zdou W, ‘The Law and Policy of The World Trade Organization’, Cambridge University Press, New York, (2013)

³⁴⁰ Some Implications of Brexit for UK - African Relations <https://www.tralac.org/images/docs/10089/some-implications-of-brexite-for-uk-african-relations-submission-from-tralac-july-2016.pdf> (Last accessed on 07 July 2018)

SADC.³⁴¹ This however does not assist with the required speedy economic growth for the entire SADC region, as South Africa gets more attention based on its population, level of infrastructure development and geographical competencies.³⁴²

The SADC-EU EPA is aimed at bettering the levels of trade and investment between the EU and SADC as a whole. Where identical bilateral agreements between the UK and SADC are concluded, this will give the UK a sizeable increase in the relations of trade, business and investment in the SADC region. This will inevitably increase sustainable growth and decrease the levels of poverty in the region.³⁴³ The UK is also moving towards ratifying the SADC-EU EPA, this would be in line with the prospects of soft Brexit, as it optimistically directed at continuing with trade relations with third countries even after its exit from the EU.³⁴⁴

There are many goods which are imported from outside Africa to South Africa but are destined for other SADC Member states. The indirect imports to SADC via South Africa lessen trade activity on certain industries within the region. This is based on the fact that South Africa gains more from the trade activity of imports destined for other Member states of SADC; this causes the reduction of extra-regional trade of the certain products for those SADC Member states.³⁴⁵ This inevitably has an effect on the African inter-regional trade arrangements, as SADC has other trade arrangements with other African RTAs. In that sense, a decline of African products traded within Africa is bound to be evident. This is because each RTA has its most benefiting Member state and those whose involvement is merely by virtue of being Member states of that particular RTA and the latter would feel the decrease in trade much more rapidly than the former.³⁴⁶

Those most performing Member states of the African RTAs may have to apply, through directions of other Member states, safeguard measures in so that, it allows for those least

³⁴¹ European Commission, Southern African Development Community (SADC), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 20 July 2018)

³⁴² European Commission's Directorate - General for Trade, 'The Economic Impact of the EU-SADC EPA Group – EU Economic Partnership Agreement', (2014)

³⁴³ Ole Media Content Hub, 'Brexit means Brexit, but what does it mean for SADC trade?' <https://www.sabreakingnews.co.za/2018/07/20/brexit-means-brexit-but-what-does-it-mean-for-sadc-trade/> (Last accessed on 24 July 2018).

³⁴⁴ Ole Media Content Hub, 'Brexit means Brexit, but what does it mean for SADC trade?' <https://www.sabreakingnews.co.za/2018/07/20/brexit-means-brexit-but-what-does-it-mean-for-sadc-trade/> (Last accessed on 24 July 2018).

³⁴⁵ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

³⁴⁶ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

performing Member states an opportunity for their domestic industries to gain momentum and increase their value through WTO law.³⁴⁷

4.5.1.1 Trade remedies that may be utilised in the event where disputes may arise regarding prejudicial effects to SADC more particularly SACU;

The SADC-EU EPA is found to be considerate as it has numerous safeguards that may be applied in circumstances where it is reasonable. This is to assist SADC EPA countries substantiate economic growth and investment on a long term basis. Safeguards are not meant to shift cheaper imports from the EU to SADC domestic industries but are there to provide for a number of circumstances which domestic industry may or is foreseen to experience injury.³⁴⁸

4.5.1.1. (a) SACU may apply Agricultural safeguards.

This measure may be utilised by way of import duties being applied, where selected agricultural products said to be threatened by imported agricultural products the MFN principle in their application must be observed.³⁴⁹

4.5.1.1. (b) Anti-dumping or countervailing measures;

The imposition these measures may be put in place where the importation of subsidised goods of the EU or the UK that cause or threaten to cause a serious injury to the SACU domestic industries.³⁵⁰

4.5.1.1 (c) SACU may apply the balance of payments safeguards.

This remedy is said to be applicable in exceptional circumstances where it is seen that the current payments capital movement, cause or threaten to cause a serious difficulties for the proper operational obligations in terms of the monetary policy or exchange rate policy for

³⁴⁷ Ole Media Content Hub, 'Brexit means Brexit, but what does it mean for SADC trade?'

<https://www.sabreakingnews.co.za/2018/07/20/brexit-means-brexit-but-what-does-it-mean-for-sadc-trade/> (Last accessed on 24 July 2018).

³⁴⁸ Safeguard measures in the SADC-EU EPA, SADC-EU EPA Outreach South Africa, https://sadc-epa-outreach.com/images/files/SADC_EU_EPA_safeguard_measures_February_2018.pdf (Last accessed on 28 February 2018).

³⁴⁹ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

³⁵⁰ Gerhard Erasmus, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

SACU.³⁵¹ This measure may be applied by way of alternative or favourable revised payment arrangements that may be necessary for the circumstances. These measures may not last for a period exceeding 6 months when applied.³⁵²

4.5.1.1 (d) *BLNS transitional safeguards*

This remedy may be imposed for the first 12 years of inception of the trade relationship if such imported products from the EU or UK may cause or threaten to cause serious injury to any BLNS state's domestic industry. This measure is applied to domestic industries of the BLNS that produce one of the 64 sensitive products observed by the BLNS and EU trade agreement.³⁵³ These observed products include meat preparations, natural honey, poultry and selected vegetables to name a few. These measures may be applied by way of import duties on the said product. The application of these measures may not exceed a period of 4 years and may be reviewed for an extension.³⁵⁴

4.5.1.1 (e) *the BLNS, Mozambique and Swaziland may impose infant industry protection safeguards.*

These measures may be applied where an EU imported product increases its quantity into these countries, which causes or threatens to cause a serious injury to the establishment of infant industries of like or competitive products of the BLNS, Mozambique and Swaziland.³⁵⁵ This measure may be imposed by way of suspension of the reduction of custom duties. This measure may be applied for a period of up to 8 years, or such period may be extended through a resolution taken by the SADC-EU EPA Joint Council.³⁵⁶

4.5.1.1 (f) *SACU may impose food security safeguards.*

These measures may be applied where it is seen to be necessary for the prevention or relief of general or local shortages of food product, in order to ensure food security of SACU Member

³⁵¹ Bachtler J, Begg I, 'Beyond Brexit: Reshaping policies for regional development in Europe', <https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12351> (Last accessed on 20 July 2018).

³⁵² Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

³⁵³ Stephen Greenberg, Anne Marie Thow and Mafaniso Hara, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

³⁵⁴ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

³⁵⁵ European Commission, Southern African Development Community (SADC), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 20 July 2018)

³⁵⁶ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

states. If it is seen that the importation of certain food products would cause shortages of supply to certain SACU Member states, this measure would be useful in that regard.³⁵⁷ How these measures may be applied, is by way of suspension of increased custom duty on the concerned food products or by the introduction of tariff quotas on those products. The application of such a measure should be reviewed annually to the least and should be lifted once the measure has served its purpose.³⁵⁸

4.5.1.1. (g) SACU may impose general bilateral safeguard measures,

These measures are applied on a temporal basis and are to be applied when such goods are being imported to SACU increase unexpectedly and such increase cause or threaten to cause serious injury to the domestic industries of SACU Member state, like or directly competitive goods.³⁵⁹

How these measures may be applied is through the suspension of further reduction of the rate of import duties of those goods concerned. This could be done through the increase of customs duty for those said goods, in so that they are equalised with the quantity of the like products produced locally. For this measure to be executed, it must be guided by the MFN principle or by the introduction of tariff quotas of the said threatening products.³⁶⁰

4.5.1.1. (h) SACU may also impose multilateral safeguard measures,

These mechanisms may be utilised if it is justifiable in terms of WTO law. This is in a case where it is deemed fit in emergencies to protect the increasing imports of goods that have been allowed through trade liberalisation obligations, which cause or threaten to cause serious injury to the importing Members domestic industry.³⁶¹ This mechanism must temporarily be applied on a non-selective MFN basis. The state imposing this mechanism must pay compensation to

³⁵⁷ Greenberg S, Marie Thow A and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

³⁵⁸ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

³⁵⁹ Greenberg S, Marie Thow A and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

³⁶⁰ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

³⁶¹ Greenberg S, Marie Thow A and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

the Members whose trade will be affected. Unlike the Anti-dumping and countervailing measures, unfairness is not a requirement to be present for the application of such a measure.³⁶²

4.5.2 Consideration of trade remedies by SADC

With all the said optimistic prospects of Brexit and suggested mechanisms in the disposal of SADC and SACU, it cannot be avoided that, Brexit may also have negative effects for Africa either way, more especially for South Africa. The Efficient Group is a corporation that is a diversified financial services group focused on providing professional advice, custom-designed products and quality service across the entire financial services value chain in South Africa and around the world.³⁶³ The Efficient Group Chief economist, made remarks that somewhat may put South Africa in a less favourable position than before. It has also been anticipated that a said increase in risk aversion among investors would lead to a higher inflation, weaker growth and high interest rates also taking into account that the South African economy shrunk by 1.2% in the first quarter of 2018/19 financial year.³⁶⁴

The continued selective participation of Member states within the African RTAs would eventually leave those industries that are vulnerable to imports from outside their RTAs, crippled and some shut down completely.³⁶⁵ With inactive or extinct industries, comes issues of unemployment and poverty, these issues inevitably affect the level of economic growth of the said Member states and eventually the entire RTA which shows the necessity of mechanisms to be observed such as safeguard measures to counter such effects.³⁶⁶ Those RTAs safeguard measures must be in line with the hopes and goals of their respective RTA as a number of them have provided above. This will strengthen achievements already obtained and also be able to identify areas where improvement can be initiated.³⁶⁷

The SADC-EU EPA is said to give market access specifically to partners of the EPA. It will be then much easier to identify problem areas or industries likely to be affected; this then will

³⁶² Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 29 August 2018).

³⁶³ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa> (Last accessed on 20 July 2018).

³⁶⁴ Fabricius P, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa> (Last accessed on 20 July 2018).

³⁶⁵ Exxaro Africa, 'Special Report: The impact of 'Brexit' on Africa', Business Risk Management Admin, <https://www.exxafrica.com/special-report-the-impact-of-brexite-on-africa/> (Last accessed on 04 June 2018).

³⁶⁶ Development Policy Research Unit, University of Cape Town, 'Trade Patterns in the SADC Region: Key Issues for the FTA', (2001).

³⁶⁷ Norton W, 'Mitigating the impact of tariffs on UK-EU trade' Civitas (2017).

shields sensitive products from full liberalisation.³⁶⁸ Further, safeguards measures that may be deployed when imports are growing too quickly than expected. The said benefits to be gained by parties to the EPA include sustainable economic development and also areas such as social and environmental affairs between South Africa and the UK.³⁶⁹

4.6 CONCLUSION

When assessing the purpose of this mini-thesis, it is important to give particular attention to the Most Favoured Nation principle which has been at the centre of trade relationships between developed, developing and least developed countries that ascribe to the WTO.

In then addressing the issue of Brexit taking place, having regard of the MFN principle would be of interest to particularly focus on the GSP system, its history and further identifying a suitable approach of the GSP system to be devised between the UK and SADC post Brexit. In giving regard to the GSP system, the already existing trade relationship between the UK and the EU and how these parties have concluded trade agreements with SACU and SADC in the past. And how then in future, their conduct may be translated in a situation where a new GSP system is initiated.³⁷⁰

Further, it is paramount for this mini-thesis to investigate the prospects of the Brexit effect on SACU and SADC. To further identify the prospective advantages and disadvantages of Brexit effects on SACU and SADC. To also identify what trade remedies are available and that may be useful in the case where Brexit may be detrimental to SADC and SACs interests. Further those trade remedies being identified as safeguard measures that may be relevant in resolving any discrepancy in the SADC trade in light of Brexit.³⁷¹

³⁶⁸ Independent, 'What is the difference between hard and soft Brexit? Everything you need to know', <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-freedom-movement-theresa-may-a7342591.html> (Last accessed on 02 June 2018)

³⁶⁹ European Commission, Southern African Development Community (SADC), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/> (Last accessed on 20 July 2018)

³⁷⁰ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

³⁷¹ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION AND BACKGROUND

In this chapter, its main purpose is to consolidate the research conducted in the previous chapters. In trying to encapsulate the impact Britain exiting the European Union (Brexit) may have on the Southern Africa Development Community (SADC) - European Union (EU) Economic Partnership Agreements (EPA), it is important to identify those SADC industries which are most likely to be affected by Brexit.³⁷²

Further, to identify possible remedies which the said industries will have at their disposal. In finding suitable approaches which SADC may utilise in preserving its industries, it is also important to recommend those feasible measures which may be applied in the occurrence of a disruption caused by Brexit. Lastly, to conclude on whether the impact Brexit will cause to the SADC-EU EPA will be to its advantage or not.³⁷³

5.1.1 Main overarching research question

How is Brexit most likely to affect the SADC-EU EPA?

5.1.2 Ancillary research questions

1. How the relationship has developed over the years to get to where it is currently, taking into account that the UK opting to exit the EU?
2. Secondly looking at SADC background and how trade relations have grown between SADC and EU, including development of the treaties which made such a trade relationship to exist. Further looking at how the relationship will most likely be affected by Brexit.
3. Thirdly, what is the preferred or most suitable PTA approach, terms and conditions, which may best suit the UK-SADC relationship after Brexit, is completed.

³⁷² Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 20 January 2019).

³⁷³ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 20 January 2019).

5.1.1 CHAPTERS SUMMARY

5.1.1. (a) *Chapter 1: Introduction.*

This chapter introduces the topic ‘A critical analysis of the impact of Brexit on the SADC-EU EPA’. The chapter goes further to investigate the background of the problem. ‘The United Kingdom (UK) is one of the largest Member states within the European Union (EU) that receive export goods from developing countries.’³⁷⁴ The UK has successfully voted to exit the EU through a referendum and this may impact the already existing developing countries’ markets that depend on their exports to the UK.³⁷⁵

Further, to illustrate the significance of the problem, the UK has promised that it intends on maintaining the existing trade agreements with most of its trade partners including the Southern African Development Community (SADC)-EU Economic Partnership Agreements (EPA). On the other hand, the UK is concerned of its independence from the EU and at this point in time, it can only be anticipated that, agreements if any, relating to Brexit will only suffice once the entire exiting process has been completed.

In an attempt to address the problem, research questions were identified and the main overarching research question being; ‘How is Brexit most likely to affect the SADC-EU EPA?’ followed by ancillary research questions that follow;

1. How the relationship has developed over the years to get to where it is currently, taking into account that the UK opting to exit the EU?
2. Secondly looking at SADC background and how trade relations have grown between SADC and EU, including development of the treaties which made such a trade relationship to exist. Further looking at how the relationship will most likely be affected by Brexit.
3. Thirdly, what is the preferred or most suitable PTA approach, terms and conditions, which may best suit the UK-SADC relationship after Brexit, is completed.

³⁷⁴ The UK’s Independent Fact-checking Charity, ‘Everything you might want to know about the UK's trade with the EU’ <https://fullfact.org/europe/uk-eu-trade/> (last accessed 12 October 2017)

³⁷⁵ Post-Brexit Trade and Developing countries: Can the UK set the Gold Standard in Development-Friendly Trade Policy? <http://www.fairtrade.org.uk/~media/fairtradeuk/get%20involved/documents/current%20campaigns/brexit%202017/mps%20brexit%20briefing.pdf> (last accessed 12 October 2017)

Further, the research methodology was dealt with, which included focus on the relationship the EU have with the UK as a Member state with regards to the SADC-EU EPA. The sources used in constructing the research were based on published work from the EU, SADC and UK.

5.1.1. (b) Chapter 2: European Union.

This chapter dealt with the first ancillary research question, on how the trade relationship between the EU and the UK has developed over the years to get to where it is currently, taking into account that the UK opting to exit the EU. The EU has been one glorious Regional Trade Agreement (RTA) which has been a model for many RTAs that were established after it. It is important thus to use the EU as an exemplary RTA regarding the exiting of Member states from one progressive RTA.³⁷⁶

The objective of this chapter is to illustrate the background of the European Union (EU) and how Britain exiting the EU may impact its trade partners. What was addressed also is the origin and procedure of Article 50 of the Treaty of the European Union, on how EU Member state may proceed when intending to exit the Union.

This move by the UK will impact the aspirations the EU had set for itself and its trade partners. The decision by the UK to exit the EU has come as a shock however its wishes have to be complied with. In doing so, Brexit negotiations had to be initiated in so that matters of interest between the UK and the EU are addressed accordingly before the UK membership lapses. The Brexit negotiations have been extended and this shows that the UK is not really ready to exit the EU on the projected two-year time frame from the beginning of the negotiations.

As a result of the extension of the Brexit negotiations, the implementation of Brexit will thus also be postponed up until time when the UK and the EU are fully satisfied that negotiations have dealt with all matters of interest. In looking at the current atmosphere of Brexit negotiations it is important to look at the impact Brexit has already and may also have in the future on the EU and UK. This will assist in finding amicable solution in trying to shield any harsh effect and also for their respective trade partners to be prepared for the worst whilst working towards obtaining the best results of Brexit.

³⁷⁶ Alex Hunt & Brian Wheeler, 'Brexit: All you need to know about the UK leaving the EU' <https://www.bbc.com/news/uk-politics-32810887> (Last accessed on 04 February 2019).

5.1.1. (c) Chapter 3: Southern Africa Development Community.

This chapter dealt with the second ancillary research question; looking at SADC background and how trade relations have grown between SADC and EU, including development of the treaties which made such a trade relationship to exist. Further looking at how the relationship will most likely be affected by Brexit.

The focal point of this chapter is the elaboration of the history of the Southern Africa Development Community (SADC), on its establishment, timeline on its commitments. The evolving trade relationship between SADC and the EU is of interest and aspects which SADC may want to preserve of this relationship which Brexit may hamper. Further, looking at the role South Africa plays within SADC and what influence it has in relation to furthering the positive interests of the SADC-EU EPA.³⁷⁷

Whilst Brexit negotiations are underway, the UK, SACU and SADC, have agreed on a continued engagement and deliberations amongst each other, in an attempt to lessen or minimise any chances of a disruption that may be foreseen to take place, which may inevitably affect the SADC-EU EPA by virtue of Brexit being processed.³⁷⁸

This continued engagement involves the interested parties agreeing separately to engage in identifying the focal points or interests to preserve which may be beneficial for all parties concerned. With Brexit taking place and issues of concern being managed in a robust manner, this would allow for a simpler way of dealing with the challenges to be faced.³⁷⁹ Industries of SACU and SADC being agriculture, textiles and poultry are directly affected by Brexit, and engagements have taken place regarding safe keeping their interests. These industries are to be guided attentively in future so that there is less or no disruption caused by Brexit.³⁸⁰

³⁷⁷ World Economic Forum, '9 mega-trends shaping the future of Africa' <https://www.weforum.org/agenda/2015/05/9-mega-trends-shaping-the-future-of-africa/> (Last accessed on 07 June 2018)

³⁷⁸ Victor Baatweng "'BREXIT" harmless to SADC-EU EPA' https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 20 January 2019).

³⁷⁹ Baatweng V "'BREXIT" harmless to SADC-EU EPA' https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 20 January 2019).

³⁸⁰ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexite-means-for-africa> (Last accessed on 20 July 2018).

5.1.1. (d) Chapter 4: Preferential Trade Agreements in terms of WTO rules.

This chapter dealt with the third ancillary research question, where the preferred or most suitable PTA approach is considered, and the terms and conditions, which best suit the UK-SADC relationship after Brexit, is finalised.

The main focus of this chapter is to look into the rules of the World Trade Organisation (WTO) and how Preferential Trade Agreements (PTA) may be applied in the occurrence and finalisation of Brexit.³⁸¹ The United Kingdom (UK) has two options when negotiating for Brexit; it may agree on the replication of existing trade agreements of the EU or it may agree to leave the EU with a deal. It would then be important to observe the appropriate approaches which the EU may have at its disposal.³⁸²

In respect of obtaining maximum efforts in achieving full regional integration, SADC and SACU alongside the UK took part in trade engagements due to the rise of Brexit. These engagements were directed in safe keeping the goals achieved thus far and for the maintenance of any development that was accelerated before Brexit taking place.³⁸³

These attempts by SACU and SADC will ultimately leave the trade groups with a much clearer plan of action in trying to secure an increased economic development for their respective economies.³⁸⁴ With SACU and SADC being signatories in separate trade deals with the UK and/ or replicating previous trade deals may seem feasible for the benefit of all parties. Being proactive on this matter will give more effect on stabilising the uncertainty and eliminate the lack of confidence which exists amongst the world trade community regarding Brexit.³⁸⁵

From the look of things currently, this would mean that an approach which would be of favour is that of replication of the already existing trade arrangements between the UK, EU and SADC.

³⁸¹ European Commission, 'EU signs Economic Partnership Agreement with Southern African countries' <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1509> (Last accessed on 18 June 2018).

³⁸² Robert Hunter-Wade, 'Why free trade has costs for developing countries', <https://www.ft.com/content/29526d98-09cb-11da-b870-00000e2511c8> (Last accessed on 20 July 2018).

³⁸³ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brex-it-means-for-africa> (Last accessed on 20 July 2018).

³⁸⁴ Baatweng V "'BREXIT" harmless to SADC-EU EPA' https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 20 January 2019).

³⁸⁵ Baatweng V "'BREXIT" harmless to SADC-EU EPA' https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 20 January 2019).

This would in most instances minimise any disruption(s) that are anticipated for their trade partners, being SADC and SACU.³⁸⁶

5.2 RECOMMENDATIONS AND SUGGESTED SOLUTIONS

5.2.1 Possible trade remedies Southern Africa Development Community (SADC) industries will have at their disposal.

Some avenues available is in terms of the SADC-EU EPA, Article 26 that allows the BLNS countries and South Africa to utilise export taxes and reimpose duties in exceptional circumstances.³⁸⁷ The BLNS in its obligation to protect infant industries, the environment or for food security purposes may introduce temporary custom duties or export taxes. This may be applied on a limited number of products and this may be done after consultations with the EU. In its bid to protect its industries, SADC-EU EPA Member states, may on a temporal basis introduce customs duties or export taxes on products not exceeding 8 products at a time, for a period of 12 years in so that to satisfy industrial development needs.³⁸⁸

Further, the application of multilateral transitional and agricultural safeguards in a case where there is a surge in imports or may cause frustration for the domestic industry of the importing countries. With regards to the EPA, the applications of safeguards have been extended which now allows use of multilateral safeguards and a variety of bilateral safeguards.³⁸⁹ These include, namely, general bilateral measures and measures specific to agriculture, securing food security, protecting infant industries and certain products in the BLNS. There has been some change as the agricultural safeguards can only be used on about 23 specific products and may be executed where the threat is realised by the importing country.³⁹⁰

³⁸⁶ Baatweng V “BREXIT” harmless to SADC-EU EPA’

https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 20 January 2019).

³⁸⁷ Baatweng V “BREXIT” harmless to SADC-EU EPA’

https://eeas.europa.eu/delegations/botswana_en/40549/%E2%80%9CBREXIT%E2%80%9D%20harmless%20to%20SADC-EU%20EPA (Last accessed on 31 January 2019).

³⁸⁸ Willemien Viljoen, ‘From the TDCA to the SADC-EU EPA – the significant changes’

<https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-eпа-the-significant-changes.html> (Last accessed on 05 February 2019).

³⁸⁹ Viljoen W, ‘From the TDCA to the SADC-EU EPA – the significant changes’

<https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-eпа-the-significant-changes.html> (Last accessed on 05 February 2019).

³⁹⁰ Viljoen W, ‘From the TDCA to the SADC-EU EPA – the significant changes’

<https://www.tralac.org/discussions/article/12514-from-the-tdca-to-the-sadc-eu-eпа-the-significant-changes.html> (Last accessed on 05 February 2019).

5.2.2 Feasible measures which Southern Africa Development Community (SADC) may apply in the occurrence of a disruption caused by Brexit.

If the UK exits the EU without a solid or definite Brexit deal, this would have various implications on the markets. The departure date was anticipated to be on the 29th of March 2019 however, an extension to this date of departure as been approved.³⁹¹ Theresa May had also expressed an option of no-deal Brexit which was not considered by the UK as it's parliament has voted against such notion. Various stakeholders, such as investors have been encouraged to prepare for the worst (no deal) even though hoping for the best, where an actual Brexit deal will be signed.³⁹²

There have been some political differences between supporters of Brexit as time progresses and no tangible resolutions or deals have been finalised. The indifferences have been one of the main causes why many politicians who were in support of Brexit, how now, some of them have resigned from their public office positions.³⁹³

If no Brexit deal is compiled or agreed upon, there will be control checks at borders of the EU of goods from the UK vice versa, which will be adopted. These controls will increase the administrative work which has been decreased by the UK being a Member state of the EU. This would increase the delay of goods entering the EU from the UK, vice versa. This has a negative effect on the businesses which predominantly rely on the exports and or imports directed to or from the UK.³⁹⁴ This would inevitably impact SADC industries that rely on exports to the EU that are destined for UK for a large percentage of their trade activity.

It is not advisable for the UK to be in anyway reluctant or stubborn in having a 'no deal Brexit' when it eventually exits the EU. Currently the UK is still afforded the status of being Member

³⁹¹ Silvia Amaro, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexite-deal-means-for-markets.html> (Last accessed on 05 February 2019).

³⁹² Amaro S, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexite-deal-means-for-markets.html> (Last accessed on 10 February 2019).

³⁹³ Amaro S, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexite-deal-means-for-markets.html> (Last accessed on 10 February 2019).

³⁹⁴ Amaro S, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexite-deal-means-for-markets.html> (Last accessed on 10 February 2019).

state of the EU since the exit has not been officiated.³⁹⁵ This would mean that the UK is not subjected to any of the said control checks as of yet and thus still beneficial to the UK. This however may change if the UK does not proactively approach and convince stakeholders and other interested parties in the application of the soft-Brexit approach.³⁹⁶

5.2.3 Whether the impact Brexit will cause to the SADC-EU EPA will be to its advantage or not. ³⁹⁷

As previously stated in the preceding chapter, there are three instances that must be taken into account when dealing Brexit and developing countries.

Firstly, is that developing countries should be prioritised whatever trade arrangements and policies to be passed by the UK legislature should bear in mind the issues and trade prospects of majority developing country's economic and social needs.³⁹⁸

Secondly, all the current and prospective trade arrangements that the UK will be party to need to be in accordance with the rules of WTO/GATT Observing the MFN principle, GSP system and or the Enabling Clause in trying to mend the drift caused by Brexit.³⁹⁹

Thirdly, on whether some or most developing countries would be able to have the capacity to transition from the previously practiced non-reciprocal trade regimes to one that will require reciprocity of all active trade partners.⁴⁰⁰ This is because SADC has been able to transition even though individual Member states of SADC have not picked up market activity compared to their counterparts Member states, such as South Africa and Namibia alike.⁴⁰¹

With the recent revelations of politicians who once supported Brexit but now have no hope of its success; it would seem as if Brexit's progress may not be viewed as operating in a manner

³⁹⁵ Amaro S, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexit-deal-means-for-markets.html> (Last accessed on 10 February 2019).

³⁹⁶ Van den Bossche P, Zdou W, 'The Law and Policy of The World Trade Organization', Cambridge University Press, New York, (2013)

³⁹⁷ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 20 January 2019).

³⁹⁸ Robert Hunter-Wade, 'Why free trade has costs for developing countries', <https://www.ft.com/content/29526d98-09cb-11da-b870-00000e2511c8> (Last accessed on 20 July 2018).

³⁹⁹ Bonapas Onguglo, Taisuke Ito, 'How to make EPAs WTO compatible? Reforming the rules on regional trade agreements' European Centre for Development Policy Management, Discussion Paper No 40 (2003)

⁴⁰⁰ Peter Draper, 'EU-Africa Trade Relations: The Political Economy of Economic Partnership Agreements', ECIPE Research Fellow, June (2007).

⁴⁰¹ Hoekman B, Rollo J, Wilkinson R and Winters LA, 'UK trade with developing countries after Brexit', The UK Trade Policy Observatory, University of Sussex, 2016

which they have anticipated. This affects the confidence which the UK Prime Minister, Theresa May is trying to instill to the world in that the UK is ready and is capacitated to administer Brexit in the most favourable manner. Theresa May's main objective at this point is to officiate the intention of the UK leaving the EU; however the most suitable approach which May and her parliament may consider and favorably so, should be the application of the soft-Brexit approach.⁴⁰²

This would lessen the burden on her part as Prime Minister, her cabinet and its government. If the soft Brexit approach is not initialised and implemented, then the administrative infrastructure of trade in the UK would need to be beefed up as there will be obvious challenges faced by the country. These challenges are not one of short term, as issues such as immigrations, jobs, social security, trade and promulgations of new laws will in the long term slow down the growth rate of UK economy.⁴⁰³

As previously stated in the preceding chapter, 'Theresa May's working visit to South Africa, she expressed the UKs' intention to replicate the SADC-EU EPA once Brexit is finalised. The EPA has proven to afford South Africa and other Southern African Customs Unions (SACU) Member states greater market access in the EU and this is what the UK hopes to also experience by its replication of the EPA.⁴⁰⁴ The replication of the EPA seeks to strengthen the already existing trade ties between SACU, SADC and the UK economy'. However, there has been quite some drastic change in the will by the UK parliament in continuing with Brexit as many parliamentarians have been pulling out their support of Theresa May in carrying out the nations vote to exit the EU. It is a pity that Theresa May was against Brexit initially but eventually accepted the mandate in its execution until it is finalised.⁴⁰⁵

Looking at the rate in which things are not turning out as planned for Theresa May, it may be reasonably expected for the UK and EU trade partners to attempt to prepare for any result of the Brexit. ACP countries, particularly SACU and SADC may consider the implementation of

⁴⁰² Amaro S, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexit-deal-means-for-markets.html> (Last accessed on 20 January 2019).

⁴⁰³ Amaro S, 'There's now a real chance the UK won't get a Brexit deal — here's what that means for markets' <https://www.cnbc.com/2018/07/10/what-a-no-brexit-deal-means-for-markets.html> (Last accessed on 29 February 2019).

⁴⁰⁴ Gaye Davis, 'May: UK to replicate EU's economic partnership with SACU, Mozambique' <https://ewn.co.za/2018/08/28/may-uk-to-replicate-eu-s-economic-partnership-with-sacu-mozambique> (Last accessed on 29 February 2019).

⁴⁰⁵ Bianca Britton and Eliza Mackintosh, 'Theresa May's Brexit deal rejected overwhelmingly by UK lawmakers' <https://edition.cnn.com/uk/live-news/theresa-may-brexit-vote-live-updates-intl-gbr/index.html> (Last accessed on 29 February 2019)

safeguards where it is deemed necessary to do so. This will be focused on preserving industries of SACU and SADC from the Brexit effect and where possible lessening job losses in the region as the uncertainty of Brexit looms.⁴⁰⁶

As previously stated in the preceding chapter, instruments such as

‘agricultural safeguards, anti-dumping or countervailing measures, balance of payments safeguards, BLNS transitional safeguards, infant industry protection safeguards, food security safeguards, general bilateral safeguard measures and multilateral safeguard measures.’

Some trade remedies that may be utilised to further the interests of SACU and SADC in light of Brexit whether or not there will be a concrete agreement concluded amongst its stakeholders.⁴⁰⁷

With Brexit negotiations being postponed for three months until Brexit finalisation, uncertainty is still rife amongst all stakeholders. This is based on the terms and conditions yet to be finalised by the EU. The negotiations seem to be directed more on the occurrence of hard Brexit that would lead the UK into an isolated standing in terms of its trade, customs and other mutual agreements concluded whilst it was an EU Member State.⁴⁰⁸ It is further reported that various companies that were based in the UK are now looking to relocate their offices elsewhere. This is evident in the case of a consumer goods giant, Unilever Global. The company has publicly announced its move from the UK to Netherlands however their reason for the move is said not to be the occurrence of Brexit but is a decision long anticipated and finally concluded prior Brexit taking place.⁴⁰⁹

This decision by Unilever Global cannot be entirely accepted as being true. This is because, the UK has not been visibly proactive in trying to minimise the uncertainties surrounding Brexit. The UK did not strongly work towards ascertaining the confidence of its investors thus such a move by Unilever Global.⁴¹⁰ It would be then advisable for the UK to consider engaging its investors and partners robustly on their expectations and reservations of Brexit, while in the

⁴⁰⁶ Stephen Greenberg, Anne Marie Thow and Mafaniso Hara, ‘Trade, food and nutrition security in South Africa: The cases of sugar and poultry’, Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

⁴⁰⁷ Greenberg S, Thow A M and Hara M, ‘Trade, food and nutrition security in South Africa: The cases of sugar and poultry’, Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

⁴⁰⁸ Marianne Merten ‘Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade’ <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018).

⁴⁰⁹ Merten M ‘Theresa May visits SA: Theresa May rings the bell for post-Brexit UK-Africa trade’ <http://firstthing.dailymaverick.co.za/article?id=119690#.W4ZTtXkUm74> (Last accessed on 29 August 2018)

⁴¹⁰ Vincent Boland, ‘Unilever’s exit from London is loaded with Brexit symbolism’, <https://www.irishtimes.com/business/unilever-s-exit-from-london-is-loaded-with-brexit-symbolism-1.3637479> (Last accessed on 29 September 2018).

negotiation stage and post Brexit, when much Brexit related decisions would have to be implemented.⁴¹¹

5.3 FINAL CONCLUSION

It has been evident from the UK joining the EU in 1973 that what had recently taken place by the UK nation voting for Brexit was not anticipated at all. The eventual consequence of Brexit would not necessarily be for the UK to isolate itself from the EU or world trade but to find itself in the midst of economic turmoil.⁴¹²

By virtue of the UK being a Member state of the EU and further having ties with ACP countries, more particularly SADC, this trade relationship is of interest this mini-thesis. It is then important for this mini-thesis to identify the effect Brexit has on SADC industries and how exactly SACU and SADC may orchestrate a proper approach to preserve its interests for its economies.⁴¹³⁴¹⁴ Furthermore, if a new regional trade agreement is concluded between the UK and SADC, it should be able to preserve and better the standing of SADC in international trade.⁴¹⁵

It was also important to investigate the intentions of UK post-Brexit expressed by Prime Minister, Theresa May and try to translate them in a manner in which they are meant and their possibilities. However, with the sudden change of tune by the UK politicians, it would seem that the Brexit deal is not necessarily going ahead as anticipated. There is now a greater chance for a no deal Brexit than for such deal to be concluded even though there may be prospects for the period of Brexit to conclude negotiations to be extended.⁴¹⁶ It would be of interest and important for the implementation of safeguards to be observed where necessary this may be an approached used of last resort. As safeguards are a mechanism used to preserve certain industries that have or will experience a serious injury due to imports from either outside the

⁴¹¹ Boland V, 'Unilever's exit from London is loaded with Brexit symbolism', <https://www.irishtimes.com/business/unilever-s-exit-from-london-is-loaded-with-brexit-symbolism-1.3637479> (Last accessed on 29 September 2018).

⁴¹² Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brexit-means-for-africa> (Last accessed on 06 March 2019).

⁴¹³ Greenberg S, Thow A M and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

⁴¹⁴ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 06 March 2019).

⁴¹⁵ Stephen Greenberg, Anne Marie Thow and Mafaniso Hara, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

⁴¹⁶ Greenberg S, Thow A M and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

RTA or within it. This will bring about the possible preserving of vulnerable industries of SACU and SADC that may be affected by Brexit as an immediate effect and further will attempt in lessening job losses in the region.⁴¹⁷

It is evident that the impact of Brexit on SADC is one that is unquestionable and which is clear. Brexit on a high probability will interrupt trade activity in the SADC region and the most convenient approach which would need to be leaned against is the conclusion of new bilateral trade agreements, the replication of existing trade terms and or the application of Soft Brexit.⁴¹⁸

The UK has given the world the most undeserving result by its parliament rejecting its Prime Minister's proposal to successfully officiate without a Brexit deal as she saw it was fit to do so. This to the world causes more confusion and distress as there seems to be no consensus on the UK's internal affairs regarding Brexit. In this regard, it would of interest and importance for SADC to safeguard its interests relating to the EU and the UK in particular.⁴¹⁹

Thus the poultry industry, including agriculture, fisheries and winery will be the most affected by Brexit as main exports from SADC are largely destined for the UK rather than other EU Member's states. Issues such as delays to supply demands of exports from SADC to the EU, UK and other importing countries that transport their imports or exports to and from SADC through the UK will be majorly affected by Brexit immediately after negotiations are complete.⁴²⁰

The supply chain, communication facilities and infrastructure technicalities such as transportation may not be addressed over a short period of time thus proper and lengthy engagements between all interested parties in needed.⁴²¹ These challenges will not be in anyway resolved when Brexit negotiations are complete but through ongoing negotiations and trade facilitations. However, it would from the analysis of the research that, the replication of

⁴¹⁷ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 10 March 2019).

⁴¹⁸ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brex-it-means-for-africa> (Last accessed on 10 March 2019).

⁴¹⁹ Greenberg S, Thow A M and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

⁴²⁰ Peter Fabricius, 'Fog in the channel: what Brexit means for Africa' The Institute for Security Studies, <https://issafrica.org/iss-today/fog-in-the-channel-what-brex-it-means-for-africa> (Last accessed on 10 March 2019).

⁴²¹ Erasmus G, 'SADC EPA Trade Defense Mechanisms' <https://www.tralac.org/blog/article/13311-sadc-epa-trade-defense-mechanisms.html> (Last accessed on 10 March 2019).

the existing trade deals will, to some extent alleviate pressures already existing and those to be experienced once Brexit negotiations are concluded.⁴²²



⁴²² Greenberg S, Thow A M and Hara M, 'Trade, food and nutrition security in South Africa: The cases of sugar and poultry', Institute for Poverty, Land and Agrarian Studies (PLAAS), 2017.

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