MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

„A Question of Agency: West and Southern Africa in Negotiations for Economic Partnership Agreements"

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Advanced International Studies (M.A.I.S.)

Wien 2022 / Vienna 2022

Studienkennzahl lt. Studienblatt Postgraduate programme code as it appears on the student record sheet:	A 992 940
Universitätslehrgang lt. Studienblatt Postgraduate programme as it appears on the student record sheet:	Internationale Studien / International Studies
Betreut von / Supervisor:	Prof. Markus Kornprobst, M.A., Ph.D.

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Abstract

In 2014, West Africa and the Southern African Development Community (SADC) Group concluded negotiations to regional Economic Partnership Agreements (EPAs) with the European Union (EU). West Africa negotiated a comparatively better trade deal, despite being economically weaker than the southern African region. This difference is puzzling. To solve it, this study focuses on African agency in international trade negotiations. It departs from a structurally embedded and historized notion of agency that takes agency seriously without neglecting the structural constraints that inform it. This study argues that agency – the socially constructed ability to bargain for outcomes and transform common problems into preferred solutions – can explain differences in EPA outcomes across African regions. It concludes that compared to the SADC negotiation group, West Africa demonstrated a higher degree of agency that manifested itself in the ability to challenge “the name of the game” and to solve common problems to its advantage.

Abstrakt

Westafrika und die südafrikanische Entwicklungsgemeinschaft (SADC) beendeten die Verhandlungen zu regionalen Wirtschaftspartnerschaftsabkommen (EPAs) mit der Europäischen Union (EU) im Jahr 2014. Obwohl Westafrika wirtschaftlich schwächer ist, verhandelte die Region einen vergleichsweise besseren Handelsdeal als die südafrikanische Region. Dieser Unterschied ist rätselhaft. Um das Rätsel zu lösen, stützt sich diese Arbeit auf das Konzept von „Agency“ in internationalen Freihandelsverhandlungen. Die Arbeit basiert auf einem strukturell und historisch eingebetteten Verständnis von „Agency“, welches „Agency“ ernst nimmt, ohne dabei strukturelle Determinanten zu missachten. Es wird argumentiert, dass „Agency“ – die sozial konstruierte Fähigkeit, Ergebnisse zu verhandeln und Konfliktsituationen in bevorzugte Lösungen zu transformieren – den Unterschied in Verhandlungsresultaten von afrikanischen Regionen erklären kann. Die Arbeit kommt zum Schluss, dass Westafrika ein vergleichsweise höheres Level an „Agency“ gezeigt hat, indem die Verhandlungssituation hinterfragt und Konfliktsituationen zum eigenen Vorteil gelöst wurden.

On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

Lea Samonig

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1 Introduction

In 2014, West Africa and the Southern African Development Community (SADC) Group were the first African regions to conclude negotiations to regional Economic Partnership Agreements (EPAs) with the European Union (EU). These EPAs represent the first interregional free trade agreements (FTAs) to ever be negotiated with African regions. Yet, they have been subject of much debate and have been widely discussed as introducing African states into a new era of trade relations with the European Union, with significant consequences for EU-Africa trade. A common point of view in existing literature tends to see the EPAs as imposed on African regions. This view is illustrated by Stephen Hurt (2003) who argues that the nature of the EPAs "[…] has significantly shifted the relationship [between the EU and African states] further from one of co-operation to one of coercion" (Hurt, 2003, p. 161). However, this work suggests that the story is more complex than that. In many respects, West Africa (ECOWAS EPA) negotiated a better deal for itself than did the SADC Group (SADC EPA). Not only does the ECOWAS EPA require a lower level of liberalization, but compared to the SADC EPA it further contains more generous EU commitments in terms of development assistance and transition periods. Hence, a comparison of the two case studies reveals that West Africa and the southern African region cannot be simply swept into the same category of weak African actors. In what follows, I argue that African agency matters in the negotiation of Economic Partnership Agreements. I translate agency into the ability to bargain for outcomes and transform conflict situations towards solutions, thereby seeking to account for the transformative potential and relational aspect of agency. In so doing, I intend to place African agency and its interaction with EU negotiators to the forefront of analyzing trade negotiations to regional EPAs. Rather than asking how 'Africa' has been marginalized in EPA trade negotiations, I ask to what extent African actors have been able to shape the outcome of these trade talks? A second question lies close by: Did African actors make use of the agency space available to them, and if so, in what ways?

In asking these questions, I make three contributions to the emerging literature on African agency in international relations. First, I seek to break away from entirely structuralist perspectives on Africa in international politics. I extend the limited literature on agency in trade negotiations by showing that agency matters, even in asymmetric North-South trade negotiations in which constraints on agency are high. Second, I take agency seriously without, however, neglecting the structural determinants that inform and shape actorness in international trade negotiations. By employing a structurally embedded and historicized notion of agency, I seek to account for the specific context that mediated West and southern African actorness in EPA trade talks with the EU. Third, I do not a priori equate African agency with an emancipatory resistance to EU demands in EPA trade negotiations. Rather, I show that African agency can take any size and shape.

This work is organized into 6 chapters. I start by developing a literature review in three steps (2). First, I discuss existing accounts on EU-Africa Economic Partnership Agreements (2.1). Second, I explain what I mean by speaking of 'African agency' (2.2). Third, I evaluate existing approaches to agency in international trade negotiations (2.3). In a second chapter, I outline a theoretical framework (3). In a third chapter, I describe the research design of this work (4). In a fourth chapter, I discuss West African and SADC trade negotiations in two steps (5). First, I outline the historical evolution of EU-Africa trade relations (5.1). Second, I compare West African and SADC trade talks in terms of their outcomes and negotiation conditions (5.2). In a fifth chapter, I compare West African and SADC agency in EPA trade negotiations with the EU by the means of two timeframes (2004-2007 (6.1) and 2007-2014 (6.2)) (6). The conclusion summarizes my arguments and outlines their implications for future research (7).

2 A Question of Agency: Literature Review

The literature review is developed in three steps. First, I provide an overview of existing accounts on EU-Africa Economic Partnership Agreements (2.1). It will be shown that scholarly accounts deal with a variety of aspects ranging from the historical evolution of EU-Africa trade relations, implications for regional integration and legal issues to fairness and development considerations. Second, I unpack what I mean by speaking of 'African agency' (2.2). I shed light on different perspectives on 'African agency' and I propose to conceptualize 'African agency' in such a way that avoids both a structural and pessimistic determinism ("nothing has changed") as well as an uncritical individualist approach ("everything is possible") to the ways African actors engage in international (trade) relations. Third, I examine three ideal-typical approaches to agency in negotiations and I discuss the value these theoretical lenses may add to an analysis of ‘African agency’ in EPA trade negotiations (2.3).

2.1 Africa, the EU and Economic Partnership Agreements

The existing literature provides for valuable analyses of different aspects of EU-Africa trade relations. For example, a great deal of literature has already been written on the historical dimension of EU-Africa trade. A common approach is to situate EU-Africa trade relations in the context of the EU’s colonial past. Brown (2000), for example, notes that in the 1960s the (back then) European Communities (EC) started to formalize their post-colonial ties with former African colonies. As part of this formalized relationship, the 1963 and 1969 Yaoundé Conventions built the basis for trade and development cooperation (cf. Brown, 2000, pp. 372ff). Within historical accounts, the Economic Partnership Agreements with Africa are widely discussed in the context of a new era of EU-Africa trade relations (see e.g. Adetula & Osegbue 2020; Hulse 2018; Zeilinger 2016; Grumiller et al. 2016 or Wildner 2011). Thereby, many (see e.g. Farrell 2005; Hurt 2003; Gibb 2000 or Brown 2000) tend to view the EPAs as the acceleration of a neoliberal restructuring of North-South relations that started already in the 1970s (for an excellent historical account of EU-Africa trade regimes see Gibb 2000). This view is best illustrated by Hurt (2003) who presents Economic Partnership Agreements “[…] as a continuation of the neoliberalisation of the EU-ACP [African, Caribbean, and Pacific states] relationship” (Hurt, 2003, p. 163). Consequently, the EPAs with Africa are analyzed as the material result of processes of global restructuring and the EU’s commitment to bring its trade regime with Africa in line with World Trade Organization (WTO) rules. In the form of EPAs, EU-Africa trade departed from the former principle of non-reciprocity towards the principle of (asymmetric) reciprocity (cf. Hulse, 2018, pp. 42f). Importantly, the same accounts also point to the pressure the EU exerted on African states to conclude interregional free trade agreements. As the WTO waiver – that granted African (and all other ACP states) preferential access to the EU market – ended in 2007, all states that had not concluded either a regional or (interim) bilateral EPA with the EU by that time, lost their duty and quota free EU market access (cf. Wildner, 2011, p. 5). Consequently, accounts that emphasize this fact tend to argue that the outcome of the EPAs was kind of “imposed” on African states. This view is summarized by Stephen Hurt (2003) who argues that the nature of the EPAs “[…] has significantly shifted the relationship [between the EU and African states] further from one of co-operation to one of coercion" (Hurt, 2003, p. 161).

Importantly, existing accounts that deal with EPAs often use the newly established principle of reciprocity in EU-Africa trade relations – as embodied in the EPAs – as a starting point for criticism. Thereby, the criticism directed at the European Union is frequently put in relation to developmental needs of African countries. For example, Weinzierl (2016) accuses the EU of hypocrisy when it comes to the development discourse that accompanied the negotiation of EPAs with ACP states. Similarly, Sanders (2015) strongly criticizes the EPAs for impeding development in Africa. In demanding reciprocity – and thus, equality – from unequal trading partners, he accuses the EU of neglecting African states the right to choose their distinct development path (cf. Sanders, 2015, pp. 568f). Moreover, Adetula and Osegbue (2020) argue that by insisting on reciprocity and thus, conformity with the WTO free trade agenda, the EPAs detach aid and trade (cf. Adetula & Osegbue, 2020, p. 213). What these accounts have in common is their (implicit or explicit) identification of a lack of political will on the side of the European Union to follow through on its development commitments when it comes to trade relations with African states.

Furthermore, the same line of criticism is often times used in order to explain the sagging negotiation process. Although the EU initially expected that by 2007 the regional EPAs would enter into force and would lead to a liberalization of 90% of EU-ACP trade within a period of 10-12 years, by 2014 negotiations were concluded only with the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the Eastern African Community (EAC) (cf. Adetula & Osegbue, 2020, p. 213). In this respect, Grumiller et al. (2016) argue that the potential adjustment costs of EPAs as well as divergent views on the role of development aid in the EPAs, made African states reluctant to sign regional EPAs (cf. Grumiller et al., 2016, pp. 9ff). This contribution is insofar important for the purpose of this work as it suggests that different perceptions of the importance and interpretation of developmental needs might have influenced the negotiation process. To follow up on this argument, other crucial contributions are provided by Weinhardt (2019/2017). Weinhardt explains how negotiation strategies adopted by the EU and West Africa resulted in an impasse of negotiations and ultimately, influenced the outcome of it. In her analysis of the EU-West Africa trade negotiations, she argues that "the main problem was not that one side sought 'development', and the other 'trade', but that both interpreted the linkage between these issues differently and mistakenly expected a shared vision" (Weinhardt, 2019, p. 175). Like that, Weinhardt's (2019) contribution contains important implications for the purpose of this work for at least two particular reasons. First, her analysis moves the attention away from underlying interests and towards the importance of expectations and perceptions of what is acceptable in terms of both negotiation behavior and outcome. Second, Weinhardt's (2019) approach does not oversee the actorness and role that African states had to play in shaping the outcome of the EPAs. Accounts that are interested in 'African agency' in EPA negotiations are further provided by Hulse (2018/2014) and Murray-Evans (2019/2015). In her analysis, Hulse (2018/2014) develops the concept of regional actorness – the ability to aggregate, formulate and implement collective goals – to explain differences in negotiation outcomes between the EU, West Africa, and the Southern African Development Community (SADC) Group (cf. Hulse, 2018, pp. 39ff). However, the notion that regional integration automatically enhances agency is questioned by Murray-Evans (2019/2015) who provides for another account of regionalism and agency in connection with the SADC EPA. Furthermore, another important strand in existing literature focuses on the argumentative dimension to EPAs (see e.g. Del Felice 2014; Hurt et al. 2013; Lee 2013 or Drieghe 2008). Again, these accounts provide valuable insights for any work interested in agency in EPA trade negotiations. What they have in common is that they point out the discourses surrounding the EPAs as well as the rhetorical strategies used by negotiation parties (see e.g. Hurt et al. 2013 or Lee 2013) and civil society (see e.g. Del Felice 2014) to influence the outcome of EPA trade negotiations.

Finally, while the above-described accounts mainly focus on fairness, regionalism, and development concerns or try to assess the argumentative dimension to EU-Africa EPAs, other accounts in existing literature concentrate on explaining the outcome of EPAs on the basis of a global re-organization of trade. Within this approach, some scholars (see e.g. Adetula & Osegbue 2020 or Hodu 2009) discuss the EPAs with Africa in the context of the EU's commitment to WTO-compatible trade – and thus, against the background of a transition towards WTO conform EU-Africa trade relations – while others (see e.g. Griller et al. 2017 or Zeilinger 2016) deal with the Economic Partnership Agreements in the context of a surge of bilateral and (mega)regional free trade agreements in recent years. Both ways of addressing the Economic Partnership Agreements between the European Union on the one side and African states and regions on the other side promise fruitful insights for the purpose of this work. First, the debate about the WTO-conformity of EU-Africa trade relations provides a starting point to ask in how far the European Union managed to implement its own interpretation of the WTO requirement of “substantially all the trade” in trade negotiations with African states. In this respect, Hodu (2009) emphasizes that GATT Article XXIV (paragraphs 5 and 8) – which establishes the conditions for free trade agreements to be WTO-compatible – requires FTAs to cover “substantially all the trade” and to be implemented within “a reasonable length of time”. At the same time, however, he notices that there is no provision in GATT/WTO law interpreting the full scope of these key provisions. Solely the Dispute Settlement Body (DSB) – in its ruling on the Turkey-Textile case – provided vague sources for interpretation by stating that “substantially all the trade” is neither all nor only some of the total trade. Concluding, Hodu (2009) remarks that the vague interpretation of “substantially all the trade” offered by WTO law poses significant challenges for both the EU and African states in negotiating the scope of any development concern to be included in the EPAs (cf. Hodu, 2009, pp. 225ff). While Hodu’s contribution (2009) clearly demonstrates the interrelations between the WTO compatibility requirement and development concerns with respect to the EPAs, it leaves open the conclusions to be drawn from this challenge. In a more opinioned contribution, Adetula and Osegbue (2020) argue that the EU’s demand for (on average) 80% market liberalization on the side of African states is an “imposition” that cannot be justified with the argument of WTO conformity (cf. Adetula & Osegbue, 2020, pp. 217f). Second, others debate the recent rise in bilateral and (mega)regional FTAs and their consequences for the multilateral trading system. Thereby, what many scholarly contributions (see e.g. Grübler et al. 2021; Bown 2017 or Griller et al. 2017) have in common is their focus on the desire of major trading powers like the EU to press ahead on certain issues that had stalled on the multilateral WTO framework before. For example, Bown (2017) shows that the desire to make progress on new rules for trade – most notably on nontariff barriers to trade – was at the heart of the EU’s and the US’ initial to negotiate mega-regional trade agreements like TTIP (Transatlantic Trade and Investment Partnership) and TPP (Trans-Pacific Partnership) (cf. Bown, 2017, p. 107). In a similar vein, Griller et al. (2017) argue that both the EU and the US are key actors in negotiating bilateral and plurilateral trade agreements outside of the WTO framework in order to “[…] transform and shape the international economic order and also to promote more far-reaching geopolitical goals” (Griller et al., 2017, p. 3). This observation is further supported by Zeilinger (2016) who finds that the EU – in negotiating EPAs – turned away from the multilateral WTO framework in an effort to press ahead on the so-called Singapore issues (cf. Zeilinger, 2016, p. 23).

2.2 Unpacking African Agency

Over recent years and more, ‘African agency’ has increasingly become a subject of interest for scholars concerned with the role of African states in international relations. To some extent, the emerging literature on ‘African agency’ in world affairs “[…] can be seen as part of a longer tradition in which Africanist scholars have sought to challenge dominant narratives that present African actors as passive recipients of external structures and political decisions taken elsewhere” (Murray-Evans, 2015, p. 1847). Thus, in part the growing attention to ‘African agency’ originates from personal research agendas of scholars who wish to engage with African international relations in a way that discusses ‘Africa’ “[…] as actor not just acted upon, historical agent not just history’s recipient” (Brown, 2012, p. 1889). For too long, the study of African international relations has been dominated by accounts eager to explain how the continent has been ruled, shaped and marginalised by external powers. Moreover, the growing scholarly interest in ‘African agency’ further has to do with the observation of an increasingly prominent role that African state (and non-state) actors play on the world stage. This has become evident in particular in areas like world trade, climate change as well as other security issues and intervention norms, in which African states, leaders and diplomats have demonstrated high levels of engagement (cf. Brown & Harman, 2013, p. 1). One area where ‘African agency’ has been found to be particularly prominent is that of the World Trade Organization (WTO). In recent years and longer, African states have repeatedly tried to make use of their number and have formed South-South coalitions – albeit under the lead of key states such as South Africa – in order to speak and intervene with a common strong voice (however, for a critical discussion of African common positions in international negotiations see Zondi 2013). For example, Lee (2013) shows how the activism of African states has contributed considerably to the standstill of the latest Doha Development Round of WTO negotiations (cf. Lee, 2013, pp. 34ff). ‘African agency’ has further attracted attention in a regional context due to the launch of the African Union (AU) in 2002. With a pan-African agenda – incorporating 54 African states – the AU inherits the ability to speak for ‘Africa’ as a collective and is attributed significant potential to influence Africa’s international relations in the future (cf. Hurt, 2020, pp. 140ff; cf. Brown & Harman, 2013, p. 6; cf. Brown, 2012, pp. 1891ff).

Studying African international trade relations from the viewpoint of agency inherits significant potential. For the purpose of this work, it invites us to engage seriously with the ways African negotiation groups may claim agency over how their trade relations will look like with the rest of the world in the future. Yet, any account interested in 'African agency' must clarify what it means by speaking of agency. Today, many contributions in the field of International Relations tend to conceptualize agency as having the ability to influence (for the better) the way international relations are conducted. For example, when analysing the role of agents in the process of state-building in developing countries Leftwich (2010) refers to agency as "[…] the capacity of agents […] to shape their environment" (Leftwich, 2010, p. 96). And Lee (2013) defines 'African agency' in the context of global trade relations as "[…] the ability to change the processes of global trade governance and the rules governing world trade" (Lee, 2013, p. 34). Other more normative accounts tend to understand 'African agency' as "[…] a way to challenge the dominant material and ideational structures of the global political economy" (Hurt, 2013, p. 53). While Leftwich (2010) and Lee (2013) fall into the tradition of conceptualizing agency as possessing the ability to have a (positive) impact on international politics, Hurt (2013) – like many others – tends to equate agency with an (emancipatory) resistance to the way African states continue to be integrated into the world economy, in particular via trade relations with major economic powers such as the European Union.

Furthermore, despite (or perhaps because of) the focus on agency I seek to engage with different forms of 'African agency' in a way that does justice to the fact that 'African agency' still operates in "tight corners" (Lonsdale, 2000, p. 6). To date, any encounter of Africa with Europe takes place in the context of historically contingent and inherently powerful material as well as ideational relations that have their roots in the European rule over the continent and before. For example, both the asymmetry in terms of economic power (material) as well as prevailing neoliberal ideas of African development – including a particular understanding of donor-recipient relations – and a discourse on 'underdeveloped Africa' (ideational) continue to inform the space available for 'African agency' (cf. Hurt, 2020, pp. 140ff). To keep this in mind means to account for the "[…] co-constituted nature of agents and structures without reducing one to the other" (Wight, 1999, p. 134). I, thus, seek to develop a notion of 'African agency' that pays attention to the persistence of tensions between African actorness and the structural constraints (whether material or ideational) that enable, disable, and shape 'African agency'. Put differently, I seek to conceptualize agency in such a way that avoids both a structural and pessimistic determinism ("nothing has changed") as well as an uncritical individualist approach ("everything is possible") to the ways African actors engage in international (trade) relations. A useful starting point to develop such a notion is Colin Wight's (2006/1999) conceptualization of agency. In his book on *Agents, Structures and International Relations: Politics as Ontology*, Wight (2006) develops a structurally embedded account of agency that has three dimensions to it. First, for Wight agency essentially refers to the act of "doing something". In other words, agency can be located best in the "freedom of subjectivity" (Spivak cited in Wight, 2006, p. 206) to do something. In a second sense, agency further refers to "being an agent of something". With this perspective on agency, Wight adds another dimension that accounts for the historically concrete social context from which agency arises and that is being reshaped through agency in return. As "[…] agents always bring their structures with them […]" (Wight, 2006, p. 296), agency can never be fully understood without taking into account the contextual constraints that inform it. Finally, according to Wight agency can also be understood from the viewpoint of roles that actors perform. This allows us to differentiate among the roles – like that of a negotiator – actors try to fulfill in particular contexts of social relations (cf. Brown, 2012, pp. 1893ff; cf. Wight, 2006, pp. 177ff; cf. Wight, 1999, pp. 109ff).

Last but not least, so far I have referred to 'African agency' as if it were a singular concept. However, it is clear from the sheer size and diversity of the African continent and its states and societies that a more nuanced notion of agency is needed. Yet, when analysing EPA trade negotiations it might – for the sake of analytical simplification – be justified to speak of (regional) African agency for at least two particular reasons. First, African regional negotiation groups – regardless of their specific constellation of negotiators (diplomats, policy advisors, interest groups etc.) – act on behalf of a collection of states that share a common history of trade relations – and hence, a particular form of incorporation into the political economy – with the European Union. Although national interests might vary considerably, it can be expected that African regional negotiation groups at least tried to act as a collective, given that they managed to conclude negotiations to bi-regional Economic Partnership Agreements. Second, African regional negotiation groups share a "discursive presence" (Brown, 2012, p.

1891) that becomes evident in the use of the term 'Africa' by both African as well as external actors (cf. Brown, 2012, p. 1902). This can be observed in particular in the area of development cooperation, "[…] where common problems and solutions are frequently ascribed to 'Africa' as a whole" (Brown & Harman, 2013, p. 4). In this respect, it will be interesting to ask in how far 'Africa' as a category itself is used by African actors to define their space for agency. Finally, another aspect worth mentioning when investigating African agency is the role generally attributed to African political leadership in the existing literature. According to Brown (2012), any account interested in African agency must be aware of the role African state leaders usually play in "[…] both defining and mediating the external expression of state preferences" (Brown, 2012, p. 1892).

2.3 Agency in International Trade Negotiations

Existing accounts on international negotiations differ in their perspectives on how negotiation parties may find and use agency in the course of the negotiation process. Within the dominant approaches to negotiations – bargaining and problem-solving – actorness is mostly conceptualized in a way that is directly related to the perceived outcome of negotiations. For example, bargaining scholars argue that negotiation processes are characterized by the central element of bargaining through which actors seek to advance and maximize their own interests. These interests are assumed to be largely stable and competitive which translates into an understanding of negotiations as zero-sum games. Parties will prefer any agreement to no agreement only if it increases their utility, with each party trying to increase its gains relative to the others (cf. Niemann, 2006, p. 469). Like that, agreements can be reached only by concessions and convergence which makes the final agreement usually to one in between the initial offers of the negotiation parties (distributive agreements). Following this bargaining lens on negotiations, the focus on relative gains as the outcome of negotiation processes has important implications for the conceptualization of actorness. Parties may find actorness – which directly translates into their ability to advance their interests – by making concessions or retractions of previous offers (cf. Hopmann, 1995, p. 26). This implies that bargaining agency typically involves the manipulation of information to mislead others, the making of commitments to reinforce one's own offers as well as the use of threats and rewards to get other parties to make and hold firm to their commitments (cf. Niemann, 2006, p. 469; cf. Hopmann, 1995, p. 29). A similar conceptual relationship between actorness (mostly described as actor strategies) and the outcome of negotiations can be found for the problem-solving lens on negotiations. Here, scholars typically argue that negotiation is less a distributive than an integrative bargaining. Hence, in problem-solving the focus with respect to the outcome of the negotiations is on absolute rather than on relative gains (non-zero-sum games). Negotiation parties engage in problem-solving in order to find solutions to common problems, thereby seeking to reach a mutually acceptable agreement (integrative agreement) (cf. Niemann, 2006, p. 469). Accordingly, in problem-solving actorness derives not so much from concessions and retractions along fixed issues, but rather from a discovery process that can be described as one of trial and error. Like that, problem-solving agency typically implies more creative solutions such as making mutual concessions, paying rewards for concessions, or increasing scarce resources and the amount of benefits available so that all parties involved can gain from sharing the value added by the negotiations (cf. Niemann, 2006, p. 469; cf. Hopmann, 1995, p. 27).

What both bargaining and problem-solving perspectives on negotiations have in common is their understanding of the negotiation process as a means to an end. Like that, negotiation becomes a tool to reach a settlement or an agreement. As Putnam (1994) points out, in both perspectives the "instrumentality lens" is applied to all aspects of the negotiation process which makes the process and the outcome appear to be one side of the same coin. Put differently, viewing the negotiation process through the lens of instrumentality shapes the way how scholars view the process and the actorness within it. As a result, agency – be it in the tradition of bargaining or problem-solving – is seen as serving and functioning in negotiations either through the direct link to distributive (bargaining) or integrative (problem-solving) outcomes. For example, in the problem-solving tradition negotiators use strategies like information-sharing in order to reach integrative agreements, while in bargaining negotiators draw on strategies such as the use of threats or rewards to reach distributive agreements (cf. Putnam, 1994, pp. 337ff). Accordingly, also relational or identity aspects enter the negotiation process through the lens of instrumentality which makes them yet another resource or strategy in order to achieve the desired outcome (cf. Putnam, 1994, p. 339).

Problem-solving and bargaining approaches to negotiations certainly offer fruitful ways to conceptualize agency within the process of negotiation. Yet, the dominant understanding of negotiations as "transactional exchanges" (Putnam, 1994, p. 338) reduces agency within negotiation to a means necessary to reach an end. This fails to account for the way negotiation parties may change (or may not change) the negotiation process – and thus, the underlying conflict situation – as such. Hence, another perspective needs to be added that accounts for the transformative potential of agency in negotiations. In this respect, Putnam (2010; 1994; 1992) offers a transformative approach that goes beyond the focus on settlement and outcomes and instead is interested in how negotiations may change the underlying dispute. In her approach, negotiation – understood as the transformation of a conflict situation – has the ability to transform not only the way negotiation partners perceive each other, but also how they perceive of disputed issues as well as the conflict situation as such. Like that, "[…] negotiations can produce fundamental changes in conflicts at the actor level, issue level, rules, structures, and context of the dispute […]" (Putnam, 1994, p. 339). Thereby, the transformative potential of negotiations stems primarily from communication. Putnam (2010) uses the concept of communication as an entry point to explain how negotiation partners may change their understanding of the issues and the dispute at stake as well as their relationship to each other within the course of negotiations. Like that, transformation becomes both the process and the product of communication between the negotiation partners. Through communication parties may "change the name of the game" (Putnam, 2010, p. 325) collectively, thus creating opportunities to develop new mutual understandings of what is at stake. Actor strategies that fall into this communicative approach to negotiations typically include framing, deliberation, differentiation or the development of collective sense making (cf. Putnam, 2010, pp. 325ff; cf. Putnam, 1994, pp. 337ff; cf. Putnam & Roloff, 1992, pp. 1ff).

3 Theoretical Framework

Several authors in the existing literature contend that the EPAs have altered EU-Africa trade relations towards coercion. As a consequence, they view the new trade deals as largely imposed on African regions. There are two problems with this argument. First, it remains stuck in a structurally deterministic view of Africa's place in international relations. African actors have for a long time been actively engaged in international negotiations and have made choices in shaping existing relationships with other actors such as the EU. Second, this argument cannot account for the variance in EPA outcomes across African regions. This is why I suggest putting the analytical concept of agency at the heart of an enquiry into EU-Africa trade negotiations. But this is not an effort to deny the "tight corners" that still impact African agency and choices in international relations. Instead, I rely on Wight's (2006/1999) structurally embedded notion of agency to use an account that treats agency within the negotiation context(s) it emerges from. As Wight (1999) notes, we need "to begin to think of agency as always structurally embedded yet distinct from those structures that enable and constrain it […]" (Wight, 1999, p. 110). Moreover, Wight's suggested tripartite character of agency allows us to think about both the scope for agency ("agency as the freedom of subjectivity") as well as the content and form of agency ("agency as an agent of something" and "agency as performing certain roles") enacted. With this conceptualization of agency at hand we can focus on asking two related questions about African agency. First, what is the scope for African agency, that is, to what extent can African actors enact trade relations with the European Union? Second, do African actors make use of the agency space available to them and if so, in what ways?

An interest in African agency in EPA trade negotiations prompts us to identify what might be done with the agency space available. Within the few accounts that deal with African agency, many tend to equate African agency with an emancipatory potential to resist externally imposed ideas and policies. While this emancipatory claim to agency is normatively valid and important, I seek to elaborate an account of agency that does not make any a priori assessments on the particular *form* of agency that is possibly enacted by African agents. In order to pay tribute to the range of possible preferences and strategies used for agency, I seek to stay responsive to what can only be told by the empirical analysis itself. Hence, I add to the structurally embedded notion of African agency an explicit analytical assignment to not a priori equate African agency in trade negotiations with the resistance against dominant structures of trade relations or the ability to bring about progressive change.

Finally, there is an agreement in existing literature that bargaining and problem-solving are two dominant ways to conceptualize agency in trade talks. Agency may indeed function as an instrument in the service of reaching a certain goal. As such, we may find that African negotiation groups employed agency by making concessions or by solving common problems. Yet, there is an important difference between these two. In bargaining, negotiation parties accept the game as it is. Bargaining behaviour can be summarized as: If you give me this, I'll give you that (i.e. tit for tat). Mutual concession-making is, thus, one of the most dominant expressions of bargaining behaviour. This transactional account of agency in trade negotiations, however, requires as a necessary pre-condition that both sides of the negotiation table understand the underlying conflict to solve, the relationship to each other as well as the issues at stake in the same way. For example, one cannot employ a certain bargaining strategy – say the use of threats to make the other side reinforce its commitments – successfully if the other side does not interpret the strategy – in our case the threat – in the way intended by the initial party. Likewise, one cannot engage in bargaining to reach a mutually acceptable agreement, if the way such an acceptable agreement could look like, let alone the way it can legitimately be reached is not 'common sense'. Hence, tit for tat bargaining implies that the negotiation game is accepted as it is. In contrast, problem-solving requires a different degree of agency. Here, space for agency and choices may evolve over time in the negotiation process, just as the mutual understanding of the issues at stake and of the relationship between the negotiation parties may change dependent on their interactions. In problem-solving, negotiation parties do not simply accept the game as it is. Rather, they continuously construct it through their interactions. Hence, problem-solving involves a higher level of agency than bargaining. To account for this transformative potential of agency in trade negotiations and enquire into its different degrees, I employ a socially constructed understanding of agency that reveals how social processes surrounding the practice of bargaining and negotiating may shape the "name of the game". In what follows, I define agency as the socially constructed ability to bargain for outcomes and to transform common problems into preferred solutions.

4 Research Design

To put it to the empirical test, I apply the above outlined conceptual framework to two cases of EU-Africa trade negotiations to Economic Partnership Agreements (EPAs): the EPA between the EU and the Economic Community of West African States (ECOWAS) (plus Mauritania) and the EPA between the EU and the Southern African Development Community (SADC) Group. I make use of this comparative case study to test how agency in trade negotiations varies across African regions. For this purpose, the two selected case studies seem particularly fruitful. Many accounts in existing literature (see e.g. Hulse 2018; Murray-Evans 2015 or Ramdoo 2014) agree that – from the point of view of African states – West Africa negotiated a slightly “better” outcome than the southern African region. This seems like an interesting puzzle to solve, given that most West African states are economically weaker than southern African states. Moreover, in contrast to the West African negotiation group, the SADC Group includes with South Africa a state that already had experience in negotiating comprehensive free trade agreements with the European Union prior to the EPA negotiations (cf. Hulse, 2018, p. 40). However, to allow for a comprehensive analysis of African agency and its interaction with the EU in EPA trade negotiations, I first test the claim of different EPA negotiation outcomes across ECOWAS and SADC African regions. In so doing, I provide for some comparison of EPA outcomes in terms of the most contentious issues in EPA negotiations: mutual market access, timeframes for liberalization, the development component and financial support provided by the EU as well as provisions on the so-called Singapore issues and on remaining policy space (see e.g. Hurt 2020; Hulse 2018 or Ramdoo 2014). Moreover, I further shed light on similarities and differences of ECOWAS and SADC trade negotiation contexts as well as on the more general historical evolution of EU-Africa trade relations to account for my claim to a structurally embedded notion of African agency.

Furthermore, based on the analysis of ECOWAS and SADC EPA outcomes and negotiation conditions, I will then turn to the test of the theoretical framework. I proceed by dividing the negotiation process of both EPAs into two parts. The first negotiation phase (2004-2007) to be looked at is the time frame from 2004 when negotiations to regional SADC and ECOWAS EPAs started and 2007 when the WTO waiver – that granted African states preferential market access to the EU – came to an end. The second negotiation phase (2007-2014) to be looked at concerns the time frame between 2007 when the WTO waiver lost its significance and 2014 when negotiations to the ECOWAS and SADC EPAs had been concluded. I use these timeframes to better understand how the scope and nature of African agency varies over time. Moreover, this classification will allow me to devote particular attention to the situation in 2007 when many individual African states signed interim bilateral EPAs with the EU and negotiations to regional EPAs had reached an impasse. Finally, to test my conceptual framework in both phases of negotiations, I employ three main sets of sources. First, I collected official press statements, speeches, and communications of representatives of the negotiation parties to employ a communicative lens on agency in EPA trade negotiations. I analyze the ideas and messages in their spoken words particularly through the link of development to trade. This allows me to draw conclusions on the relational aspect of agency – that is whether both sides of the negotiation table show similar or dissimilar understandings of the issues and the underlying negotiation situation at stake. Second, I examine officially published side texts, the texts of the two final trade agreements as well as insider sources (in particular the regularly published *Trade Negotiations Insights,* edited by the International Centre for Trade and Sustainable Development and the European Centre for Development Policy Management) to analyze the scope and form of agency enacted by ECOWAS and SADC negotiators. I pay particular attention to language that indicates "exchanges", making of "commitments and concessions" as well as the use of "threats or rewards" in order to operationalize bargaining or problem-solving types of agency. However, it is important to note that it will not be possible in any case to demonstrate clear linkages between different types of agency and outcomes. Moreover, in examining specific legal provisions of the ECOWAS and SADC EPAs, I further draw on interpretations of existing WTO law to account for potential external (structural) sources of agency. Third, I access academic literature (see e.g. Hulse 2018/2014; Weinhardt 2017 or Murray-Evans 2015) that focuses on EPA trade negotiations to cross-validate my findings and to get insights into what happened outside of the formal setting of trade negotiations.

5 West Africa and the SADC Group in Negotiations for Economic Partnership Agreements

In the following, I first provide an overview of the historical development of EU-Africa trade relations (5.1). I do so in order to avoid an ahistorical account of agency and to better understand the negotiation context that ultimately mediated African actorness in EPA trade negotiations. I go on to provide some comparison of the ECOWAS and SADC EPAs in terms of outcomes as well as negotiation conditions (5.2). Together, this chapter forms the basis for a subsequent analysis of African agency in EPA trade negotiations that does justice to the historical concrete context by which agency is informed.

5.1 EU-Africa Trade Relations: Embedding EPA Negotiations

The European Union and African states have a long-standing history of trade relations and development cooperation that traces back to European colonialism and the imperial control of the African continent. In the context of decolonisation starting with the second half of the 20th century, a new form of North-South relations started to emerge that – in the case of EU-Africa relations – translated into a formalised relationship between the six founder members of the (back then) European Communities (EC) and former African colonies. As part of these post-colonial formal ties, the 1963 and 1969 Yaoundé Conventions built the basis for development cooperation and provided African states with trade access – albeit on a reciprocal basis – to the EC market. This changed, however, when Britain joined the EU in 1973 and with it the need to account for the British Commonwealth. The new geographical scope of post-colonial ties – coupled with a growing Southern demand for more beneficial trade relations and international aid – ultimately contributed to the replacement of the Yaoundé Convention with the Lomé regime in 1975 (cf. Brown, 2000, pp. 372ff). From now on, the Lomé regime was to govern trade relations between the European Union and a total of 46 African, Caribbean, and Pacific (ACP)[1] states. Lomé, thus, effectively created a new ACP group of diverse countries in order to allow the EU to negotiate a single agreement with its former colonies. Most importantly, Lomé introduced trade relations on the basis of non-

[1] In April 2020 the ACP Group has been officially re-named as the Organisation of African, Caribbean and Pacific States (OACPS).

reciprocal – and hence, preferential – EU market access for ACP states as well as protocols guaranteeing preferential prices for certain export commodities to the EU market (cf. Hurt, 2020, p. 148). As “a sign of the times” (Elgström & Pilegaard, 2008, p. 366) the 1975 Lomé Convention, thus, reflected demands for a New International Economic Order (NIEO) and institutionalised a new form of EU-ACP cooperation resulting from an ongoing process of restructuring post-colonial North-South relations (cf. Gibb, 2000, pp. 461f). Moreover, while the EU-ACP cooperation under Lomé I aimed to guarantee EU access to commodities in ex-colonial states and to maintain these privileged links, the Lomé Convention further stood in the spirit of an – at least rhetorically – “[…] equal partnership of two regional groups representing the developed and underdeveloped worlds […]” (Gibb, 2000, p. 462).

However, North-South trade relations continued to be restructured in the course of the subsequent Lomé re-negotiations from the early 1980s on (Lomé II – Lomé IV). Echoing a growing liberalisation and multilateralisation of international relations in general and a new wave of trade liberalisation in particular – as embodied in the agenda of the Uruguay Round of GATT (General Agreement on Tariffs and Trade) negotiations at that time – Lomé re-negotiations increasingly called into question previous principles of the EU-ACP partnership. For example, already Lomé I and Lomé II adopted a more liberal understanding of both aid and trade when the EU tried and ultimately succeeded in linking aid provisions to the fulfilment of human rights conditionalities – an approach met with great resistance by ACP states. This process of redefining trade and development cooperation with former colonies was intensified in the 1990s with the negotiations to Lomé IV and its midterm revision known as Lomé IV-bis. While Lomé IV introduced support for structural adjustment programmes, Lomé IV-bis attached the provision of aid to comprehensive political conditions including the rule of law and good governance coupled with a unilateral suspension mechanism of aid in the case of misbehaviour (cf. Hurt, 2003, pp. 161ff; cf. Brown, 2000, pp. 372ff). In sum, the re-negotiations of trade and development cooperation in the course of the Lomé Conventions moved an explicit political aspect to the forefront of EU-ACP – and thus, EU-Africa – relations and saw the increasing adoption of (neo)liberal ideas of what North-South trade relations should look like.

Moreover, while the history of the Lomé Conventions already brought a change to the nature of EU-Africa cooperation, it was the 2000 Cotonou Agreement that – in building on previous trends – established a new era of EU-Africa trade relations. Originating from a 1996 European Commission *Green Paper on Relations between the EU and the ACP countries on the eve of the 21st century: Challenges and options for a new partnership* (see European Commission 1996), the Cotonou Agreement set EU-ACP relations on a fundamentally new basis for a timeframe of 20 years. Most significantly, it replaced the non-reciprocal trade preferences established by the Lomé regime with a series of reciprocal – albeit asymmetrical – regional Economic Partnership Agreements (EPAs) between the European Union on the one side and regional groups of ACP states on the other side, thus starting to differentiate between ACP states. In so doing, the European Union called for a renewed "equal" partnership to account for the global context of the 21st century and to promote regional integration in the ACP region (see e.g. Hulse 2018; Hurt 2003 or Gibb 2000). The main reasons for these changes were proposed by the European Commission already in its 1996 Green Paper. First, the European Commission held that the preferential unilateral trade preferences granted to ACP states did not result in the expected economic growth of ACP states. Instead, the share of ACP trade of total exports to the EU had continuously fallen and ACP states were not able to successfully use trade preferences to diversify their economic structures. Second, the Commission justified the reciprocal trade requirement with the need to bring EU-ACP trade in line with World Trade Organization (WTO) law, since it so far discriminated between (ACP and non-ACP) developing countries (cf. European Commission, 1996, pp. 1ff). While GATT/WTO law generally offers WTO contracting parties the exception to deviate from the principle of non-discrimination – in the form of the 1979 Enabling Clause – in favour of developing countries, the Lomé regime clearly violated GATT/WTO rules by offering only a restricted (ACP) number of developing countries trade preferences. This was possible only due to a 1995-2000 WTO waiver under Art. IX which exempted the Lomé trading regime from complying with the principle of non-discrimination (also referred to as the most favoured nation (MFN) principle) (cf. Farrell, 2005, p. 269; cf. Hurt, 2003, p. 164; cf. Gibb, 2000, p. 467). Moreover, also the non-reciprocal nature of EU-ACP trade relations was seen as in violation of GATT Art. XXIV which provides that in order to comply with GATT/WTO law, free trade agreements need to cover "substantially all the trade" (Art. XXIV:8), they must not allow for the raising of trade barriers against third non-contracting parties (Art. XXIV:5), and they must be implemented "within a reasonable length of time" (Art. XXIV:5c) (cf. GATT, 1994, pp. 42f). While no clear interpretation of the "substantially all the trade" liberalisation requirement is provided in GATT/WTO law, the

Understanding on the Interpretation of Article XXIV of the GATT 1994 clarifies that a 10 year transitional period is allowed for interim agreements to lead to the creation of free trade areas (cf. Onguglo & Ito, 2003, pp. 20f). In sum, EU-ACP – and hence, EU-Africa trade – under Lomé was found by the European Commission in violation of two key principles – non-discrimination and reciprocity – of the multilateral trading system (cf. Farrell, 2005, p. 269; cf. Hurt, 2003, p. 164; cf. Gibb, 2000, p. 467).

Finally, the 2000 Cotonou-Agreement – which expired in 2020 with a new EU-ACP partnership agreement awaiting ratification at the time of writing (see European Parliament 2021) – was drawn up in this context of pressures from the multilateral trading system and a strategic EU interest in a renewed EU-ACP partnership. As the economic pillar of the new Cotonou Framework, so-called Economic Partnership Agreements (EPAs) started to be negotiated around 2002-2004 between the EU and 7 regional groupings of (in total 79) ACP states. These regional ACP negotiation groups – Caribbean (CARIFORUM), Pacific, West Africa (ECOWAS), South African Development Community (SADC), Central Africa, Eastern and Southern Africa (ESA) as well as East African Community (EAC) – were formed by the ACP states themselves and in part built on existing regional organisations. From the side of the EU, the EPAs were above all presented as tools for development that would foster ACP regional integration, combat poverty, and bring the EU-ACP trade regime in line with WTO law (the EU emphasis on the trade and WTO conformity aspect of the EPAs also found an expression in shifting the task of negotiating EPAs from DG Development to DG Trade). In order to conclude EPAs, the EU set an initial deadline of 31st December 2007 – a date that corresponded with the expiry of the WTO waiver over the principle of non-discrimination for EU-ACP trade – after which middle-income countries were to lose their preferential – duty and quota free – access to the EU market. Without a regional (or bilateral interim) EPA in place, these states would fall back on the EU’s Standard Generalised System of Preferences (GSP) – a unilateral and comparatively less advantageous EU trade regime. In contrast, the so-called least developed countries (LDCs) of the region were yet to maintain their preferential EU market access under the Everything But Arms (EBA) initiative. However, in 2007 only the Caribbean negotiation group had concluded a regional EPA with the EU, while some other – including 19 African – states entered into bilateral interim EPAs in order not to lose EU market access. Negotiations to comprehensive regional EPAs continued to drag on until the EU set a final 2014 deadline after which all those without either a regional or individual interim EPA in place would lose market access. Out of the African regional groupings, in 2014 West Africa, the SADC Group and the East African Community (EAC) had concluded negotiations to a full regional EPA with the European Union (cf. Hulse, 2018, p. 43; cf. Ramdoo, 2014, pp. 1ff; cf. Ramdoo & Bilal, 2011, pp. 1ff).

5.2 Comparing ECOWAS and SADC EPA Negotiation Outcomes

After 10 years of difficult negotiations with the European Union, both West Africa (ECOWAS EPA)[2] and the SADC Group (SADC EPA)[3] concluded negotiations to full bi-regional Economic Partnership Agreements in 2014. The conclusion of SADC and ECOWAS EPA negotiations coincided with the October 2014 deadline that the EU set out beforehand for the conclusion of regional (or bilateral interim) EPAs in order for non-LDCs (Cape Verde, Ghana, Ivory Coast, and Nigeria in West Africa as well as Botswana, Namibia, and Swaziland in southern Africa) to maintain their duty and quota free access to the EU market. As an exception, South Africa joined the SADC EPA negotiations only in 2006 and was not to fear the loss of any trade preferences since its trade relations with the EU were governed already under a different – *the Trade, Development and Cooperation Agreement* – regime since 1999 (cf. Ramdoo, 2014, pp. 5ff). At the time of writing, the ECOWAS EPA has been signed by all EU member states and all ECOWAS negotiation members *except* Nigeria, while the SADC EPA has been signed by all SADC negotiation members, but so far is only provisionally applied since it still awaits ratification by 15 EU member states (cf. European Commission, 2022, pp. 2ff). In what follows, I provide some comparison of the ECOWAS and SADC EPA negotiation outcomes in order to demonstrate that the outcome of EPA negotiations is not the same across African regions. Like that, I further intend to support my central argument that African agency matters in the negotiation of international trade negotiations with the European Union and beyond. Before developing the comparative analysis, however, I start by briefly outlining some of the differences and

[2] The ECOWAS negotiation group (in this work also referred to as 'West Africa') covers all 15 ECOWAS member states (Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo) plus Mauritania.

[3] The SADC negotiation group (in this work also referred to as 'southern Africa') covers Angola, Botswana, Lesotho, Mozambique, Namibia, South Africa, and Swaziland. However, while Angola was initially part of the negotiation group, it did not end negotiations.

similarities of ECOWAS and SADC EPA negotiation conditions to provide a comprehensive picture of EPA trade talks.

Comparing ECOWAS and SADC EPA negotiation outcomes from the viewpoint of agency is a thrilling task. This is even more so since both African regions negotiated these free trade agreements under at least broadly similar conditions. Both African negotiation groups were characterized by an associated regional organization (RO) – the Economic Community of West African States (ECOWAS) in the case of West Africa and the Southern African Development Community (SADC) in the case of southern Africa. Yet, it is important to note that while the ECOWAS Group negotiated on the basis of full ECOWAS RO membership (plus Mauritania), the SADC Group did match only partially with SADC RO membership and was thus, less institutionalized. Moreover, in the course of negotiations the two ROs and their Secretariats took on different roles. In 2005, the position of the ECOWAS Secretariat was advanced to that of a Commission, transferring greater decision-making power from the ECOWAS member states to the regional organization. In contrast, SADC is characterized by strictly intergovernmental structures, resulting in part from the history of recently won political sovereign independence and the consistent distinct corporate identity on the side of southern African states (cf. Murray-Evans, 2019, pp. 117ff; cf. Hulse, 2014, pp. 554f). Hence, what at first sight appears to be a striking similarity – negotiations on the basis of regional organizations – may turn out to be the perhaps most significant (institutional) difference in the way both African regions conducted their trade negotiations with the European Union. While the SADC Group negotiated on the basis of intergovernmentalism, the ECOWAS negotiation group opted for a supranational approach (cf. Hulse, 2018, p. 43). Moreover, what both African regional negotiation groups have in common is that they act in the presence of a regional hegemon – South Africa in southern Africa and Nigeria in West Africa. Yet, here again, these regional hegemons are likely to have played different roles in the EPA trade negotiations. This is demonstrated by Hulse (2014) who argues that "although South Africa's economic and military dominance grants it the (material) potential to lead the region, SADC states are wary of South African leadership […]" (Hulse, 2014, p. 556), regularly reminding South Africa to stay in place (again linked to the distinct historical identity of the region and the political history of the apartheid regime). By comparison, Nigeria has demonstrated significant leadership ability not only in extending the ECOWAS mandate, but in bringing West African states together for the sake of a common position in trade negotiations (cf.

Hulse, 2018, p. 43; cf. Hulse, 2014, pp. 557f). Finally, another aspect worth mentioning is due to the different internal composition of ECOWAS and SADC negotiation groups. While the ECOWAS Group in large part consists of so-called LDCs (with the exception of Cape Verde, Ghana, Ivory Coast, and Nigeria), the SADC Group consists of LDCs (Angola, Lesotho, and Mozambique) as well as lower (Swaziland) and upper middle income (Botswana, Namibia, and South Africa) countries. In economic terms, the southern African negotiation group is, thus, comparatively more "developed" than the West African Group (cf. Ramdoo, 2014, pp. 24f).

In terms of outcomes, much of the existing literature on Economic Partnership Agreements agrees that from the point of view of African states, West Africa negotiated a somewhat "better" deal with the EU than the SADC Group (see e.g. Hulse 2018; Murray-Evans 2015 or Ramdoo 2014). This is somehow counterintuitively given the regional economic differences – with West Africa counting the highest number of LDCs in Africa – and the fact that the SADC Group includes with South Africa a state with prior experience in negotiating free trade deals with the EU. However, before reviewing in detail the picture the existing literature draws with regard to EPA negotiation outcomes, it is worth taking a brief look at the original negotiation mandate of the parties. Art. 1 of the *Cotonou Partnership Agreement* between the EU and ACP states – defining the legal framework for negotiating EPAs – states that "the partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy" (European Commission, 2000, n.p.). In order to foster development the negotiation parties are called on to "[…] adapt progressively to new conditions of international trade […]" (Art. 34.2) (European Commission, 2000, n.p.). To do so, the Cotonou Partnership Agreement defines the EPAs as comprehensive WTO-compatible free trade agreements (Art. 36.1) that are mandated in covering trade in goods (Arts. 37-38) as well as trade in services (Art. 41.4), and other trade related areas such as trade and environment or competition policy (Arts. 44-52) (cf. European Commission, 2000, n.p.). While no legal definition of the requirement of WTO compatibility (liberalization of "substantially all the trade within a reasonable length of time" according to GATT/WTO law) is provided for in the Cotonou Agreement, the EU has defined elsewhere that WTO-compatible free trade agreements must cover 90% of mutual trade in a timeframe of 10-15 years (cf. Hurt, 2003, p. 170). Moreover, the Cotonou Agreement defines areas of development support (Chapter 2) as well as the requirement of locally owned development finance cooperation (Chapter 4) without, however, providing clear commitments on the scope and nature of financing provided for by the EU (cf. European Commission, 2000, n.p.).

In what follows, I provide some comparison of the negotiation outcomes in terms of the most contentious issues in EPA negotiations: mutual market access, the timeframe for liberalisation allowed, provisions on the so-called Singapore issues and on remaining policy space as well as the development component and financial support provided for by the EU (see e.g. Hulse 2018; Ramdoo 2014 or Hurt 2000). With respect to market access and product coverage, ECOWAS is expected to liberalise 75% of EU imports – based on the region's common external tariff policy – over a period of 20 years. Products are classified in four categories, including one compiling sensitive products that will be excluded from liberalisation altogether (agricultural and industrial goods such as meat, fish, vegetable products, cocoa, textile, cement, and apparel amounting to a total of 25% of all tariff lines). In contrast, the SADC Group will together liberalise 80% of its tariff lines over 12 years. Importantly, the product coverage offer for the SADC Group consists of two separate schedules, one for the five Southern African Customs Union (SACU) members of the group (Botswana, Lesotho, Namibia, Swaziland, and South Africa) and one for Mozambique as a non-SACU member (Angola not included since it did not sign the EPA). To complicate matters further, while all other ECOWAS and SADC negotiation member states will enjoy duty and quota free access to the EU market (= 100% liberalisation on the side of the EU), South Africa will have a less favourable access regime to the EU, with some restrictions on South African exports and a liberalisation period on the side of the EU of up to 11 years. In total, around 20% of all SADC trade will be excluded from liberalisation (cf. Hulse, 2018, p. 45; cf. Ramdoo, 2014, pp. 4ff). The asymmetric nature of EPAs allows ECOWAS and SADC negotiation groups some space – other than the tariff exclusions – to protect sensitive domestic economies. While the ECOWAS EPA contains a safeguard clause (Art. 22 ECOWAS EPA) to protect infant industries, the SADC EPA includes an agricultural safeguard clause (Art. 35 SADC EPA) plus a transitional safeguard clause (Art. 37 SADC EPA) for certain other products available only to the BLNS states. Moreover, both regions managed to include a clause on export taxes in their agreements (Art. 26 SADC EPA and Art. 13 ECOWAS EPA) to allow for a temporary raise of taxes in the case of revenue needs, infant industry, or environment protection. Yet, the export clause entails more detailed restrictions (including e.g. a supply quantity guarantee for raw materials) in the SADC EPA than in the ECOWAS EPA. Likewise, both EPAs include a MFN clause (Art. 16 ECOWAS EPA and Art. 28 SADC EPA). This means that in the future, the EU will be granted the same trade preferences as any ‘major trade partner’ (defined as a state with a share of world trade higher than 1% (SADC) or 1.5% (ECOWAS)) of ECOWAS and SADC member states. Furthermore, neither of the two EPAs contains binding commitments in terms of the so-called Singapore issues (including trade matters such as intellectual property rights, public procurement, competition, and investment). Yet, in form of a rendez-vous clause (Art. 106 ECOWAS EPA and Arts. 73-74 SADC EPA), the EU and African states committed themselves to follow up on negotiations on these trade related issues in the future (cf. ECOWAS EPA, 2014, n.p.; cf. SADC EPA, 2014, n.p.). Finally, further differences can be found with respect to the development and financing component contained in the EPAs. While the ECOWAS EPA includes a part on development (part III ECOWAS EPA) and financial support commitments in the amount of 6.5 billion Euros between 2015-2020 via the Economic Partnership Agreement Development Programme (PAPED) (Art. 55 ECOWAS EPA), the SADC EPA does neither provide for a distinct chapter on development nor does it provide any commitments on financial support for the implementation of the EPA – other than resources (such as the European Development Fund) that existed already prior to the conclusion of EPAs (cf. Hulse, 2018, p. 46; cf. Ramdoo, 2014, p. 10; cf. ECOWAS EPA, 2014, n.p.; cf. SADC EPA, 2014, n.p.).

6 Agency Matters: Comparing SADC and ECOWAS Actorness in EPA Trade Negotiations

So far, I have shown that in terms of some of the most contentious issues in EPA negotiations – including market access offers, timeframes for liberalisation, and additional financial commitments – the ECOWAS EPA indeed represents a more favourable trade deal for West African states than the SADC EPA for southern African states. In this section, I build on this finding to argue that agency matters in international trade negotiations, even if asymmetries are high. I apply the conceptual framework outlined above to the comparative examination of interregional ECOWAS and SADC EPA trade negotiations. Thereby, I separate the timeline of negotiations (2004-2014) into two phases (2004-2007 (6.1) and 2007-2014 (6.2)) that account for the impasse situation in 2007 and demonstrate how the scope and nature of agency varies over time.

6.1 From the Outset of Negotiations (2004) towards the Impasse Situation (2007)

In 2004, formal negotiations to bi-regional SADC and ECOWAS Economic Partnership Agreements started. At the outset, the European Union[4] argued for a mutual market liberalisation of 90% – 100% on the side of the EU and 80% on the side of West and southern African states – over a period of 10 to 15 years in order to conclude WTO-compatible EPAs. This was presented like a non-negotiable fact – “take it or leave it" – which was somewhat imposed on the EU by new external trade realities (see discussion above). From the very beginning, the West African region formulated a rather uniform and self-confident response to EU demands. As a region, West Africa offered to open its market up to 60% over 25 to 30 years. Moreover, at this early stage of negotiations the West African region further concentrated on obtaining additional financial support commitments from the European Union (cf. Weinhardt, 2017, p. 289). That West Africa was able to formulate a common negotiation position early on in the negotiation process was due to the role of the ECOWAS Commission that was given a negotiation and implementation mandate by the ECOWAS member states (plus Mauritania). Moreover, the – at least seemingly – convergent preferences in West Africa’s negotiation position at the outset of EPA negotiations are certainly related to the role

[4] DG Trade was responsible for conducting EPA negotiations on behalf of the European Union. However, for matters of simplicity I speak of the EU in general.

of Nigeria as the region's undoubted hegemon as well as to similar material concerns of most ECOWAS states – consisting of three-quarters of LDCs (cf. Hulse, 2014, p. 558). By comparison, the SADC negotiation group made a different – rather bumpy – start to the trade negotiations with the EU. From the very beginning, seven SADC states decided to negotiate with the EU under a different regional configuration, which meant that the SADC negotiation group did not match the geographical scope of its regional organization. In addition, Tanzania – which was initially part of the SADC EPA Group – later on opted for the East African Community (EAC) Group, and South Africa – having already concluded a free trade agreement with the EU – came to join the SADC negotiation group at a later time (cf. Hulse, 2014, p. 557). Hence, at the outset of negotiations, South Africa – other than Nigeria in West Africa – did not fulfill a leadership role in bringing together a common SADC negotiation position. While it could have done so after its accession to trade talks in 2006 in terms of both its economic predominance – accounting for more than half of the wider region's total Gross Domestic Product (GDP) – and technical capacity, the region's specific history of apartheid prevented it from doing so. The skepticism towards South African leadership at that time – most prominently voiced by Botswana, Lesotho, Namibia, and Swaziland (BLNS) which all share a historically high degree of unequal trade relations with South Africa – was further related to South Africa's unilateral signing of a free trade agreement with the EU in 1999. While the BLNS states were not part of these EU-South Africa trade talks, they nevertheless were subject to the 1999 established import regime due to their Southern African Customs Union (SACU) membership (cf. Murray-Evans, 2019, pp. 118ff). Taken together, the factors described above suggest why no clear evidence could be found in favor of a common SADC negotiation position and response to EU demands at the outset of trade negotiations. This observation is further supported by a *Trade Negotiations Insights Update Report* from November 2004 which states that the SADC Group "[…] continues the process of establishing its priorities" (Trade Negotiations Insights, 2004, p. 7).

From 2004 onwards, trade negotiations between the EU and both African regional negotiation groups were to a large degree characterized by a standstill. The reasons for this are manifold, albeit less obvious in some cases than in others. On the surface, not much was going on at all. While the SADC Group was clearly occupied with internal difficulties, the EU and West Africa did not deviate from their original negotiation position. Neither did any party make significant concessions, nor is there any evidence that serious attempts were made to explore common solutions to the problem of sagging trade talks. The EU's "take it or leave it" strategy did not go as planned and instead West Africa decided to "leave it". It is clear, thus, that West African negotiators did not simply accept the game as it was presented by the EU at that time. Yet, a critical moment arrived when the EU reinforced its "take it or leave it" approach by introducing a 2007 negotiation deadline. After 2007, any state without a regional or interim bilateral EPA at hand – with the exception of LDCs – was to lose its duty and quota free market access to the EU. From now on, EU officials made sure to communicate this newly imposed deadline at any opportunity. Importantly, EU negotiators and officials justified the deadline for the conclusion of EPAs by the means of WTO law. In a statement delivered in early 2007 the back then EU Trade Commissioner Peter Mandelson – EU chief of EU-ACP trade talks at that time – stated:

"That deadline is imposed by the expiry of the legal protection at the WTO for our existing trade agreements which are based on preferential access and break WTO rules. Our goal is to put a new system in place that finally puts an end to preference systems that divide ACP regions with different duties for different countries. If we don't have the new system in place we will have to fall back on [an] alternative with less generous market access. […] <u>So the importance of a new agreement by 2008 is not a threat – it's a reality</u>" (Mandelson, 2007a, n.p.; emphasis added).

He repeatedly reaffirmed this position and emphasized that the Commission did not intend to introduce a threat to the negotiations by insisting on the deadline, but instead was itself bound to do so:

"This deadline is not a bluff or some negotiating tactic invented in Brussels. It is an external reality created in the WTO in Geneva" (Mandelson, 2007b, n.p.).

Moreover, in a joint letter with the back then EU Development Commissioner Louis Michel, published in *the Guardian* in 2007, Mandelson called out those criticizing the deadline as endangering development in the region, thus trying to link the deadline to the development mandate of the EPAs:

"But there are some misconceptions about EPAs that are complicating the job of those in the regions who want and need them. Critics say the EU is steamrolling these regions into completing negotiations this year. <u>It is not the EU that is imposing this deadline. […] Calling for an end to EPA negotiations when there is no credible alternative is</u>

playing poker with the livelihoods of those we are trying to help" (Mandelson & Michel, 2007, n.p.; emphasis added).

Emphasizing that the negotiation deadline was a reality created at the WTO in Geneva and not in Brussels, the EU tried to rhetorically manipulate the information delivered about the 2007 deadline in a way that would help to save its face and simultaneously increase its space for agency at a time were progress on EPA negotiations seemed hopeless. However, intended as a threat or not from the side of the EU, it is clear that the 2007 deadline was meant to impose considerable pressure on ACP states to move ahead with the trade talks. Yet, in the run-up to the 2007 deadline negotiations continued to stall, while the EU continuously neglected any possibility to prolong trade talks. This is quite remarkable since the insistence on the legal deadline – "no day longer" – is hard to understand from an economic point of view. Many accounts explain the EU's harsh stance with respect to the 2007 deadline with the EU's economic interest in the ACP region as well as the need for WTO conformity (see e.g. Ramdoo 2014 or Oxfam International 2006). Yet, Drieghe (2008) shows that the greatest economic interest of the EU did not consist in concluding the talks as soon as possible and in securing their reciprocal character, but rather in making sure that these new trade deals were to include liberalisation in services and trade related matters. Since none of the interim EPAs initialed in 2007 with African states includes those issues of interest, it is legitimate to question the notion that the 2007 deadline was indeed in the EU's best economic interest. Moreover, from a legal point of view the EU could have asked for another extension of the WTO waiver or otherwise could have accepted to miss the deadline by some months (cf. Drieghe, 2008, pp. 50f). Rather, it seems that the EU got "trapped in its own discourse" (Drieghe, 2008, p. 51). Having repeated and emphasized the unavoidability of the 2007 deadline and the absence of any alternative so much, the EU – from a normative point of view – could simply not afford to deviate from its course. Hence, what at the outset was intended to be the EU's bargaining chip in increasing its agency, in the run-up to 2007 turned out to re-define and delimit the space for EU maneuver.

Moreover, while the EU – intentionally or not – forwarded a threat in the form of the 2007 negotiation deadline, the ongoing deadlock of ECOWAS and SADC bi-regional trade negotiations suggests to consider another relational dimension to trade negotiations. There is good reason to believe that the EU initially thought that in the end, African regions would give in to EU demands in order not to lose their preferential access to the EU market. This would explain the EU's initial harsh position on the negotiation deadline. That this scenario was never part of possible outcome options for the African regions can be demonstrated by both the continued stalling of trade talks as well as the fact that neither African region initialed a comprehensive regional Economic Partnership Agreement at the end of 2007 – despite the increased pressure. On the other hand, African negotiators may have not expected the EU to push through with the deadline as it did. This becomes evident in the run-up to 2007, when the ECOWAS Commission delivered a request to the EU for an extension of the WTO waiver for three more years – despite the fact that the EU had neglected this possibility for years (cf. Weinhardt, 2017, p. 289). This suggests that both sides of the negotiation table did interpret the underlying conflict in a different way. The impasse situation in 2007 is, thus, not the sole outcome of material realities such as the absence of mutual concessions or the reflection of a certain bargaining strategy (stalling on the side of African negotiation groups, exerting pressure on the side of the EU). Rather, the deadlock with respect to the negotiation of regional comprehensive EPAs reflects to a considerable extent that both sides misguided their (relational) beliefs about what was possible as an outcome by 2007 and how to get there.

However, despite the stalling of regional EPA negotiations, individual African states in 2007 decided whether or not to conclude interim bilateral EPAs with the EU. This possibility was introduced by the EU when it realized that – except for CARIFORUM – no ACP region would be ready and willing to sign a regional EPA at the 2007 deadline. The decisions taken reflect to some part that agency is informed by material constraints. In particular, for non-LDC African states, structural constraints on their agency materialized themselves in the loss of duty and quota free EU market access if they decided not to initial an interim EPA. In the case of the SADC negotiation group, the three non-LDCs Swaziland, Botswana and Namibia initialed interim EPAs, but Namibia did not sign in the end. South Africa as another non-LDC of the group did not need to initial one since it already had a free trade agreement in place with the EU. Interestingly, also Mozambique and Lesotho signed one. This finding is particularly important since both states count as LDCs and as such would have continued to enjoy duty and quota free EU market access under the EBA initiative in any way. Angola – as the third LDC of the SADC negotiation group – did not sign an interim EPA but continued to trade with the EU under the same preferential conditions as before. Equally important, Namibia – a state considerably threatened by market access loss – did in the end opt to not sign the interim EPA it had negotiated with the EU (cf. Murray-Evans, 2019, pp. 129ff). By comparison, in the ECOWAS negotiation group – consisting of three quarters of LDCs – only the two non-LDCs Ghana and Côte d'Ivoire negotiated an interim EPA with the European Union. Yet, Ghana did not sign it in the end (cf. Hulse, 2018, p. 49). Hence, this picture of material determinants of agency in the conclusion of (interim) EPAs is mixed at best. It is true that the comparatively divergent material realities in the SADC negotiation group impacted both the scope and nature enacted by individual states and the region as a whole. It took the SADC negotiation group a comparatively long time to find common goals and a common strategy, thereby, being disabled from making use of the agency space available to it. The material constraints to regional SADC agency are further demonstrated in form of the approaches taken towards bilateral trade talks. Yet, the cases of Namibia, Mozambique, and Lesotho suggest that individual agency – against the odds of many structuralist accounts on EPAs – is not determined by material realities. While the non-LDC Namibia in the end resisted to sign one (accepting to lose its preferential market access), the LDCs Lesotho and Mozambique did so. According to Murray-Evans (2019), this puzzle is to solve by the means of different ideas about the EPAs and their role in development as such. While Lesotho and Mozambique had started to follow a national development strategy that was to different degrees compatible with the liberal economic orthodoxy promoted by the EU – that can be summarized as "trade liberalization = growth = development" (Del Felice, 2014, p. 159) – Namibia has been historically rather skeptical of this market-orientated interpretation of development and instead tried to follow a different path (cf. Murray-Evans, 2019, pp. 118ff). This observation on the role of (neoliberal) beliefs in accepting EPAs was further confirmed in a comparative study of all ACP regions by Munyi (2016) who finds that "the quickest states to ratify an EPA were those which most intensely shared the EU's neoliberal belief in an automatic correlation between trade liberalisation and economic growth, rather than those that were most materially vulnerable" (Munyi, 2016, p. 49). However, in the case of the ECOWAS region, material realities seem to offer a more convincing explanation for the agency enacted by both the region as a whole and individual states. Here it can be argued that the (at least broadly) similar material realities in terms of market access regimes clearly favored the region in finding a common approach to EPA trade talks. This claim is supported by the fact that only two (non-LDC) states (out of a total of 16 states) deviated from a common – and openly preferred – regional position by pressing ahead on bilateral deals.

In sum, in the run-up to the 2007 negotiation deadline African states and regions enacted a different scope and nature of agency. To some extent, agency was shaped by the material and ideational reality of an ascribed "development status" coupled with the 2007 deadline that enabled or disabled individual states to maintain preferential EU market access without an EPA in place. However, the signing of interim EPAs under the pressure of the deadline was not only a matter of different structural realities in the form of LDCs versus non-LDCs. Instead, the form of agency enacted was informed by particular ideas about 'development' and its link to trade which made African states interpret differently the choices on offer. Finally, this finding from the empirics further reminds us that agency as such has no normative value attached to it. Rather, African agency – bet it at the level of regions or states – can take the form of either resisting or adhering to dominant (EU proposed) forms of economic development.

6.2 From the Impasse Situation (2007) towards Concluding Regional Economic Partnership Agreements (2014)

In 2007, negotiations to comprehensive regional EPAs had reached an impasse. At the same time, Ghana (non-LDC) and Côte d'Ivoire (non-LDC) (ECOWAS) as well as Swaziland (non-LDC), Botswana (non-LDC), Namibia (non-LDC), Mozambique (LDC), and Lesotho (LDC) (SADC) had initialed an interim EPA with the EU. However, by the end of 2008 Ghana (ECOWAS) and Namibia (SADC) had not signed their interim EPA, while the remaining states had signed it but did not take any concrete steps to ratify the agreement (cf. Ramdoo, 2014, pp. 24f; cf. Traidcraft, 2012, n.p.). Consequently, on the 1st of January 2008, the EU adopted a *Market Access Regulation (MAR 1528)* which guaranteed continuous duty and quota free market access to all those that initialed an interim EPA. However, the same regulation provided that all states that had not ratified their interim or regional EPA by 1 January 2014 would lose their access to the EU market (cf. Traidcraft, 2012, n.p.). Like that, the EU imposed yet another negotiation deadline for January 2014. Again, this deadline was understood as a threat by ACP states, albeit an illegitimate one. In a joint 2011 communication a delegate of the ACP Council of Ministers stated:

"Instead of emphasis being placed on negotiating on substance […] ACP countries are pushed into meeting their unilateral deadline which results in sub-optimal outcomes of

the concerned regions [...]. We are committed to concluding a mutually beneficial agreement with [the] EU but we should not be hurried unduly, but rather follow a mutually agreed road map of negotiation" (ACP, 2011, n.p.).

What this joint ACP communication suggests is that while African (and other ACP) regions were re-committed to the negotiation of regional EPAs, they did not agree with the EU in terms of the way to do so. Instead, they felt the EU's negotiation tactic – one that was based on exerting pressure via the reference to WTO conformity – to be 'unduly' and 'unilaterally imposed'. Hence, as a continuation of the first phase of negotiations (2004-2007), the start of the second phase was again characterized by an element of relational misbelief. ECOWAS and SADC (as well as other ACP) negotiators were surprised by the EU negotiation strategy which they found to be aggressive and in deviation from the principle of a 'new partnership'. On the other side, EU officials did not anticipate the amount of criticism faced with respect to their way of negotiating, given that the conclusion of WTO-compatible free trade agreements – in line with the phase-out of the WTO waiver – was already agreed on in the Cotonou Agreement (cf. Del Felice, 2014, p. 156). Related to these misguided beliefs about the other's way of conducting trade negotiations, however, was a more fundamental (mis)understanding of the underlying negotiation situation as such. For the EU, the negotiation of WTO-compatible and comprehensive free trade agreements by the end of 2014 was intrinsically related to the development component of the EU-ACP partnership. This dominant EU view on the link between trade and development can be summarized best as "trade liberalization = growth = development" (Del Felice, 2014, p. 159). Commissioner Mandelson illustrated this particular understanding of the trade-off under negotiation when he explained with respect to the ECOWAS EPA:

"The Economic Partnership Agreement currently being negotiated with West Africa pursues an ambitious objective. That objective is to make West Africa an economic magnet that attracts investment and stimulates private enterprise, a hive of economic activity that guarantees sustained growth and drives more sustainable economic, social and environmental development" (Mandelson, 2005, n.p.).

In this and several other EU statements, words like investment, economic growth, and development are related positively to each other. In contrast, the ECOWAS region expressed its understanding of the trade-off to be negotiated in a different way. It becomes clear from ECOWAS official communications that for the region the EPA would not automatically translate into a tool for development. Rather, it was made clear that necessary conditions must be created first, and additional financial support must be provided in order for market liberalisation to contribute to development in the region. In a press statement from 2009 the back then ECOWAS Commissioner for Trade and Industry Mohammed Daramy told the reporters:

"I must reiterate that confining West African countries to the production of primary commodities amount to condemning them to remain locked in the commodity trap. […] West Africa is not negotiating for time – we are concerned with reducing poverty and development of our people – we'll negotiate for the next 20 years if that is how long it will take to get our concerns addressed" (Daramy, 2009, n.p.).

What can be found for ECOWAS was generally expressed for the ACP region as a whole (as demonstrated by joint ACP/AU statements, see e.g. Del Felice, 2014, p. 158). Instead of simply accepting the name of the game ("trade liberalization = growth = development"), West African – and to a growing extent also southern African – negotiators intended to solve the continuous deadlock by transforming it into a preferred situation ("trade liberalization + financial support + capacity building = growth = development"). Yet, the discussion above showed that an official and common regional position must not be mistaken for convergent preferences among individual states. In particular, in the case of the SADC negotiation group, the picture drawn of preferences for interim EPAs suggests that yet again, the trade-off might be interpreted differently depending on the SADC negotiation member state. While Botswana, Lesotho, Mozambique, and Swaziland saw the agenda promoted by the EU in negotiations rather as a boost to national development – a "win-win situation" – the EPA skeptics like South Africa, Namibia, and Angola were more inclined to view the underlying situation as "[…] a trade-off between market access and concessions to an offensive EU agenda […]" (Murray-Evans, 2015, p. 18). It is, thus, no surprise that it took the SADC negotiation group at least until 2009 to formulate a common negotiation position (cf. Hulse, 2018, pp. 52f).

However, a turning point for both ECOWAS and SADC agency in EPA trade negotiations came in early 2009. In the case of ECOWAS, the scope of actorness was considerably widened due to a legal report on GATT Art. XXIV which was commissioned by civil society groups engaged in EU-ECOWAS trade talks. The report – which was carried out by an independent trade expert – concluded that the wording of Art. XXIV does not determine the EU's definition of WTO compatibility as 80% liberalisation over 15 years as required from African regions. Like that, the report disarmed the EU's central argument in pushing towards the conclusion of EPAs. From now on, the ECOWAS Commission departed from its focus on development assistance and instead justified its unchanged 60% market opening offer with the argument of conformity with WTO law (cf. Hulse, 2018, p. 49). In changing its negotiation strategy, the ECOWAS Group did not only exploit an external structure of WTO law to its advantage, but employed for what Sharman (2007) coined the term "mimetic challenge". A mimetic challenge refers to a specific rhetoric action "[…] which involves mimicking the discourses and norms of your main protagonist in a negotiation" (Hurt et al., 2013, p. 2). Accordingly, ECOWAS negotiators started imitating the EU discourse on WTO conformity and used the same argument to justify the low market access offer. This was a considerable strategic success, given that the EU was now entrapped by its own arguments. Interestingly, the same strategic action – albeit in a different manner – can be observed for the SADC negotiation group. Starting in early 2009, the group noticeably began to deploy a common negotiation strategy. However, this common position was less an expression of a 'coming together' of the group than of a re-gained South African leadership. Hulse (2018) for example notes that South Africa forwarded considerable threats to the other SACU member states – Botswana, Lesotho, Swaziland, and Mozambique – in the form of a potential break-up of SACU or a re-introduction of customs controls in order to claim its authority (cf. Hulse, 2018, p. 52). However, in the wake of reasserting their regional dominance, South African negotiators started to pick up the EU's discourse on development and regional integration. According to Elgström (2008), the EU in EPA negotiations has rhetorically portrayed itself as "[…] a benign partner, concerned with the well-being of the poorer countries" (Elgström, 2008, p. 4). Thereby, this self-portrayal as a partner for development is related to the EU's international role and identity of "normative power Europe" (Manners, 2002, p. 235). Yet, the EU got entrapped within its own EPA discourse as a defender of norms and partner for development, when South African negotiators started to rely on this discourse to increase their bargaining agency. By linking EU rhetoric and the way the EU was negotiating to the EU's identity as "normative power Europe", they successfully questioned the legitimacy of EU bargaining behavior (cf. Hurt et al., 2013, p. 3). Accordingly, South Africa accused the EU of endangering development and regional integration by risking the disintegration of SACU – something South Africa itself had threatened beforehand.

Moreover, South African negotiators further called out the EU for forcing LDCs into negotiating reciprocal free trade agreements (cf. Hulse, 2018, p. 53). This rhetorical strategy of course ignored the fact that two out of the three LDCs of the group actually welcomed the comprehensive liberalisation agenda promoted by the EU (see discussion above).

Moreover, so far it was shown that both African negotiation groups increased their potential for agency in the asymmetric EPA trade negotiations by imitating parts of the dominant EU discourse on EPAs. Since these discourses are directly related to the EU's self-constructed international identity – "normative power Europe" – ECOWAS and SADC negotiators found a rhetorical tool to seriously question both the content and strategy that the EU followed in EPA negotiations. In general, Elgström (2008) finds that the "black-or-white nature" (Elgström, 2008, p. 3) – either angel (self-portrayal) or demon (outside-portrayal) – of the picture drawn of the EU in EPA negotiations hampered both EU agency as well as the possibility to find common EU-Africa positions (cf. Elgström, 2008, pp. 2ff). However, that ECOWAS and SADC negotiation parties were able to increase their agency at this later stage in the trade negotiations was also due to external factors. First, it was already demonstrated how ECOWAS negotiators made use of existing WTO law in order to undermine EU arguments. Second, Del Felice (2014) demonstrates at the example of the *STOP EPAs campaign* (2004-2009) how transnational activism surrounding the negotiation of EPAs influenced what was possible in terms of outcomes. In constructing an EU identity of a responsible donor and partner in trade relations – yet again, employing a "mimetic challenge" to EU discourse – the campaign is given credit for making officials on both sides aware of the bargaining potential of rhetoric practices (cf. Del Felice, 2014, pp. 145ff). This finding can be supported by the means of several EU statements in 2007 – the year when the campaign gained momentum – in which EU officials like Mandelson claimed that 'critics of EPAs' would work against the interest of ACP negotiation parties themselves (see e.g. Mandelson & Michel 2007). Finally, another critical moment arrived on 5th December 2013 when the Danish Ministers for Development Cooperation as well as Trade and European Affairs together with the French, Irish, UK, and Dutch Ministers for Trade and Development issued a *Joint letter to the High Representative of the Union for Foreign Affairs and Security Policy, and Vice President of the European Commission and the European Commissioners for Development and Trade (see Petersen et al. 2013)* in which they listed a number of requests – including lower levels of ACP liberalisation and EPA development programs – to finally conclude development-friendly EPAs:

“In order to ensure the successful and rapid conclusion of these negotiations, further flexibilities should now be considered by the EU […]. We should reconsider the particularly strict interpretation of Article XXIV […]. We should soften our position on the transition periods required for liberalization […]” (Petersen et al., 2013, p. 2).

This open call to “accommodate some of the concerns of our partners” (Petersen et al., 2013, p. 2) by EU ministers is remarkable given that it came at a time when the EU headed into final decisive rounds of negotiation with ECOWAS and SADC negotiation groups. That the joint letter forwarded by EU ministers to the Commission in December 2013 did inform both African and EU agency can be illustrated best by the example of the ECOWAS EPA. According to a *Trade Negotiations Insights Report* from 2011, the ECOWAS Group presented the EU with a revised market offer of 70% liberalisation over a transition period of 25 years in 2011. The same report further states that next to the issue of market access, the provision of additional development funding was the other main unresolved issue on the way towards the conclusion of a regional ECOWAS EPA (cf. Trade Negotiations Insights, 2011, p. 14). Yet again, the EU negotiators rejected this offer and stated that no additional financing would be provided. As a consequence, no further rounds of negotiation were held between April 2012 and February 2014 (cf. Hulse, 2018, p. 49). When in February 2014 the last round was scheduled for negotiation, West Africa made another offer of 75% market liberalisation over 20 years. West Africa, thus, made concessions to the EU in terms of market access offer but still insisted on additional development funding. This time, however, negotiation conditions for the EU had changed considerably. Not only was there an expert report undermining the EU’s interpretation of ‘substantially all the trade’, but the EU’s legitimacy as a ‘development partner’ had been openly questioned and a letter had been published by EU ministers only some months beforehand asking the Commission to pursue a more accommodating approach in the conclusion of regional EPAs. Moreover, by calling on the Commission to “[…] take into account the need for EPA accompanying measures, particularly in regions where EPA development programs have been designed […]” (Petersen et al., 2013, p. 2), the publication of the joint letter further increased pressure on the EU to accept the ECOWAS demand for additional funding. In the final version of the ECOWAS EPA, the EU not only accepted ECOWAS’ final offer on market liberalisation, but also provided for financial support commitments in the form of the

Economic Partnership Agreement Development Programme (PAPED) (for a more detailed discussion see chapter 4.2). Another major EU concession worth noting is the prohibition on the use of agricultural export subsidies – a long-standing ECOWAS demand that had caused a deadlock on the multilateral WTO level before (cf. Ramdoo, 2014, p. 9). However, that the final market liberalisation outcome is somewhere in between the initial offers (60% ECOWAS and at least 80% EU) suggests that both sides made compromises and concessions to reach this mutually acceptable agreement. Yet, West Africa secured an important success in that the final market access offer is below those negotiated by Ghana and Côte d'Ivoire (80% or more) in their interim EPAs (cf. Hulse, 2018, p. 49). Hence, in the case of ECOWAS, it can be noted that 'coming together as a region' did indeed increase African agency in the asymmetric trade negotiations with the EU.

Eventually, the final negotiation phase between 2011/12 and 2014 was not only one of increased ECOWAS agency, but one in which the EU made significant concessions to (at least part) of the SADC negotiation group. A *Trade Negotiations Insights Report* from 2008 provides a look into the second phase of negotiations, stating that in November 2008 negotiations were far from advanced and instead, a next round of negotiations to a comprehensive regional EPA was postponed to January 2009 (cf. Trade Negotiations Insights, 2008, p. 18). Three years later in 2011, another *Trade Negotiations Insights Report* holds that still little to no progress has been made on key matters like market access, development cooperation as well as services and investment. In terms of market access, the controversy related not so much to market opening overall, but rather to the question of coverage of agricultural products – a highly sensitive issue to both the EU and the southern African region. Importantly, the same report indicates that in terms of services and investment liberalisation "[…] Botswana, Lesotho, Mozambique and Swaziland have all expressed their readiness to take the discussions forward […]" (Trade Negotiations Insights, 2011, p. 15). This suggests that in this later stage of trade talks, SADC negotiation members were still not in agreement about the extent to which they were ready to commit to the EU's liberalisation agenda. It is all the more interesting, thus, that the final agreement contains no binding commitment with respect to services and other trade-related ('Singapore') issues. Instead, a rendezvous clause was agreed on that commits the region to carry on negotiations with the EU on these issues in the future. It appears, thus, that South Africa and Namibia – as the main EPA skeptics of the region – were able to obtain this concession from the EU, even though other members of the region showed their willingness to negotiate new generation issues. Moreover, while South Africa is the only member of the region that does not enjoy duty and quota free access to the EU, it negotiated for itself a market access schedule which is more favorable than its previous one. Most importantly, it obtained better EU market access for agricultural products, including wine, fruits, and sugar. As a reward, South Africa agreed with the EU on a *Protocol on Geographical Indications* that protects a total of 251 EU products. Moreover, in regard to agricultural products, another major concession was won for the whole region in form of the prohibition to use agricultural export subsidies, an ACP demand that had caused a deadlock on the WTO level before. Furthermore, since the SACU region is covered by one common market access schedule, the BLNS states had to give in to the EU's demand to open their markets for some sensitive products for which the EU showed great interest in South Africa. Nevertheless, the EU compensated these states in the form of a transitional safeguard clause that would allow them to temporarily protect certain products they considered sensitive (cf. Murray-Evans, 2019, p. 136; cf. Ramdoo, 2014, pp. 3ff). Importantly, Hulse (2018) argues that the last-minute concessions on agricultural safeguards and agricultural market access was favored by the joint EU minsters letter from 5th December which asked for a more flexible approach with regard to these exact same matters (cf. Hulse, 2018, p. 53). Finally, despite significant reservations against the MFN clause and demands for additional financial support commitments, the SADC negotiation group was not able to follow through with these demands. In sum, the picture drawn above with respect to SADC agency in EPA negotiations is more complex compared with the ECOWAS case study. It is clear that in the final years of negotiation, concessions as well as the use of rewards did play a significant role in both the scope and nature of agency enacted by SADC negotiators vis-à-vis the EU. However, it was also suggested that South Africa used threats within its own group in order to assert its authority and bring other SADC member states in line with South African demands. This further suggests that the 'coming together' of the SADC negotiation group from 2009 onwards did increase the agency of South Africa at the expense of others, particularly those that were in favor of a more comprehensive trade agreement with the EU. Regional integration and a common regional position, thus, does not automatically enhance agency of all states. Rather, the final SADC EPA agreed on 15th July 2014 by all SADC member states except Angola is more an expression of South African agency than it is of agency of the region as a whole.

7 Conclusion

By adding to the limited literature on African agency in international trade relations, this study has argued that agency is not the preserve of the European Union. In fact, African actors find ways to act even in the setting of asymmetric EU-Africa trade negotiations, in which structural constraints on African agency are high. It is true that the ECOWAS and SADC EPAs were drawn up in the context of pressures from the multilateral WTO trading system and a strategic EU interest in a renewed and reciprocal EU-Africa partnership. This made many believe that African regions were simply pressured into unfavorable Economic Partnership Agreements they could not do anything about. Yet, the comparative framework employed by this work reveals something different. At the outset of trade negotiations, both African negotiation regions were faced with broadly similar structural constraints that materialized themselves in the requirements of WTO-compatible and reciprocal free trade agreements. Over time, however, African regions developed different scopes and types of agency. Against the odds of material determinants and somewhat counterintuitively, the economically weaker West African region overall was able to broker a comparatively better deal for itself.

The reasons for the different EPA negotiation outcomes were captured through the lens of a socially constructed notion of agency. For quite a long time, both the EU and West Africa misguided their beliefs about what was possible as an outcome and how to get there. The EU followed a negotiation strategy based on pressure and (possibly unintentional) threats, believing that West Africa would ultimately give in, no matter what. West Africa, however, interpreted the choice set on offer and the ways to get there in a different way. What was found to be perfectly legitimate bargaining behavior on the side of the EU, was rejected as illegitimate by West African negotiators. In the first phase of the negotiations, this relational aspect of trade negotiations clearly hampered space for EU maneuver and transformed the EU-West African relationship to the benefit of West African negotiators. However, it was not until the second phase of negotiations that West Africa was able to translate regional agency into bargaining behavior and into transforming important conflict situations to its advantage. While exchanging offers with the EU, West African negotiators further actively challenged “the name of the game” – and thus, the EU interpretation of the link between trade and development – as such. This required a comparatively high degree of agency, given that new mutual ideas about the issues at stake had to be developed and implemented.

In the end, the final agreement – being the only EPA that contains additional financing for development – suggests that West Africa and the EU came to a new mutually acceptable understanding of what was doable as a negotiation outcome. In comparison, the SADC negotiation group found it difficult to make use of the agency space available to it, mostly due to divergent internal interpretations of the issues at stake. Only in the final phase of negotiations, the SADC Group was able to obtain important concessions from the EU. This time, however, SADC Group members paid rewards for it. Instead of mutually constructing a new understanding of the negotiation situation and trying to solve common problems, agency in SADC negotiations took on more the form of tit-for-tat bargaining. Compared to West Africa, this was not only a different type of agency employed in the trade negotiations, but also one that required a lower level of actorness. And when South Africa finally did start to successfully challenge “the name of the game” towards the end of negotiations, it hampered not only EU space for maneuver but also the agency of EPA enthusiasts of the own group. Like that, many EU concessions in the final agreement correspond to South African demands and cannot be mistaken for regional SADC agency as such.

The results of this study have four implications for further research. First, it is inadequate to sweep African negotiation groups into the same category of weak African actors. Both African regions showed different types and degrees of agency. The economically weaker West African region employed a higher degree of agency than the comparatively more developed and better equipped southern African region. This further implies that agency is not a matter of materially strong versus weak states or regions. While agency is clearly informed by material constraints, it is not dependent upon them. Second, it has been demonstrated that African agency in international trade negotiations cannot be equated with a successful and perhaps even emancipatory resistance to EU demands. Instead, African states have shown varying degrees of conformity with the EU’s view on economic development and have to different degrees been able to influence the trade talks accordingly. Third, it is not sufficient to automatically ascribe agency to deep regional integration. In the southern African region, ‘the coming together’ of the group towards the end of negotiations increased South African agency at the expense of others. Like that, smaller states may even lose agency in the midst of deeper integration processes. Fourth, more research must be directed at the ways ideas and social processes inform the scope and nature of agency. It was argued that different ideas about the link between development and trade considerably impacted the course of EPA trade negotiations with the EU. Becoming aware of these divergent ideas and challenging “the name of the game” required a relatively high degree of agency. However, this finding is only a starting point. More research is needed to improve our understanding of the interrelationship between agency and socially constructed ideas in asymmetric international trade negotiations.

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Acronyms

ACP	African Caribbean Pacific
AU	African Union
BLNS	Botswana Lesotho Namibia Swaziland
CARIFORUM	African Caribbean and Pacific States
DG	Directorate General
DSB	Dispute Settlement Body
EAC	East African Community
EBA	Everything But Arms
EC	European Communities
ECOWAS	Economic Community of West African States
ESA	Eastern and Southern Africa
EPA	Economic Partnership Agreement
EU	European Union
FTAs	Free Trade Agreements
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
LDC	Least Developed Country
MFN	Most Favoured Nation
NIEO	New Economic International Order
OACPS	Organisation of African, Caribbean and Pacific States
PAPED	Economic Partnership Agreement Development Programme
RO	Regional Organization
SACU	Southern African Customs Union
SADC	Southern African Development Community
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
WTO	World Trade Organization