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Abstract

Deep Integration (DI), defined as the abolishment of 'behind the border' trade restrictions, has been a major focus of activity within the European Union. More recently, Deep Integration has also been included in the negotiations of new bilateral and regional trade agreements. This paper chooses the current EU–South Africa negotiations as a case study and argues that these tendencies may become a dangerous restriction for the economic policy space of the South African government. We will discuss selected issues of Deep Integration projects – in particular corporate governance and competition policies – with a 'comparative capitalism' framework as the analytical backdrop.

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Deep Integration in north–south relations: compatibility issues between the EU and South Africa

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Deep Integration (DI), defined as the abolishment of ‘behind the border’ trade restrictions, has been a major focus of activity within the European Union. More recently, Deep Integration has also been included in the negotiations of new bilateral and regional trade agreements. This paper chooses the current EU–South Africa negotiations as a case study and argues that these tendencies may become a dangerous restriction for the economic policy space of the South African government. We will discuss selected issues of Deep Integration projects – in particular corporate governance and competition policies – with a ‘comparative capitalism’ framework as the analytical backdrop.

Keywords: Deep Integration; comparative capitalism; north–south relations; South Africa; corporate governance; competition policy

[Intégration forte dans les relations nord-sud: questions de compatibilité entre l’UE et l’Afrique du Sud.] L’intégration forte, définie comme la suppression des restrictions commerciales au-delà des frontières, a été un objectif majeur au sein de l’Union européenne (UE). Plus récemment, l’intégration forte a également été incluse dans les négociations de nouveaux accords commerciaux bilatéraux et régionaux. Cet article a choisi les négociations actuelles entre l’UE et l’Afrique du Sud comme cas d’étude et soutient que ces tendances pourraient devenir une restriction dangereuse aux marges de manœuvre du gouvernement sud-africain. Certaines questions relatives à des projets d’intégration forte seront discutées – en particulier la gouvernance des entreprises et les politiques de concurrence – le cadre analytique choisi étant le contexte d’un « capitalisme comparé ».

Mots-clés : intégration forte ; capitalisme comparé ; relations nord–sud ; gouvernance des entreprises ; politique de la concurrence

Introduction

During the last decades, Deep Integration (DI), defined as the abolishment of ‘behind the border’ trade restrictions, has become a major focus of activity within the European Union (EU) and within the North American Free Trade Agreement (NAFTA). More recently, DI has not only become an ‘internal’ issue for the United States and the EU, but has also been included in their current negotiations of new bilateral and regional trade agreements, in particular after the failure of the Singapore Issues in the World Trade Organisation (WTO) negotiations 1996. Since an agreement on this new form of

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'deep' trade integration had failed within the multilateral framework of the WTO, the northern governments (especially the EU and US) have been busy pushing these issues within regional and bilateral agreements.

Among the first developments to consolidate these new forms of cooperation in north–south relations are the current negotiations of the European Union with South Korea, India and the African Caribbean Pacific (ACP) Group of States, including South Africa. While the inclusion of Deep Integration into trade agreements has only become an issue during the last 15 years and substantial consequences are not yet visible, it raises important questions of institutional compatibility with specific regard to the long-run development of capitalism in Africa. In order to develop our argument, we are drawing on a comparative capitalism analytical framework, an approach which has become somewhat canonical for the study of Western economies. Nevertheless, this framework has rarely been applied to African economies. From this perspective, economic institutions do not travel well and rely on crucial institutional complementarities for their effectiveness. Correspondingly, the EU's attempt to prescribe a single best (liberal) practice does not take into account Southern institutional requirements. We are illustrating our arguments with case studies on competition policies and corporate governance in South Africa, given that these institutional areas are central to the comparative capitalism approach, but have been neglected in existing research on Deep Integration. We have chosen the Economic Partnership Agreement negotiation between the EU and the Southern African Development Community (SADC) as an exploratory case study, placing a particular focus on South Africa. South Africa is not only the biggest African economy, but also the most proactive in fighting this process in the region. Moreover, South Africa is a 'crucial case' (Gerring 2007) for our argument because of its liberal institutional environment that is much closer to the standards proposed by the EU and the US: if Deep Integration is incompatible with the South African institutional context, it is certainly even more so with other, less liberal African economies.

This article proceeds as follows: First we provide an overview of the Deep Integration research agenda, with particular emphasis on its north–south dimension and the Economic Partnership Agreements (EPAs). Next, we present our comparative capitalism analytical framework and demonstrate its potential relevance for the analysis of north–south relations. At the centre of our presentation stands an evaluation of current DI issues in the context of negotiations for the EPA between the EU and SADC with a focus on South Africa's corporate governance and competition policy.

What is Deep Integration and why does it matter for north–south relations?

Definition of Deep Integration

Deep Integration 'moves beyond the removal of border barriers' (Lawrence 1996, 8) and focuses on removing restrictions to trade that hinder investments across borders. Within orthodox trade agreements, the focus has usually been on the abolishment of tariffs and non-tariff trade barriers for the trade of goods (Shallow Integration). More recently, however, the focus has changed towards harmonisation of national economic regulation to facilitate foreign direct investment (FDI) and trade in services:

The development of regional production systems and the promotion of service investment require deeper forms of international integration, for example, the elimination of differences in national production and product standards that make regionally integrated production costly. Investment also depends on credible and stable governance mechanisms and secures access to large foreign markets unhindered by customs officials or by domestic actions such

as antidumping. Since much of the investment relates to the provision of services, the regulatory regimes governing establishment and operation become the focus of attention. (Lawrence 1996, 17)

Correspondingly, the ‘explicit actions by governments to reduce the market segmenting effect of domestic (non-border) regulatory policies through coordination and cooperation’ (Hoekman and Konan 1999, 1) are a vital part of DI efforts. Thus, not only trade issues are in the focus of DI, but also the free movement of capital and labour (Evans *et al.* 2004, 12–13; Lloyd 2008, 20; Young and Peterson 2006, 798). Harmonisation forms an important element of this particular type of integration, for instance in product/technical standards, regulation of investment conditions (including questions of corporate control and corporate governance), intellectual property rights (IPRs) or competition policy (Lawrence 1996; Evans *et al.* 2004; Ghoneim 2008).

While the standard approach to Deep Integration refers to economic integration theory (mainly based on Balassa 1961) the term ‘deep trade agenda’ by Young and Peterson (2006, 798) describes the political practices regarding DI within the EU new trade policy. In this context, some authors differentiate between ‘WTO plus’ or ‘WTO extra’ (Ahearn 2011; Holmes 2010; Horn *et al.* 2009), thereby differentiating between regulations which are part of the realm of the multilateral trading system and those that go beyond current agreements (e.g., IPRs provisions that are not part of the WTO TRIPS agreement). Although Deep Integration covers partly the same issues, one key difference between WTO plus/extra and DI is that the latter also occurs beyond legal agreements. This means that firms and states in the global south also adapt EU and US norms to receive access to their markets without any legal requirement (Holmes 2010, 6; Ahearn 2011, 14–17).

Deep Integration in north–south relations

Within the global trade regime, several changes of trade patterns have been taking place in the multi- and bilateral arenas over the last two decades. In the context of the 1996 WTO meeting in Singapore, northern governments attempted to attain better market access in key Southern economies through the harmonisation of national policies under the umbrella of the WTO. In this and later negotiations, northern governments strived for a harmonisation of regulations on public procurement, investment policies and intellectual property rights (IPRs). Nevertheless, the majority of the WTO member states, mainly from the global south like India or Tanzania, refused to accept these plans (Khor 2004, 1). The implementation of a multilateral agreement on DI has been stalled within the WTO for years. Therefore, the EU and the US turned towards emphasising an inclusion of these issues in their negotiations of new bilateral and regional trade agreements, because it seemed to be more promising to implement these issues with fewer negotiations partners, if compared with the WTO (Shadlen 2005).

The assessment of the effects of Deep Integration in north–south relations is a rather young research area (Claar and Nölke 2012). Some 10 years ago, researchers in development economics started to deal with the question of whether DI hinders or supports the development strategies of southern states, based on standard neo-classical models (Evans *et al.* 2004; Ghoneim 2008; Meyn 2006; Robles 2008; Sally 2007). With respect to south–south relations, there are some studies on DI in regional integration processes, in particular in Asia (Dubey 2005) as well as in the form of bilateral agreements between Asian countries (Lloyd 2005, 2008). Regional agreements among southern states, however, still focus on trade facilitation and better market access, rather than on Deep

Integration (Evans *et al.* 2004). Some more recent studies (Ahearn 2011; Holmes 2010; Horn *et al.* 2009) on the EU/US trade agreements concentrate on the different strategies by these two driving forces of Deep Integration. While both have some common concerns like IPRs and free movement of capital, the US also include anti-corruption, environment and labour in their preferential trade agreements. In addition, the legal provisions by the US are standardised. The EU is more flexible regarding its legal texts and uses various phraseologies. Social provisions and competition policy are important issues in EU agreements (Ahearn 2011, 13f, 17f; Horn *et al.* 2009). These different strategies also challenge the partners in the global south and it is questionable whether these agreements create a gain for all contracting partners.

Studies in development economics usually focus on the potential advantages that DI can offer for Southern governments, such as increases in inward investment, technology transfer and industry upgrading (Gasiorek and Holmes 2010, 146–148). More specifically, in analysing the broader impacts of DI on national economic development, the most common approach has been to axiomatically provide data confirming the negative impacts of protectionist policies on national economic growth, subsequently providing a foundation for positively assuming that countries can and do only benefit from DI, as harmonisation is supposed to not only stimulate large increases in capital inflows, but also lead to the improvement of the institutions in Southern economies (see Ghoneim 2008).

EU, economic partnership agreements and Deep Integration

Traditionally, the European Union has a close relationship to the ACP countries, mostly because several EU members were colonial powers. Besides political cooperation and development assistance, trade plays a crucial part in the relationship. While the EU supported asymmetrical access to the European market for a long time, it has now changed to reciprocal agreements with the EPAs. Young and Peterson (2006) and Orbie (2008) describe the refocused EU strategy as the ‘new trade politics’. Due to the prominence of Deep Integration, more obviously political issues have become involved on the trade agenda. Although the EU has been increasingly challenged by emerging markets and other developing countries (Young and Peterson 2006, 797–803), it remains a norm-setting actor in global trade relations (Orbie 2008; Langan 2009). The EU has considerable experience in negotiating and implementing DI issues because of its internal market, which serves as a model for other world regions. Correspondingly, the EU has made ‘deliberate attempts to export its “model”’ (Orbie 2008, 37). Young and Peterson (2006) argue that the EU is aggressively promoting DI issues as part of its new trade strategy. Others argue that EU Deep Integration trade policy rather is a continuation of the traditional relations between the EU and ACP states (see Langan 2009). Within those relations, the EU transfers its institutional settings and, therefore, a specific form of capitalism.

These developments were controversially debated in the negotiations of the EPAs, the follow-up agreement on trade policy and co-operation between the EU and ACP states under the umbrella of the Cotonou Agreement. While the WTO waiver for the regulations on trade in Cotonou agreement expired in 2007 and should be addressed with the EPA, the Cotonou Agreement will continue to be in place to address developmental aspects and a political dialogue until 2020 (Spieker 2011, 57–59). In 2008 EPAs should have been implemented, but so far only the CARIFORUM region has signed a full agreement. Other negotiation groups faced various challenges, such as differences between the membership of the regional integration project and the members of the negotiations

(Jakobeit *et al.* 2005). These problems, together with the DI provisions, are the main reason for the lack of full EPAs with the African states until today.

A major concern for African governments is the impact on national economic development if they adapt the EU provisions. Therefore, several studies about the prospective adjustment costs of the ACP countries were conducted over the last years. Concerns relate to implications such as a reduction of government revenues, deindustrialisation, an economic recolonisation and privatisation of services (Goodison 2007, 149–150). Other studies focus on trade-related aspects like gains in exports and loss in imports for the ACP states (Fontagné *et al.* 2008, 2011). According to some studies, the EPAs have a positive effect on imports and welfare for the ACP countries (Andriamananjara *et al.* 2009; Morrissey and Zgovu 2011), while Patel (2007) argues that in the case of trade in goods hardly any change will occur for Ghana. These studies, also including publications by Fontagné *et al.* (2008, 2011) only focus on trade in goods and give no estimation how Deep Integration issues could affect the development of the ACP countries. Furthermore, fiscal adjustment costs are considered – Milner (2006, 77, 113–114) concludes that the implementation of the EPA might cost €9 billion – but institutional adjustment costs are not.

Those studies show that it is possible to analyse the EPA impact on trade in goods, but it is far more difficult to show how Deep Integration issues might impact on national regulations. It is impossible to come up with any comprehensive measurement of DI effects before these policies have been implemented on a broad scale. Even in the case of the CARIFORUM EPA, signed in 2008, it is difficult to relate economic developments back to the EPA provisions on behind-the-border issues (see Nicholls 2011). In the absence of systematic, theory-driven studies, speculations abound. Patel argues that Deep Integration issues, especially investment regulations, will not increase investment flows. Furthermore, the space for developmental national policies might be reduced (Patel 2007, 22). Other concerns have been raised regarding the imposition of Western standards for IPRs through EPAs that would limit the use of traditional standard tools to regulate patent holders (Shadlen 2005, 766–768; Brücher 2008, 209). Similar concerns relate to the role of technical and security standards in the process of economic development and their treatment in the context of Deep Integration (*ibid.*).

However, existing literature fails to take into account the complex interactions between Deep Integration and the institutional context of advanced African economies. For this purpose, the comparative capitalism research programme is used here as an analytical framework for analysing the potential impacts of DI, especially in terms of creating and maintaining an environment that stimulates economic growth through supporting the development of a coherent and complementary institutional framework. Such an approach not only broadens the scope of existing analyses, but also aims to add depth to our empirical and theoretical understanding of Deep Integration.

Comparative capitalism as an analytical framework for the study of Deep Integration

The comparative capitalism analytical framework

Comparative capitalism has become the common denomination of institutionalist approaches towards comparative political economy that are building upon, but at the same time transgressing, the ‘varieties of capitalism’ approach as developed by Peter Hall and David Soskice (Hall and Soskice 2001a). The basic hypothesis of the original

'varieties of capitalism' approach is that the inherent institutional complementarities of two different basic types of market economies, coordinated market economies (CMEs) and liberal market economies (LMEs), are able to explain their innovation patterns (Hall and Soskice 2001a). Each element of the two basic types has strong institutional complementarities with other elements of the same model, and differs clearly from the functional equivalent of the other model. Usually, five interdependent elements can be highlighted (Hall and Soskice 2001b, 17–33; see also Jackson and Deeg 2006, 11–20); namely (1) the financial system, i.e., the primary means to raise investments; (2) corporate governance, i.e., the internal structure of the firm; (3) the pattern of industrial relations; (4) the education and training system; and (5) the preferred mode for the transfer of innovations within the economy. The primary means of raising capital for investment in the LME system are bonds and equities issued on international capital markets. In CMEs, domestic bank lending plays a much bigger role, together with retained earnings. Correspondingly, there is a stark difference between corporate governance systems in the two models. The LME model focuses on outsider control by dispersed owners, based on active markets for corporate control (mergers and acquisitions, including hostile takeovers). The CME model, in contrast, has rather strong disincentives for hostile takeovers and is primarily based on the insider control by major shareholders (block holders). Managers have to find the consensus of their supervisory boards for major decisions and therefore have to involve block holders and labour representatives. In sum, the two models differ in particular regarding the prominence they give to international capital markets. Whereas the latter clearly play the dominating role for corporate finance and corporate governance in the LME model, the CME model allows for much more influence for other stakeholders, including block holders, major banks, management and labour. All capitalist varieties rely on the speedy transfer of innovations throughout the economy. Different types of innovation systems, however, have important repercussions for the design of competition policies, particularly in CMEs: inter-company cooperation, particularly between small and medium scale enterprises, needs to be exempt from overly strict competition policies in order not to hinder the transfer of innovations. In LMEs, in contrast, competition policies need not pay attention to these exceptions. Instead, they rather tolerate high degrees of economic concentration, as long as this concentration is compatible with the search for low consumer prices (Wigger and Nölke 2007).

Traditionally, Western Europe, the US and Japan have been the sole focus of the comparative capitalism (CC) research programme. More recently, these typologies have been adapted to semi-peripheral states (Schneider 2008, Nölke and Vliegenhart 2009, Nölke and Claar forthcoming). However, in order to be applied in Southern settings, CC must be adapted as well as complemented with a transnational perspective. By 'transnational' we mean the systematic incorporation of trans-border influences, both by actors (multinational corporations, financial actors) and institutions (regional and global economic regulation). A transnational perspective is particularly important if we talk about the embedding of institutional frameworks to support capitalism in Southern settings. Here, capitalism developed in a different path than in the north, within a different stage of development of the capitalist world system, in particular during a more intensive integration into the world economy, as indicated by a much stronger penetration by multinational corporations and by a much more powerful moulding by international institutions (such as the International Monetary Fund, the World Bank and the World Trade Organisation), leading to quite different state–economy relationships than within the northern governments (Coates 2000, 226f; Phillips 2004, 10–13).

Comparative capitalism and Deep Integration in South Africa: the theoretical argument

According to Ben Ross Schneider, we can identify a third form of capitalism besides LME and CME, namely hierarchical market economies, which he sees as the dominant form of capitalism in South Africa as well as in Latin America (Schneider 2008, 15). But others argue (Nattrass and Seekings 2010, 29) that South African capitalism cannot be categorised in those forms of capitalism, because Schneider limits his analysis only to corporate concentration. More recently, Nölke and Claar (forthcoming) have elaborated that South Africa has more obvious similarities with a state-permeated market economy. In this model, capitalism is marked by a particularly close relationship between state and business. In contrast to minority shareholders (LME) or institutional block holders (CME), major companies in state-permeated market economies usually are either dominated by families or by the state, in any case organised by national capital. Competition policies are less strict, but geared towards the temporary support of individual companies, e.g., to enable expansion into other markets.

The purpose of DI issues in EU (and US) trade agreements is to implement policies characteristic for an LME form of capitalism. An adoption of LME institutional settings may cause considerable problems for Southern economies. For instance, the single-minded focus of competition policy within LMEs in favour of low consumer prices does not fit into the praxis of temporarily tolerating exceptions of small and medium-scale enterprises in order to create global competitive companies. In addition, the LME model of corporate governance with its focus on minority shareholder protection puts pressures on the family cooperation as well as on state ownership and collides with national policies in favour of particular stakeholders (e.g., disadvantaged social groups). Although the EU also includes CME economies like Germany, it has pushed for policies that mainly fit to LME institutional systems in their bilateral agreements with Southern economies during the EPA negotiations. As we will demonstrate below with regard to the political economy of South Africa in the domain of corporate governance and competition policy, Deep Integration based on LME standards is hardly compatible with the national institutional requirements of a state-permeated market economy.

South Africa's trade relations with the European Union: the economic partnership agreements

Before analysing the question of compatibility, the historical evolution and the current relation between South Africa and the EU needs to be considered to understand the different pathways. In order to tackle the issue of the desirability of a Deep Integration EPA from the perspective of South Africa, the following two sections focus on analysing two particular issue areas, namely competition policies and corporate governance, which are closely related topics within investment.

Trade relations during apartheid proved difficult not only for South Africa, but also for its trading partners. Due to the repressive regime in South Africa other states tried to isolate South Africa both economically and politically. The European Community did not implement sanctions against South Africa properly because it was interested in its national resources. Moreover, multinational corporations (MNCs), e.g., in the automobile industry, had economic interests in South Africa because the apartheid environment provided cheap labour (Wolpe 1972). After the first post-apartheid election in 1995, South Africa became a member of the World Trade Organisation. As the government was interested in a

reorganisation of its trade relations, one of the first steps taken was to accept a number of multilateral and bilateral trade agreements. In the context of EU trade relations, the new government expected to gain access to the EU market under the Lomé Convention, but the EU rejected this claim in 1995. During the negotiations of a bilateral free trade agreement between 1996 and 2000, South Africa traded with the EU under the generalised system of preferences (Akinkugbe 2000, 282).

In January 2000, the Trade, Development and Cooperation Agreement (TDCA) came into force. This free trade agreement is WTO-compatible and the main goal is the liberalisation of both markets. It contains regulations of duty- and tax-free exports in the industry sector and the agricultural sector. South Africa can export 95% of its products to the EU and the EU can export 86% of its product to South Africa without duties or taxes (Akinkugbe 2000, 282). While some observers are celebrating the TDCA, there is still a huge imbalance between the openness of both sides. Indeed, South Africa opened its markets up to 81%, while several restrictions on the EU side, especially in the Wine and Spirits Agreement, are still in place. For example, South Africa is not allowed give the same name to some of its wines as those in Europe (Venter and Neuland 2004, 194–197).

At the beginning of 2007, South Africa joined the Southern African Development Community (SADC)–EPA negotiations as a full negotiation partner. Before that, South Africa only enjoyed observer status. South Africa and its neighbouring countries – Angola, Botswana, Lesotho, Namibia, Mozambique and Swaziland – requested the change in status. Despite this cooperation, South Africa still decided not to sign the Interim EPA at the end of 2007, due *inter alia* to concerns over the liberalisation of services and over harmonisation in issues like intellectual property rights (*Business Day*, 23 December 2008; TradeInvest South Africa 2007). One reason is that the SADC members are still lacking a common regulation on intellectual property rights. This regulatory topic is intended to be tackled in the full SADC EPA with the EU; nevertheless some have argued that a common rule within SADC needs to be established beforehand (Phiri 2008).

In 2010, South Africa and the region started to negotiate again on an EPA. While some members of the negotiating group, like Botswana, were committed to discussing services issues, South Africa so far decided not to discuss issues on services and investment (Carim 2010, 1). Currently, the main focus is on agricultural issues and the EU is bringing in its protection of geographical indicators system (GIs), which might affect only South Africa and not the neighbouring countries (Grant-Makokera and Botha 2011)

South Africa and the desirability of an EPA: corporate governance and investment regulation

In the comparative capitalism perspective, corporate governance issues are at the centre of differences between various capitalist production systems. In case of South Africa, post-apartheid policies play a particular role in this regard. In order to overcome inequality and poverty through the distribution of ownership and better access to jobs, the South African government introduced the Black Economic Empowerment (BEE) and its follow-up Broad-Based Black Economic Empowerment (BBBEE) with considerable impact on the corporate landscape. All corporations listed at the Johannesburg Stock Exchange (JSE) must increase the number of black directors, share ownership, suppliers and black management (Southall 2006, 182). Moreover, the Code of Good Practices is valid for the public and private sectors and any company that wants to do business with the government (Krüger 2011, 210). Five big conglomerates (Billiton, Old Mutual, Anglo America, South African Breweries and Dimension Data) moved their listings

from the JSE to the London Stock Exchange. While Armstrong *et al.* (2005, 23) do not see a connection to the governance structure, except in the expansion of its capital internationally, other observers argue that there is a strong connection between flight of capital and BEE. According to Terreblanche, the opportunity for the accumulation of substantial 'black capital' flew out of the country, since companies could save their capital from redistribution by BEE (Terreblanche 2002, 122–124).

Although the BEE policy is necessary in the national environment, the international market has not taken it very favourably. Firstly, international firms are excluded from the ownership clause, but still have to meet the other BEE targets if they want to do business in South Africa (Mebratie and Bedi 2011, 8). In the last years, South Africa has had a very low rate of foreign direct investment (around US\$1 billion annually, Armstrong *et al.* 2005, 12), which could be related to BEE's being a hindering factor for investors. Veloso (2008: i, 77–78) argues that the relative level of FDI into South Africa declined since BEE and that FDI flows by multinationals in other African states are higher. Other observers assume that BEE has not hindered FDI flows into South Africa, since FDI numbers still grew. Some even argue that there is a positive effect of BEE for FDI (Empowerdex 2005). Others argue that business confidence declined more generally, not related to BEE. For example, investment in the mining sector dropped because of the Mining Sector charter.

Secondly, the BEE policies are partly not in line with the WTO commitments. For example, management control and employment equity interfere with the regulation that employment should not be based on citizenship. Furthermore, multinationals usually do not have to invest in local human development (Mortenson 2006, 15). Some observers thus argue that in order to meet the WTO regulations South African government should revise its BEE provisions (Mortenson 2006, 15). Similar problems are discussed in the case of bilateral treaties (Yazbek 2010, 111–113; Chigara 2011) and provide evidence that BEE is one of the main controversial issues as regards investment regulations and DI treaties. Within the new Growth Path the government considers a revision of the BEE regulation to achieve more economic growth (EDD 2010, 50–51). Others, however, highlight the important role of BEE regulations for more than just social peace in South Africa (Andreasson 2011). Of particular importance here are the King Reports on corporate governance published by the Institute of Directors in Southern Africa to advise the government (Armstrong *et al.* 2005, 20–22). A particular feature of corporate governance in South Africa as highlighted in the King Reports is that companies are treated as social entities that are not only an asset of their owners: 'South Africa must carefully balance the interests and rights of shareholders with the needs and demands of a wider range of stakeholders in society' (Andreasson 2011, 666). Correspondingly, the King Reports propose a system of corporate governance that explicitly acknowledges legitimate claims of a range of stakeholders, including workers and trade unions. Among its more specific elements are not only well-known policies such as triple-bottom-line accounting, but also an obvious endorsement of BEE policies (Andreasson 2007a, 15).

Undoubtedly, these specific features would be undermined by a more comprehensive adoption of LME-based Deep Integration agreements in South Africa, e.g. in the context of the current EPA negotiations with the EU. Behind these agreements – and EU policies in general – we identify a perspective that assumes the existence of a single best practice in corporate governance – a best practice that is modelled along the model of Anglo-Saxon LMEs. More specifically, the EU proposal from June 2007 for a full EPA envisages a chapter on investment that demands for the liberalisation of rules that are regulating FDI, including the abolition of so-called 'performance requirements'. Black Economic Empowerment regulations are part of these requirements and would need to be abolished, if the EU

had its way without any reservations (Müller 2011, 124). Bilateral Investment Treaties (BITs) already challenge the BEE policies because foreign investors complain against those policies in South Africa, but also in other regions (Chigara 2011, 215, 219–220).

Even if we do not want to overstate the positive effects of BEE policies, it certainly would be problematic if EU-driven policies and foreign investors undermined one of the cornerstones of post-apartheid efforts for societal conciliation in South Africa. Given that the EU in the current political climate appears to be willing to compromise on these issues – as indicated by the long list of exceptions contained in the CARIFORUM EPA section on investments (Brüchner 2008, 197–200) – this is not an imminent threat. Still, it is indicative of the potential dangers emanating from an EU approach that might be feasible under different political circumstances. Our comparative capitalisms perspective thus warns against a wholesale adoption of LME corporate governance standards. MNCs in Southern economies frequently profit from corporate governance structures that do not conform with the Anglo-Saxon model and its emphasis on short-term profit and quarterly reports to the financial markets. Instead, a more stable ownership structure, based on family or state ownership, rather enables successful companies to pursue long-term economic strategies, in particular aimed at enlarging market shares – somewhat similar to the historical evolution of German or Japanese capitalism. In the South African case, family businesses have a tradition and during apartheid they intervened in the political sphere and took over social responsibility (Venter 2008). Around 80% of businesses are family-owned, mostly small and medium enterprises (Gupta *et al.* 2010, 149; Venter *et al.* 2003, 1). From this perspective, the export of Anglo-Saxon corporate governance standards in the context of current negotiations in north–south Deep Integration trade agreements may well inhibit economic development in South Africa’s economy. Similar arguments have been made regarding Deep Integration elements within the NAFTA treaty, e.g., regarding the disability of the Mexican government in preventing acquisitions of Mexican companies by Canadian or US companies (Shadlen 2005, 766). At least for those ‘emerging economies’ that are harbouring the potential for the emergence of successful home-grown companies it may not always be desirable to adapt Anglo-Saxon corporate governance models with their emphasis on the dominant role of the international capital markets and on an active market for corporate control.

The EPA, comparative capitalism and South African competition policies

Similar problems can be observed with competition policy regulations which are a main DI subject in EU trade agreements (Horn *et al.* 2009; Ahearn 2011) and are included in all early EPA drafts. Developing countries have different approaches from industrialised countries with regard to the implementation of competition laws (Roberts 2004, 230). While there are some similarities between EU and South African competition policy, the differences relate to the focus and the goal of competition policies. The EU generally wants to maximise competition in its single market and South African actors ‘focus on the competitive process and the social balance that is inherent in this aspect and underpinned by the different characteristics of the South African economy’ (Walt 2010). The latter leads to a linkage between competition and industrial policies.

One particular focus of South African competition policy is on the reduction of economic concentration. Already during the apartheid period, antimonopoly legislation existed and in 1979 South Africa passed the Maintenance and Promotion of Competition Act, but the effect of these policies was minimal; it resulted in corporate ownership and the control over capital being in the hands of the few South African conglomerates by

the end of apartheid (Roberts 2004, 227). Moreover, the major South African firms provided two-thirds of employment and had a large share in industrial output (Kaplinsky and Manning 1998, 144). Due to this fact, small and medium-sized enterprises provided only few employment possibilities and were practically absent from the industrial development of the country (Hirsch 2005, 198; Kaplinsky and Manning 1998, 144). Correspondingly, the South African government focused on supporting small and medium-scale enterprises in its Competition Act of 1998 (OECD 2003, 52). To be more precise, the Act called for small and medium-scale enterprises to obtain 'an equitable opportunity to participate in the economy' (Republic of South Africa 1998, section 2).

Another notable feature of the Competition Act is that the South African government also included public interests and social goals, two areas which are more often not considered and 'not always compatible with the explicit goals of regular competition policy' (Chabane 2003, 5). In regard to South Africa there is a strong connection with BEE because the Act also refers to a promotion of 'a greater spread of ownership, in particular to increase stakes of historically disadvantaged persons' (Republic of South Africa 1998, section 2). During apartheid, the ownership and the control of firms were concentrated in the hands of the white elite because blacks were restricted to participate as owners by law. The barriers of small and medium-scale enterprises (SMEs) to enter the market were still high because of the historical concentration of business. Thus, nowadays black-owned SMEs are supported via the means of competition policy, by addressing the issue of economic concentration. The specific focus on SMEs was intended to stimulate long-term economic development, including growth, employment and distribution of wealth (Chabane 2003, 7; Hartzenberg 2008, 12). Unfortunately, the process of implementation of new institutions for supporting SMEs has been slow so far (Hirsch 2005, 202–204). In sum, South Africa's competition policy focuses on the special needs of its particular business and social structure.

This competition policy is potentially contradictory to the one pursued by the EU, which is highly controversial in the context of the EPAs, precisely because the EU would like to implement its very own competition policy within these agreements. With the reform of EU competition policy in 2004 the EU made a major shift towards the US (LME) approach, not only in terms of administrative enforcement (abolition of notification procedure), but also in substantial terms. Thus, the focus of EU competition policy on anti-competitive conduct is much more tolerant about economic concentration than about co-operation between small- and medium-scale enterprises (Wigger and Nölke 2007). These developments are also visible in the EPA draft. Besides an implementation of competition rules and regulating bodies by both parties (EC–SADC EPA Draft: Title 5, Art. 2), the EU has also made it clear that they refuse to allow any kind of 'agreements and concerted practices between undertakings, which have the object or effect of substantially preventing or lessening competition' as well as 'the abuse by one or more undertakings of market power' (EC–SADC EPA Draft: Title 5, Art. 1). South Africa would be particularly affected, considering that it is the only economy within the EPA with legislation on competition policy (Hartzenberg 2008, 13). If South Africa were to accept European competition policy principles, a number of developmental instruments, e.g., restrictions of BEE, reduction of the concentration of economic power within a small white elite, the build up of black-owned small and medium-scale enterprises, the ability to operate state monopolies (Holmes *et al.* 2008, 8) and to support public enterprises, e.g., with subsidies, would be most unlikely to be available anymore, thereby restricting the ability of government to set up a coherent institutional frame (Yu 2007).

As in the case of corporate governance regulation, our comparative capitalism perspective has highlighted potential tensions between EPA Deep Integration requirements and the South African developmental model. Again, this problem may not be unique to South Africa, given the importance of competition policies for the growth of home-grown companies in other emerging markets, such as Brazil, China, Mexico or Russia. Implementing the ‘one size fits all’ approach propagated by EU or US Deep Integration policies may prove to be a major inhibiting factor for dynamic growth in some Southern economies.

Conclusion

Our paper has argued that Deep Integration is one of the most pressing concerns in the debate about north–south trade relations. It has given an overview of the components of Deep Integration and its current empirical relevance – a relevance that is expected to rise in the years to come. In order to study whether Deep Integration is a desirable development from the perspective of economic development in South Africa, our paper has developed a comparative capitalism perspective on these issues as an institutionalist complement to existing approaches from neo-classical development economics. Departing from this perspective we have highlighted the particular features of the South African corporate governance and competition policy models and their limited compatibility with the more liberal standards that are implicitly contained in the draft EPA with the EU. If the EU succeeded in pushing their goals, South Africa might need to abolish policies that play an important role for overcoming post-apartheid economic inequalities and an equally important role for stabilising its companies against the whims of global capital market actors. EPAs are not the only institutions that create heavy restraints on the ability of countries such as South Africa in pursuing ‘developmental state’ strategies, but important ones (Andreasson 2007b, 8).

In conclusion, the implementation of Deep Integration issues in trade agreements may lead to severe compatibility conflicts in South Africa and in other Southern economies, because they cannot adequately protect their domestic institutions under these circumstances. Proper regulation, protection and reaction to special circumstances might not be possible anymore. More generally, northern economies frequently use Deep Integration to implement Anglo Saxon forms of capitalism in the global south, while the supporting institutional framework is often absent. In the case of South Africa, Deep Integration thus could be a chance for more integration into the global economy, but it could also pose a threat to its economic development.

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