

# Sustainable Development

## The missing piece in the Southern African Customs Union's regional trading arrangements?

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<http://www.tradeknowledgenetwork.net>

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Coordinated by the International Institute for Sustainable Development (IISD), the TKN links network members, strengthens capacity in areas of research, training and policy analysis, and also generates new research to assess and address the impact of trade and investment policies on sustainable development. The current phase of TKN research and policy engagement is kindly supported by the Swiss Agency for Development and Cooperation (SDC) and The Norwegian Agency for Development Cooperation (NORAD). In addition, TKN has received past support from the Rockefeller Foundation, the Norwegian Ministry of Foreign Affairs, the International Development Research Centre (IDRC) and the Canadian International Development Agency (CIDA).

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## Contents

Acronyms	ix
Executive Summary	xi
1. Introduction	1
1.1 Methodology	1
1.2 Scope	2
2. Linkages between Trade and Sustainable Development	2
3. Trade and Sustainable Development in the SACU Region	10
3.1 Background of the Southern African Customs Union	11
3.2 Macro-economic and Trade Indicators in SACU	13
3.2.1 GDP Indicators	15
3.2.2 WTO Commitments	18
3.2.3 SADC Trade Flows (includes SACU)	18
3.3 Sustainable Development in SACU	20
3.3.1 Primary UNDP Indicators of Development	20
4. Trade Agreements and Negotiations in the SACU Region	24
4.1 Free Trade Agreements	24
4.2 SACU and its Trade Relations – Existing Agreements	26
4.2.1 SADC Trade Protocol	26
4.2.2 SACU-EFTA Trade Agreement	28
4.2.3 SACU-Mercosur Preferential Trade Agreement	29
4.2.4 Attempted SACU-US Free Trade Agreement	29
4.3 SACU and its Trade Relations – Current Trade Negotiations	31
4.3.1 SADC Free Trade Area	31
4.3.2 SADC Services Protocol	31

4.3.3	SADC-EU Economic Partnership Agreement	32
4.3.4	SACU-US Trade, Investment and Development Cooperation Agreement	35
4.3.5	SACU-Mercosur Preferential Trade Agreement Revision	36
4.4	SACU and its Trade Relations – Planned Trade Agreements	36
4.4.1	SADC Customs Union	36
4.4.2	SACU-India Trade Negotiations	37
4.4.3	SACU-China Trade Negotiations	38
4.4.4	SACU, India, Mercosur Trade Negotiations	38
4.4.5	SACU-EAC Trade Negotiations	38
4.5	Trade Agreements by Individual SACU Member States	38
4.5.1	South Africa’s Trade Agreements	39
4.5.2	Botswana’s Trade Agreements	41
4.5.3	Lesotho’s Trade Agreements	42
4.5.4	Namibia’s Trade Agreements	42
4.5.5	Swaziland’s Trade Agreements	43
4.6	References to Sustainable Development in SACU FTAs	43
5.	Regional Policy and Institutional Contexts	43
5.1	SACU Policy and Institutional Context	43
5.1.1	The 2002 SACU Agreement	43
5.1.2	The SACU Revenue Sharing Formula	45
5.1.3	Towards a Common Industrial Policy for SACU	50
5.2	SACU Member States and International Agreements	52
5.2.1	SACU Member States and the CSD	52



6.	Outcomes of the Trade Agreements	54
6.1	Outcomes of Existing Agreements	55
6.1.1	SADC Trade Protocol Outcomes	55
6.1.2	SACU-EFTA FTA Outcomes	59
6.1.3	SACU-Mercosur PTA Outcomes	59
6.2	Potential Outcomes of Current Negotiations	59
6.2.1	SADC FTA Potential Outcomes	59
6.2.2	SADC Services Protocol Potential Outcomes	60
6.2.3	SADC Economic Partnership Agreement Potential Outcomes	61
6.3	Potential Outcomes of Planned Agreements	70
6.3.1	SADC Customs Union	70
6.3.2	Scenarios for Rationalization of COMESA, SADC, SACU and the EAC	72
6.3.3	SACU-India PTA Potential Outcomes	75
6.3.4	SACU-China PTA Potential Outcomes	76
6.4	Outcomes of Trade Agreements by Individual SACU Member States	78
6.4.1	Deeper India, Brazil and South Africa (IBSA) Relationship, Potential Outcomes	78
6.4.2	The EU-South Africa Trade, Development and Cooperation Agreement (TDCA) Potential Outcomes	80
6.5	Summary of Outcomes	83
7.	Recommendations and Further Research	84
7.1	Recommendations	84
7.2	Further Research	87
8.	References	88
	Annex 1: CSD Indicators of Sustainable Development	97

## List of tables, figures and boxes

Table 1: SADC population, area, aid and GDP indicators, 2005	15
Table 2: SACU GDP and country percentages	15
Table 3: Selected macroeconomic indicators in SADC countries, 2006 (%)	16
Table 4: Growth in GDP per capita (PPP, US\$, 2000 prices), 1960 – 2005	17
Table 5: GDP structure in SADC countries, 2005 (%)	17
Table 6: Tariffs summary 2006: Final bound and applied MFN averages	18
Table 7: Share of SADC trade in SADC country imports	19
Table 8: Share of SADC trade in SADC country exports	19
Table 9: Main destinations for SACU exports	20
Table 10: SACU member states' Human Development Index (HDI)	21
Table 11: SACU member states' Human Poverty Index (HPI)	22
Table 12: SACU member states' Gender Development Index (GDI)	22
Table 13: SACU member states' carbon dioxide emissions (CDE)	24
Table 14: Tariff phase-down offers: SADC excluding South Africa per cent tariff lines at zero	31
Table 15: SADC's exports and imports of services (US\$ millions), 1994 & 2004/5	32
Table 16: Receipts from SACU revenue pool, 2004	46
Table 17: Net development component transfers under SACU RSF, 2006	48
Table 18: SACU member state treaty ratifications	52
Table 19: Status of national strategies for sustainable development (NSDS) in SACU	52
Figure 1: Map of SACU within Africa	11
Figure 2: Share of total SADC GDP, (US\$ m, 2000 prices)	16
Box 1: The United Nations Commission for Sustainable Development	9
Box 2: Sustainable development policy-making in Namibia	54
Box 3: Institutional policy-making in the SADC Secretariat	54
Box 4: The case of Ramatex: Unsustainable development	84

## Acronyms

ACP	African, Caribbean and Pacific
AGOA	African Growth Opportunity Act
AU	African Union
BNLS	Botswana, Namibia, Lesotho and Swaziland
CET	Common External Tariff
CMA	Common Monetary Area
CNM	Common Negotiating Mechanism
COMESA	Common Market of Southern Africa
CSD	(United Nations) Commission on Sustainable Development
CU	Customs Union
DRC	Democratic Republic of Congo
DSB	Dispute Settlement Body
EAC	East African Community
EBA	Everything But Arms
EC	European Commission
EDF	Economic Development Fund
EFTA	European Free Trade Agreement
EPA	Economic Partnership Agreement
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
HDI	Human Development Index
HPI	Human Poverty Index
GATT	General Agreement on Tariffs and Trade
GDI	Gender Development Index
GDP	Gross Domestic Product
GHGs	Greenhouse Gases
GM	Genetically Modified
GMEF	Global Ministerial Environment Forum
GMOs	Genetically Modified Organisms
GNI	Gross National Income
GSP	Generalized System of Preferences
IBSA	India-Brazil-South Africa Agreement
IEPA	Interim Economic Partnership Agreement
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
IMF	International Monetary Fund
JPOI	Johannesburg Plan of Implementation

LDC	Least Developed Country
MFN	Most Favoured Nation
MGDs	Millennium Development Goals
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
NSDS	National Strategy for Sustainable Development
NTB	Non-Tariff Barrier
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OOF	Other Official Flows
PPP	Purchasing Power Parity
PTA	Preferential Trade Agreement
REC	Regional Economic Communities
RISDP	Regional Indicative Strategic Development Plan
RSF	Revenue Sharing Formula
RTA	Regional Trade Agreement
S.A.	South Africa
SACU	Southern African Customs Union
SACTWU	South African Clothing and Textiles Workers' Union
SADC	Southern African Development Community
SADCC	Southern African Development Co-ordination Conference
SD	Sustainable Development
TDCA	Trade Development and Cooperation Agreement
UNCAD	United Nations Conference on Trade and Development
UNCSD	United Nations Commission for Sustainable Development
UNDP	United Nations Development Programme
UN	United Nations
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme
U.S.	United States
US AGOA	U.S. African Growth and Opportunity Act
VAT	Value Added Tax
WSSD	World Summit on Sustainable development
WTO	World Trade Organization

## Executive Summary

The number of bilateral and regional free trade agreements (FTAs) around the world has grown sharply in recent decades. This trend is based on the assumptions that free trade and the removal of regulations on investment will lead to economic growth, poverty reduction, increased living standards and employment opportunities. For developing countries, attraction of foreign direct investment and access to markets are key motivations for such negotiations. The Southern African region is no exception to this global trend. Economic integration has been promoted at the regional level throughout the Southern African Customs Union (SACU) and the Southern African Development Community (SADC), as well as bilaterally and cross-regionally, including existing and planned agreements with trading partners as diverse as the U.S., the EU, India, China the European Free Trade Association, the East African Community and the Mercado Común del Sur (Mercosur).

Heated debates continue regarding the likely economic, social and environmental impacts of such trade agreements. Critics warn that FTAs can, in fact, undermine countries' development objectives, for instance through the loss of tariff revenues, increased competition and environmental pressures. This study aims to shed some light onto these debates by examining the status and impacts of bilateral and regional integration in the SACU region (South Africa, Botswana, Namibia, Lesotho and Swaziland). The study focuses on the actual and potential sustainable development outcomes of the discussed trade deals in terms of the expansion of trade and improvements in market access. In addition, the impact of various trade agreements on regional integration in SACU and the broader region is explored. The study concludes by outlining a set of recommendations and possible areas for further research.

## Linkages between Trade and Sustainable Development

Sustainable development as a concept has its roots in the 1980s, when the 1987 UN Commission on Environment and Development Report (the Brundtland Report) outlined a need for: "development that meets the needs of the present, without compromising the ability of future generations to meet their own needs." Sustainable development also entails a fair and equitable distribution of the benefits of development, improved well-being for citizens and respect and care for the environment. The concept has also been taken up in the trade context, including in the 2001 WTO Ministerial Declaration, which launched the current round of trade negotiations. Today, it is widely recognized that "not only can open trade and sustainable development be compatible and mutually supportive, they must be" (Halle, 2006, p. 2).

Making sustainable development the ultimate objective of trade allows for the linking of economic growth, social development and environmental management. It is not automatic that economic growth or growth in market access through trade liberalization leads to economic development, let alone sustainable development. Trade agreements may even undermine sustainable development where they impact negatively on domestic regulatory requirements (e.g., health regulations). Globally, opposition has been growing to trade liberalization that does not take into account development issues and does not actively alleviate poverty. The purpose of trade liberalization needs to be that of sustainable national development, and it must thus be considered as subordinate to larger national policy contexts. Strong domestic institutions play a role in securing this. The key to locating trade liberalization within a country's development context would be to tailor liberalization packages to the needs of the particular country.

## Trade and Sustainable Development in the SACU Region

The Southern African Customs Union is a full customs union with a common external tariff. A new Customs Union agreement was signed in 2002 and has been in force since 2004. The agreement aims to *inter alia* facilitate the cross-border movement of goods between the territories of member states and create effective, transparent and democratic institutions which will ensure equitable trade benefits for member states; enhance the economic development, diversification, industrialization and competitiveness of member states; promote the integration of the member states into the global economy through enhanced trade and investment; promote the equitable sharing of revenue arising from customs, excise and additional duties levied by member states; and facilitate the development of common policies and strategies.

The 2002 agreement set in place a new institutional framework for SACU. A SACU Tariff Board and Tribunal will be operational by March 2009. Member states are meant to establish a common negotiating mechanism for the purpose of undertaking negotiations with third parties and no member state shall negotiate and enter into new preferential trade agreements with third parties or amend existing agreements without the consent of other member states. All agreements negotiated prior to the 2002 agreement can remain in place, but SACU also agreed that any provisions of such agreements that clash with the 2002 Agreement must be renegotiated.

### Macro-economic and Development Indicators in SACU

While the other SACU members are much smaller in population and GDP than South Africa, they have generally experienced higher growth rates in the last decade and a half. Botswana has the highest level of GDP per capita. The total population of SACU was 53.6 million in 2006. In terms of GDP, in 2005 South Africa's GDP was US\$159.6 billion, Botswana US\$8.2 billion, Namibia US\$4.2 billion, Swaziland US\$1.5 billion and Lesotho US\$0.98 billion.

The Human Development Index (HDI) values for the SACU members show that all SACU member states fall into the lower half of countries ranked for the purposes of the HDI. South Africa and Botswana's low life expectancies, in spite of their higher GDP per capita are a reflection of the impact of HIV/AIDS on the two countries, (a challenge faced by the other SACU member states as well). With regard to the Human Poverty Index (HPI), a clear gap exists between the top three members, South Africa, Namibia and Botswana, and the remaining two members, Swaziland and Lesotho. South Africa ranks at the top of the table for both HDI and HPI. The Gender Development Index reveals that Namibia is ranked much higher than South Africa, with a further gap between these two states and Lesotho, which in turn is ranked much higher than Botswana and Swaziland, revealing that gender disparities are not automatically linked to HDI or HPI rankings.

A clear difference in economic output and the attendant carbon emission costs between South Africa and its SACU neighbours is evident, where the figures for South Africa are closer to the average for high income OECD countries than Sub-Saharan African countries.

## SACU and its Trade Relations – Existing Agreements

### **SADC Trade Protocol**

All SACU countries participate in the Southern African Development Community (SADC) which also includes Angola, the Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Mozambique,

Seychelles, Tanzania, Zambia and Zimbabwe. In 2005, South Africa contributed 69 per cent of SADC's total GDP. SACU sources only 1.9 per cent of its total imports from the SADC region. SADC accounts for 9.7 per cent of SACU exports, which means large trade imbalances between SACU and the rest of SADC exist. SACU receives between 71 and 78 per cent of total intra-SADC exports (i.e., exports by SADC member states to each other). The region is even more dependent on South Africa as a source of its African imports. Around 90 per cent of SADC (excluding SACU countries) imports from the region are sourced from SACU.

As agreed in the SADC Trade Protocol, which entered into force in 2000, the SADC member states aim to progressively move towards a Free Trade Area in 2008. The staggered phase-down of tariffs is meant to conclude between 2008 and 2012 with a phase-down of sensitive product tariffs, so that by 2012 about 98 per cent of SADC merchandise trade will be zero-rated. Offers for tariff reduction to BLNS countries were largely front-loaded, while offers to South Africa were mid to back-loaded. Various challenges have undermined the implementation of the Trade Protocol, including the differentiated tariff reduction schedules, restrictive rules of origin, ongoing member state concerns about the costs and risks of intra-regional tariff liberalization, and the slow pace itself of the implementation of the agreed commitments. The danger exists that these ongoing issues may undermine the potential benefits to be gained from the implementation of the SADC FTA, launched in August 2008.

### **SACU-EFTA Trade Agreement**

Negotiations towards a FTA between SACU and the members of the European Free Trade Association (EFTA)<sup>1</sup> commenced in 2003, and an agreement was signed in June 2006, but full ratification by all the SACU member states only occurred in mid-2008. The trade balance is in SACU's favour, with a trade surplus of US\$1.5 billion for SACU recorded in 2006. South Africa is the major trading partner with a share of about 94 per cent of SACU-EFTA trade. The agreement covers trade in goods and provides for further engagement of the parties with regard to: intellectual property, competition, trade in services, investment, public procurement and cooperation and assistance. In terms of non-goods sectors, the Joint Committee that oversees the agreement must take a decision within five years of the agreement coming into force as to whether these issues will actually be negotiated.

The agreement also stipulates the two parties' desire to create new employment opportunities and improve working conditions and living standards in their respective territories while promoting sustainable development. EFTA states will assist SACU states to realize sustainable economic and social development as well as take into account environmental conservation. They will also provide technical assistance to the SACU states in order to assist them in the implementation of the Agreement and will provide assistance to those SACU sectors that will be affected by the process of liberalization and restructuring of the economy of the SACU states. Further sectoral assistance will be offered to SACU sectors.

Commentators have noted that the year-and-a-half delay in complete ratification of the EFTA agreement by SACU member states raises questions concerning trade negotiation coordination within SACU. The SACU Secretariat needs to have the capacity as well as the mandate to monitor and ensure that ratification takes place quickly. The SACU Common Negotiating Mechanism should therefore also deal with ratification and implementation, in order for SACU to effectively conduct trade negotiations as a unit, as it is bound to do under the new SACU Agreement.

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<sup>1</sup> EFTA comprises the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation.



### ***SACU-Mercosur Preferential Trade Agreement***

A Preferential Trade Agreement (PTA) was signed between the Mercado Común del Sur (Mercosur)<sup>2</sup> and SACU in December 2004, as a first step towards the creation of a Free Trade Area. It was the first agreement that SACU concluded in accordance with the provisions of the 2002 SACU Agreement. The two regions want to forge closer relations in order to strengthen South-South cooperation by reducing their dependency on the markets of developed countries and endeavouring to diversify their own economies. In 2004, total trade between South Africa and Mercosur amounted to US\$1.83 billion. South African exports were US\$304.2 million, whereas its imports from Mercosur stood at US\$1.52 billion.

### ***Attempted SACU-US Free Trade Agreement***

The United States (U.S.) and SACU launched FTA negotiations in June 2003. The negotiations agenda covered traditional market access issues in such areas as industrial and agricultural tariffs, product standards, customs procedures and trade remedies (anti-dumping). SACU was prepared to grant access to the SACU market on terms and conditions already offered to the EU in the context of the Trade Development and Cooperation Agreement (TDCA). Other issues negotiated in the agenda included “new generation” trade issues such as services, investment, intellectual property, competition, government procurement and environment. However negotiations were suspended in April 2006, apparently due to the divergent views among the parties on the scope and level of ambition for the FTA. This breakdown was largely due to disagreement on the new generation issues. The South African Department of Trade and Industry noted in a briefing to Parliament that the U.S. was seemingly unprepared to accept the need for phased liberalization and a developmental approach.

## **SACU and its Trade Relations – Current Trade Negotiations**

### ***SADC Free Trade Area***

To assess the progress towards the launch of a FTA, SADC conducted a mid-term review of the Trade Protocol in 2005 and an audit of the tariff phase-down program in 2007. The SADC Secretariat stated that the Audit Study results validated the launch of a FTA in 2008. Specific actions to support those member states that are lagging behind in implementing fully the tariff phase-down program were identified. However, the audit report itself found significant non-compliance in conjunction with serious compliance constraints, which resulted in the majority of member states selecting to trade under alternative preferential trade agreements. It stated that significant commitment and implementation was required in order for the SADC Protocol on Trade implementation to be completed on schedule. With the launch of the FTA in August 2008, any unfinished Trade Protocol tariff phase-down obligations will have to be integrated with member states’ FTA commitments.

### ***SADC Services Protocol***

SADC is in the final stages of negotiating a protocol to liberalize services trade and create a regional services market. The process commenced in 2002 and a draft Protocol on Trade in Services was finalized in July 2007. The draft Protocol aims to provide a framework for progressive, flexible liberalization of

<sup>2</sup> Mercosur is a customs union comprising of Argentina, Brazil, Paraguay and Uruguay (with Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela as associate members) that came into effect in December 1994.



trade in six priority service sectors among SADC member states, namely communication, construction, energy-related, financial, tourism and transport services. Since 2005, the process has been given new impetus by the rapid growth in services trade within the region and between the region and other countries.

### ***SADC-EU Economic Partnership Agreement***

Preferential market access agreements between the EU and the African, Caribbean and Pacific (ACP) countries have existed for almost 40 years. The most recent platform was the Cotonou Agreement, which came into force in 2000 to replace the Fourth Lomé Convention. Under these agreements, the EU unilaterally extended preferential market access to ACP countries, allowing their products to enter the EU market free of customs duties, or in certain instances, at preferential rates of duty. The agreement aimed to alleviate poverty and to promote sustainable development and the integration of the ACP countries into the world economy.

Because it is a preferential agreement, the trade component of the Cotonou Agreement was criticized by some non-ACP developing country members of the WTO for not being compatible with WTO rules by granting unfair advantages to the ACP countries alone, to the exclusion of other developing countries. Therefore, this non-reciprocal trade relationship between the EU and the ACP countries has been the subject of negotiations to establish WTO-compatible, largely reciprocal economic partnership agreements (EPAs) between the EU and the ACP countries.

The EPA negotiations are taking place with regional groupings of ACP countries. The SADC EPA currently comprises all SACU members plus Angola and Mozambique. South Africa was originally not a member of this grouping but was allowed to join in 2007. The other SADC members are members of other EPA groupings. The SADC-EU EPA negotiations were launched in July 2004 and were to end in December 2007. However, due to disagreements between the two parties on “new generation” trade issues (trade in services, intellectual property rights, investments, competition policy, government procurement, labour standards, and trade and environment), and other issues such as export subsidies, negotiations proceeded very slowly.

As the deadline of end-2007 for the expiry of the Cotonou Agreement approached, a SADC EPA had still not been signed. For Botswana, Namibia and Swaziland, a failed SADC-EPA implied that these countries would lose preferential access to EU markets after the Cotonou waiver expired in December 2007, with attendant hikes in tariffs and export losses, especially for agriculture and beef. South Africa on the other hand had an existing EPA-style agreement with the EU since 1999 while Lesotho had the Everything But Arms trade regime to fall back on.

The EU finally agreed to settle for a limited SADC-EPA in November 2007 on the basis that further negotiations on the new trade generation issues for a full EPA would continue through 2008, and therefore initialled Interim Economic Partnership Agreements (IEPAs) on trade in goods with Botswana, Lesotho and Swaziland.

Namibia initialled in December 2007 but refused to agree to further negotiations on services and trade related issues. South Africa did not initial the text, largely due to the EU’s insistence on the inclusion of services commitments in any final EPA, and also apparently due to the inclusion of a Most Favoured Nation clause in the IEPA (see below). The SADC-EPA countries that agreed to negotiate services will receive support for their services sectors and government institutions to increase their capacity to handle such trade. SACU trade with the EU as of late 2008 is thus governed by both by the TDCA in the case

of South Africa and the IEPA in the case of the other SACU member states. However, the IEPAs will be unenforceable by law without South Africa's consent since the 2002 SACU Agreement forbids its signatories from entering individual preferential trade deals without the consent of all the SACU member states. This would put enormous strain on SACU's unity.

### ***SACU-US Trade, Investment and Development Cooperation Agreement***

As noted above, the SACU-US negotiations that commenced in 2003 ended in April 2006 due to the divergent views between the parties on the scope and level of ambition for the FTA. This breakdown was largely due to disagreement on the new generation issues such as investment, government procurement and trade in other services (similar to the issues that have led to the breakdown of the EU-S.A. component of the SADC-EU EPA negotiations). Following the breakdown of the SACU-US Free Trade Agreement negotiations, the two parties agreed in November 2006 to pursue a Trade and Investment Cooperation Agreement (TICA) that could possibly lead to a FTA in the long term. The second phase of negotiations concluded in December 2007. Negotiations are expected to conclude in 2008.

### ***SACU-Mercosur Preferential Trade Agreement revision***

The original SACU-Mercosur Preferential Trade Agreement was signed in 2004. SACU is currently finalizing negotiations around a new or revised PTA with the South American common market, Mercosur. The eleventh round of negotiations was held in Pretoria, South Africa in early October 2007. The process of resolving outstanding details was not concluded in time and so the last round and signature of the agreement was postponed to end March 2008.

## **SACU and its Trade Relations – Planned Trade Agreements**

### ***SADC Customs Union***

The SADC Regional Indicative Strategic Development Plan (RISDP) calls for the establishment of the SADC FTA by 2008, a SADC Customs Union by 2010, a SADC Common Market by 2015, a SADC Monetary Union by 2016, and a Single Currency by 2018. Not all SADC member states would necessarily be able to, or be required to, join the Customs Union at its launch, so a solution may be a two track approach, with the first track comprising the Rand-based Common Monetary Area—namely South Africa, Lesotho, Swaziland, Namibia and outside the CMA—Botswana, Mauritius, Mozambique and Tanzania, i.e., those countries which are currently meeting most of the requirements for SADC macro-economic convergence. A Customs Union would be built on the implementation by all SADC members of the requirements of the SADC Free Trade Area. Delays with this may delay the preparations for the Customs Union. SADC has also not yet decided upon options for collecting and distributing Customs Union revenues, trade institutions for collecting tariffs, as well as trade facilitation support and development mechanisms. Various potential scenarios for the rationalization of regional membership are outlined in the report.

### ***Other trade negotiations***

Potential trade agreements currently in the pipeline include:

- PTA between SACU and India (expected to be finalized by end-2009)
- PTA between China and SACU (initial discussions underway)

- Trilateral agreement between India, Mercosur and SACU (under consideration)
- FTA with the East African Community (under consideration)

### Trade Agreements by Individual SACU Member States

Outside of SACU most of the intra-SADC trade is still taking place under either Common Market of Southern Africa (COMESA<sup>3</sup>) or bilateral preferences. Following the implementation of the SADC Protocol on Trade, several non-SACU countries (e.g., Malawi, Mozambique and Zimbabwe) renewed “dormant” bilateral agreements to incorporate reciprocal preferences. This points to the continuing importance of bilateral agreements in the region, although not all the agreements are active or extensively utilized.<sup>4</sup> The SADC Trade Protocol does not prevent member states from belonging to more than one preferential trade arrangement. Any pre-Trade Protocol agreements have to be renegotiated to accommodate the Protocol or alternatively they must be discontinued, as any advantage, concession, privilege or power granted to a third country under such arrangements must be extended to other member states according to the MFN principle. This applies to new trade agreements as well with SADC or non-SADC parties.

#### *South Africa's trade agreements*

South Africa has preferential agreements with Malawi, Zimbabwe and Croatia plus a non-reciprocal trade arrangement with Mozambique. At present, it is considering further bilateral deals with Kenya, Nigeria, China, Singapore, South Korea and India in addition to its current bilateral trade agreements with the EU, Mauritius, Kuwait and the United Arab Emirates. However it must be borne in mind that the SADC FTA should ideally supersede bilaterals with other SADC members. Two additional agreements are highlighted below.

**The India-Brazil-South Africa (IBSA) Agreement** was launched in June 2003 as a means to support political consultation and coordination, to strengthen sectoral cooperation and to improve economic relations between the three countries. IBSA aims to promote South-South links, mainly through trade and investment. It operates by way of regular, high level gatherings and bi-annual summits. The three countries have declared their intention to double intra-IBSA trade to US\$15 billion by 2010 and achieve a free trade agreement between India, Mercosur and SACU.

**The Trade, Development and Cooperation Agreement (TDCA)** between the European Union and South Africa was signed in December, 1999 to establish a WTO compatible Free Trade Area by 2012. The EU is to liberalize 95 per cent of its imports from South Africa over 10 years while South Africa has to liberalize 86 per cent of its imports from the EU over 12 years. To protect vulnerable and sensitive sectors on both sides a number of products have been kept outside the ambit of the free trade agreement, and are to be reviewed periodically.

Additionally, free trade agreements are apparently under consideration with Japan and Singapore. Actual negotiations have yet to commence.

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<sup>3</sup> COMESA is made up of 19 states, namely Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda; Zambia and Zimbabwe.

<sup>4</sup> All SACU states are also beneficiaries of the U.S. AGOA (U.S. African Growth and Opportunity Act).

**Other SACU members**

Bilateral trade agreements of other SACU members include:

- Botswana: bilateral trade agreements with India, Malawi, Zimbabwe, Angola, Zambia and the EU
- Lesotho: bilateral trade agreement with Mozambique; as a Least Developed Country (LDC), Lesotho benefits from duty- and quota-free market access to the EU
- Namibia: Preferential Trade Agreements with Zimbabwe (1992) and Angola (2004)
- Swaziland: bilateral trade agreements with Tanzania, Malawi, Mozambique, Zambia and Zimbabwe

**Phasing out of individual member state trade agreements**

Although the 2002 SACU Agreement allowed member states to continue their pre-existing bilateral agreements, normal customs duties apply to products traded under such agreements once exported to other members of SACU that are not party to those agreements. The continued operation of multiple agreements within the Common Customs Area therefore means that each member state has to commit additional human and technical resources to tracking and imposing tariffs on goods imported under such agreements, so as to remain compliant with the provisions of the Customs Union. This burden is heavier for those member states that already face capacity constraints related to customs operations. Even if such measures were applied strictly, their application would undermine the free movement of goods within the Customs Union, thus negating one of the major arguments in favour of a Customs Union. In fact measures to collect duties on such goods would probably outweigh the overall benefits, and so such measures are not consistently applied.

Ideally, therefore, these agreements need to be brought into harmony with the current agreement in order to improve efficiency and to reduce transaction costs. They could be streamlined, rationalized, or a transitional mechanism could be established that provides for phasing out individually concluded preferential agreements in favour of agreements concluded by all SACU members collectively. The SADC Trade Protocol deals with this by allowing such agreements between SADC members at least to continue until such time as the market access conditions under the Trade Protocol become more favourable than the bilateral trade agreements, at which point the bilaterals must be phased out. However, the SACU Agreement does not contain specific provisions to guide the process of phasing out such agreements, although in SADC's case it will be easier as SACU already acts as a unit in the SADC FTA process.

**References to Sustainable Development in SACU RTAs**

From the research conducted for this study, it appears that the greater majority of trade agreements or negotiations undertaken by SACU or its member states tend to focus only on one pillar of sustainable development, mainly the economic aspects of trade. More specifically, emphases are on facilitating market access, expanding trade and promoting regional integration. Poverty alleviation and improvement of living standards are occasionally mentioned in the preambles. Specific poverty alleviation and social development issues and commitments, however, seemingly feature rarely. Only a

few agreements, the SACU-EFTA and the SADC EU-EPA agreements, as well as the text of the failed SACU-US agreement, cover economic, social and environmental aspects of sustainable development. No mention is made in any agreements of the UN Commission on Sustainable Development indicators, the 2002 Jo'burg Plan of Action, or the 1992 Agenda 21 agreement. .

Although there are efforts to address sustainable development at a national level in the region, not much has been done to link trade and sustainable development in formulating regional and bilateral agreements, beyond noting trade's direct impact on specific sectors of the various economies. This raises the necessity for SACU and its member states to link the achievement of Agenda 21 and Johannesburg Plan of Implementation (JPOI) targets to current and future trade negotiations, and integrate socio-economic development and the environment in regional and national trade policies.

### Regional Policy and Institutional Contexts

The 1969 SACU Agreement was renegotiated in 2002 to take account of the new socio-political environment in the region following the demise of Apartheid. The new agreement seeks to build a democratic approach to trade policy while minimizing revenue instability, by means of shared decision-making and a revised new revenue sharing arrangement. While the Agreement that resulted did not explicitly mention sustainable development, it stated that common policies aimed at balanced development are to be adopted in at least four areas: industrial development, agriculture, competition and unfair trade practices. In addition, it requires SACU members to agree on a joint industrial policy.

#### ***The SACU Revenue Sharing Formula***

The Revenue Sharing Formula of the SACU Common Revenue Pool plays an important role in the region in significantly supplementing the budgets of the smaller SACU states. The revenue pool is made up of the customs pool and the excise pool. The total SACU customs pool is divided according to a formula based proportionally on each country's share of total trade within SACU (intra-SACU imports). Due to the fact that South Africa exports much more to its neighbours than it imports from them, the revenue split strongly favours the other states, giving it a strong distributional or developmental aspect. The excise pool is divided in proportion to each country's share of total SACU GDP. The revenue-sharing agreement is essentially a compensatory mechanism to offset the trade-distorting effects for the small states in being in a Customs Union with South Africa, which is massively larger in terms of GDP, manufacturing and export capacity. A high proportion of government revenues in Swaziland, Lesotho and Namibia come from the overall SACU fiscal transfers (Lesotho – 28 per cent, Swaziland – 24 per cent, Namibia – 12 per cent, Botswana – nine per cent). The cost of these transfers to South Africa, the only net donor, is one per cent of its GDP.

This compensatory arrangement is perhaps a key reason for the durability of the customs union. However, South Africa's National Treasury in particular feels that a large proportion of this money should be redefined as development assistance. This approach is opposed by the other SACU member states, as it would no doubt allow the volume of the funds to be reduced once separated from the Revenue Sharing Agreement. It would also give South Africa more discretion over the distribution of funds, whereas at present the other SACU member states are free to use the proceeds from the Revenue Sharing Agreement for any budgetary purpose. The SACU states see the CU as a source of revenue, whereas South Africa sees the regional tariffs as a negligible source of revenue but a useful industrial policy tool. This automatically creates conflict in the regional arrangement.



### ***The SACU Revenue Pool Development Component***

A development component is also provided, funded by 15 per cent of the excise revenue. This is distributed almost equally, with roughly 20 per cent of the funds going to each SACU member state. South Africa funds around 90 per cent of the development component and is the only net contributor. In 2001/02 the Development Fund comprised around eight per cent of the total revenue pool, and the South African contribution totalled R1, 319 billion. The 2007 figure could be in the range of R2 billion. The size of the development component is therefore likely to become increasingly important over the next decade as South Africa continues to liberalize its trade with other non-SACU trading partners.

SACU and CMA financial transfers accounted for some 87 per cent of overall South African government transfers to Africa in 2004. It is possible that the SACU revenue has slowed efforts to diversify the non-South Africa SACU economies, their skills capacity and tax bases, due to over-reliance on one particular financial source.

### ***Towards a common industrial policy for SACU***

In spite of the 2002 Agreement's progressive goals, the character of SACU appears to be changing very slowly, and there does not appear to be movement towards setting up bodies that would initiate and guide the process of harmonizing the SACU industrial policies, although discussion is occurring on agricultural policy harmonization. At present, SACU members still compete for, rather than pool, resources, including international capital. The net effect of this has been a polarization of development, industrial, labour and social policies, as investors negotiate differing agreements with host SACU countries. The absence of any significant mention of SACU or regional policy formation in the new South African Industrial Policy Framework has made the BNLS concerned that South African policy will once again be the dominant policy foundation for the region, and that its SACU member states will remain largely just a market for South African goods.

### ***SACU member states and the Commission on Sustainable Development***

The 2002 World Summit on Sustainable Development (WSSD) resulted in the Johannesburg Plan of Implementation (JPOI), and the JPOI set out the target of each state producing a National Strategy for Sustainable Development (an NSSD). South Africa is at final draft stage (the South African version is called a National Framework for Sustainable Development), and Lesotho is likewise busy with the formulation of a NSDS. Namibia and Swaziland have completed their NSDSs and Botswana has not yet embarked on this process. It is not certain whether these strategies will be harmonized under the SACU umbrella.

## **Outcomes of the Trade Agreements**

The majority of the agreements noted in this report have in common a focus largely on market access, to the exclusion of social or environmental issues. The reasons for this might include:

- A lack of coordination between government departments in each SACU state in preparing country positions prior to negotiations, e.g., the national Environmental Affairs, Social Development and Trade departments not discussing and integrating their priorities. Related to this, different levels of influence of the various departments may affect whose input is prioritized;

## trade knowledge network

- A lack of awareness and/or research into the linkages between trade and sustainable development;
- A lack of capacity, both in personnel and institutional structure, to integrate sustainable development into trade policy;
- A lack of collaboration between government, business and civil society in the run-up to negotiations;
- An unwillingness to insist on adjustment support from the more developed trade partner(s) during negotiations. Similarly, an unwillingness to insist on sufficient resources for and time to implement such support where such support is raised by developed country trade partners.

It is therefore unclear what positive effect the overall trade liberalization has had on the region beyond boosting exports. It is observable that SACU countries have succeeded in terms of having improved access to foreign markets but with both positive and negative implications for the countries.

Market liberalization and elimination of tariffs between trade agreement partners opens up markets for a country's exporters but it also can allow more competitive suppliers to penetrate the country's domestic market. Increased competition from imports due to liberalization can result in reduced production and eventually to job losses if sufficient adjustments are not made in time. Although, in South Africa for example, the labour intensive textiles industry has benefited a lot from trade liberalization, the sector has also been hard hit by liberalization as would be expected, with factory closures and retrenchments. The motor industry in South Africa would also be vulnerable to increased competition if all its support measures were to be phased out. At the same time however, it should be noted that cheaper inputs can benefit domestic manufacturers and even allow them to become more competitive, and increased foreign competition can reduce overpricing by companies that may have a significant share of the market.

SACU countries engage in trade agreements in the hope that the agreements will help them eradicate or alleviate the high poverty incidence in their countries. However, SACU countries are still faced with high poverty levels in their countries and the link between increased trade and decreased poverty does not appear to be a direct one. Another related challenge is persistently high unemployment rates, especially in South Africa. Employment opportunities created by trade liberalization so far have been insufficient to help address or overcome this problem. This reinforces the argument that market access is a necessary but not sufficient condition for the potential benefits of trade to be realized by countries.

The environmental impacts of trade liberalization across the SACU region remain unclear as no research had been undertaken on this issue at the time of writing. In terms of environmental lawsuits against foreign importers, exporters and manufacturers operating in South Africa, it appears that no court cases have been brought in this regard, or equally by BNLS countries against South African companies operating in the SACU region. However, within the BNLS, Namibian trade unions brought a case against a Malaysian textile investor, Ramatex.

## Recommendations and Further Research

In light of the issues noted in this report, the following recommendations are made:

- Trade policies and agreements should be crafted in such a way that they adequately support sustainable development. In addition, sustainable development should be a priority in national and international policies. SACU and its member states thus need to link the achievement of Agenda 21 and the JPOI targets to current and future trade negotiations, and integrate development and the environment in national and regional trade policies. This will require capacity, both in personnel and institutional structure, at national and Secretariat level, to integrate sustainable development into national and regional trade policy.
- In general terms, research should be undertaken by regional institutions into the linkages between trade and sustainable development in the region, and set within the context of current literature and international experiences.
- A set of national and region-wide sustainable development guidelines for trade negotiators should be drawn up based on regional consensus, in order to inform free trade negotiations and align them with national and regional priorities. To this end, a set of overarching regional sustainable development priorities should be drawn up to complement the various NSDSs, and the SACU member states that have not yet completed NSDSs should be encouraged to do so. However, these are only of use if they are consciously incorporated into trade and other national policy.
- SACU countries need to conduct trade sustainability impact assessment studies. These studies are crucial as they enable countries to have sufficient detailed and relevant information on the economic, social and environmental implications of any trade agreement before negotiations are finalized, ideally before they enter any substantive stage. In other words, trade policy-making requires the analytical capacity to negotiate agreements. There needs to be analytical capacity within the government department involved, in academia, the private sector and civil society, capacity within other relevant government departments (e.g., agriculture), in regulatory authorities, in Parliament, and in customs authorities.
- Detailed analysis should be conducted of post-FTA or PTA trade flows to determine whether existing areas of trade deepened or whether new areas of trade commenced, i.e., whether trade widened. This could assist in determining the competitiveness of exporters, their willingness to export and their responsiveness to export opportunities created by the agreements. This could guide future trade negotiations and government trade facilitation interventions.
- Likewise, the development of expertise at a national level capable of identifying institutional and policy development is necessary, specifically changes made necessary by trade reform commitments made at the international level. For example, given the trade liberalization implications of the WTO's current round, what type of intellectual property rights systems, competition law regimes and regulatory structures will promote sustainable development in each particular national context?
- Increased coordination is necessary between government departments in each SACU state in preparing country positions prior to negotiations, for example, a national level Environmental Affairs department, a Social Development department and a Trade department discussing and



integrating their priorities. This process would then have to be replicated at SACU level to harmonize and consolidate the respective national positions prior to (and during) trade negotiations.

- The need for inclusiveness and transparency in trade negotiations agreements is increasingly vital, given the need to correctly align them with national development goals and a broader set of development beneficiaries. Two reforms would be necessary to address this. First, governments (and within governments, trade departments) are often not able to compile comprehensive trade offers that incorporate the many economic and developmental goals of the country due to the number of state and non-state actors involved, interests affected and challenges facing any given state. A comprehensive trade strategy needs to be designed in conjunction with representatives from business, labour, civil society and other government departments. The interests of transparency and inclusiveness need to be balanced so as to safeguard negotiating positions, but the negotiations need to be inclusive in order to be accurate, and to build legitimacy. The opposition to the EPAs is precisely because the agreements are seen as poorly targeted to developmental needs, and unethical in their lack of inclusiveness and transparency. This can lead to enormous opposition to their implementation and potential economic and political liabilities for the governments involved. At stake seems to be the need to protect the sovereignty of national development choices against policy-limiting, but legally binding, agreements.

The second element of this would be that trade agreements must still fall under the oversight of national parliaments, and such parliaments must not be relegated to merely rubber-stamping such agreements, but must be able to interrogate the trade-offs made. Trade agreements must not be even provisionally implemented until such approval is given. This would mean that ratification by parliaments must be mandatory and such ratification must contain the ability to veto aspects of the agreement, that is, power to approve agreements must vest in the legislature, not the executive. The battle in the U.S. over the President's Fast-Track authority is a case in point. Although such a process of parliamentary oversight and final approval would be slower and might entail further rounds of negotiations, the experience of the EU-EPAs and the U.S.-FTAs that have been negotiated over the last five years reveals the dangers for equitable, sustainable development if trade agreement authority is not democratized. This is especially valid given the expansion of trade agreement agendas to non-goods areas such as the "new-generation" or Singapore issues (public procurement, trade in services, investment, food safety regulation, intellectual property, competition policy, etc.).

- It would be useful to establish sectoral bodies at the regional level to represent the interests of various economic sectors across the region, and allow them to effectively represent their interests to governments in the region and SACU itself before and after negotiations in regard to the impact of trade agreements on their respective sectors. The same process should be applied to civil society and its structures and bodies.
- There is a need to establish regional protocols or even institutions that specifically promote sustainable development in order to provide clarity to trade negotiators on region-wide issues, for example a regional standard for Environmental Impact Assessments would be useful and a comprehensive regional environmental policy that is broader than just protected areas.
- Arising from South Africa's ambitious trade liberalization agenda and their potential multi-faceted impact on SACU, it would be good for SACU to develop the capacity to utilize the WTO's Dispute Settlement System, especially given the recent rulings by this body as noted in

the introduction to this report, that is, multiple trade deals raise the potential for abuses of the text of the agreements by businesses both from SACU and the trade partners. Because trade agreements are legally binding, they would need to be accompanied by a system that can process queries from business in the region regarding potential trade dispute cases. Further, official national contact points in each member state for regional WTO coordination, and dispute settlement efforts should ideally be established where necessary. What the preceding chapter on the outcomes of trade agreements shows is that even well-negotiated trade agreements are hard to police if the countries concerned do not have effective regulatory and institutional processes in place. Yet policing them is important if exemptions and vulnerable sector provisions are to be upheld. At the same time, even in sectors where offensive offers have been made by SACU or South Africa, the trade agreement partners are often significantly bigger or more sophisticated economies (e.g., the EU, the U.S., EFTA, India and China), and so such measures would provide a secure environment in which to trade, as well as facilitate other measures such as safeguard declarations if needed. It would also appear very useful for SACU to study the recent decisions of the WTO DSB in this regard.

- Binding adjustment support measures should be automatically included in trade agreement negotiations and the final agreements, and should include a monitoring and evaluation component for assessing their implementation. A point of departure for linking trade and sustainable development could therefore be to include collaborative institution building in developing countries as part of the WTO program of special and differential treatment, and align it with other recent multi-stakeholder initiatives on Trade Related Technical Assistance. Sufficient resources for the effective implementation of such should form part of the agreements. SACU member states should be familiar with the sustainable development outcomes that trade partners may be required by their mandates from their law making bodies (Congress, Parliaments, etc.) to achieve (e.g., in the case of the U.S., the EU and EFTA).

Linked to the recommendations above, and due to the limited size of this study, which precluded these topics from being addressed, some recommended areas for further research could be highlighted:

- Research into a template or list of national and region-wide sustainable development guidelines to assist negotiators during trade negotiations;
- Research focused on institutional development issues linked to the efforts of the WTO program of special and differential treatment in regard to collaborative institution building in developing countries, and incorporating analysis of other recent multi-stakeholder initiatives on Trade Related Technical Assistance (see related footnote above). This should be accompanied by research focused on a template for binding adjustment support-related annexes to be attached to trade agreements;
- An examination of the type and amount of research conducted by government, business and the wider civil society prior to, or during, recent trade negotiations by SACU or SACU member states, in order to establish the level of analysis conducted in preparation for negotiations;
- An examination of the type and amount of intra-government, government-business and government-civil society discussions held prior to, or during, recent trade negotiations by SACU or SACU member states, in order to establish the level of analysis conducted in preparation for negotiations;

- Research into the relationship between the executive and the legislature in the approval and possible renegotiation of trade agreements. Linked to this, research that maps the inclusiveness of the actual negotiations process and the feedback mechanisms between negotiators and representatives from business, labour, civil society and other government departments;
- Analysis into the establishment of region-wide sectoral bodies, standardized SACU Environmental Impact Assessment processes and a SACU-wide Environmental Policy;
- Research focused on the development of SACU's capacity to utilize the WTO's Dispute Settlement System, especially given the recent rulings by this body as noted in the introduction to this report;
- A comparison of the negotiating mandates of SACU's trade partners (especially the U.S., EU and EFTA) with commitments made or undertakings given by these partners during the respective negotiations, including a comparison of what they were required to deliver, from a sustainable development perspective, and what they agreed to, or undertook to agree to;
- Where undertakings or commitments have been made by EFTA, the EU or the U.S. during negotiations, in terms of broader sustainable development issues, a comparative examination of the processes to be followed in the implementation and monitoring of these undertakings would be useful.



## 1. Introduction

*“We believe that trade liberalisation should be [evaluated] against a certain development benchmark which should relate to a specific country development strategy if it is to serve our development agenda.”*

This statement, by Ethiopia’s Trade and Industry Minister, Ato Girma Birru, after the conclusion of the summit for Africa’s Finance and Trade Ministers held in Addis Ababa in early April 2008 to discuss the 2008 Economic Partnership Agreements (EPA)<sup>5</sup> negotiations, highlights the struggle to align trade with developmental concerns. Developing countries are faced with an increasing bilateral and multilateral trade and even regional negotiating agenda. At the same time there is a growing need for developing and developed countries to find a common vision, capacity and strategy to formulate sustainable development within the context of trade policy and practice. This has highlighted the increasing need for objective and accurate information, research, analysis and capacity building, for policy-makers globally. Policy coherence between trade and sustainable development policy is required to address social issues of poverty alleviation, increased access to health, education and income opportunities while ensuring environmental conservation that works in balance with economic and trade development.

This research project, funded by the International Institute for Sustainable Development (IISD), is part of broader IISD efforts to expand knowledge sharing and research with diverse partners globally on trade and sustainable development. This project contextualizes the relationship between the sustainable development policy agenda in the Southern African Customs Union (SACU) region, and regional trade agreements in the SACU region. SACU is comprised of South Africa, Botswana, Namibia, Lesotho and Swaziland.

Within this context, the paper seeks to review the status of regional trade agreements (RTAs) operating in the SACU region and assess the potential for these agreements to positively contribute to sustainable development in SACU, or to frustrate it, and to make recommendations accordingly. SACU is the oldest Customs Union in the world, but issues of sustainable development are as vital for its agenda as for any other regional body of developing countries.

### 1.1 Methodology

The study’s methodology comprised a combination of desk research and interviews with various stakeholders. The desk research included a mapping exercise to determine what trade agreements existed, which were currently being negotiated and which were in the planning stages. Literature pertaining to the three categories of agreements was analyzed.

Two trips to SACU states other than South Africa were conducted between September and October 2007. Interviews were conducted with relevant institutions and stakeholders involved in trade- and/or sustainable development-related research. A smaller set of interviews was conducted with relevant South African stakeholders.

The first draft of the paper was presented at a workshop in February 2008 to discuss the findings with the stakeholders interviewed during the course of the field trips. The information and feedback gathered during the workshop was then incorporated into the report.

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<sup>5</sup> EPAs are regional trade agreements between the European Union (EU) and African, Caribbean and Pacific (ACP) countries that are meant to replace the Cotonou Agreement between the EU and the ACP countries. For further details, see Section 4.3.3.

## 1.2 Scope

Following a review of the conceptual linkages between trade and sustainable development (Chapter 2), the study outlines some of the key sustainable development challenges facing the SACU region using a range of indicators and perspectives, including macro-economic, trade and human development indicators (Chapter 3). The study then examines the status of the various bilateral and regional free trade agreements in the region, whether existing, under negotiation or planned (Chapter 4). Chapter 5 provides a more in-depth analysis of certain aspects of the 2002 SACU agreement that are thought to be particularly relevant in terms of developmental impacts.

Chapter 6 examines the outcomes of the discussed trade agreements for sustainable development. Due to scarcity of data, the study was unable to assess the broader sustainable development impacts of the agreements, such as poverty reduction, environmental impact, health and education and infrastructure development, except in a few instances. Rather, the study primarily focuses on the actual and potential sustainable development outcomes of the discussed trade deals in terms of the expansion of trade and improvements in market access. In addition, the impact of various trade agreements on regional integration in SACU and the broader region is explored. The study concludes with a set of recommendations and possible areas for further research.

## 2. Linkages between Trade and Sustainable Development

The debate on the advantages and disadvantages of trade liberalization, and its interaction with the environment specifically, has often been too narrowly conceptualized within two models and schools of thought, whereas many schools of thought exist.<sup>6</sup> Amongst the many approaches, two have often been overemphasized as the key approaches to the field. Trade liberalization has been portrayed as either the saviour of the environment or its destroyer (Cosbey, 2004c, p.1). The main arguments of the “trade liberalization as destroyer” model are that trade liberalization increases the scale of economic activity and increased economic activity means increased use of scarce natural resources, more waste materials and more pollution. Secondly, trade liberalization may result in certain types of environmental problems associated with the transport of goods and damage from imported invasive species. Lastly, trade liberalization, by constraining the actions of governments, may reduce the policy space within which national governments attempt environmental management.

The main argument of the “trade liberalization as saviour” model is that trade liberalization leads to increased trade. This then results in increased economic activity and increased economic activity results in higher incomes. People with higher incomes are then able to afford higher environmental standards and more inclined to demand such standards. Attempts were also made to quantify these relationships to show that environmental damage rises as income increases from a low level, and then slows, and finally falls again as income increases beyond a certain threshold level.

However, both models have been criticized in important respects—the “destroyer” model seemingly fails to account for the significant effects of increases in income resulting from increased trade. In developing countries, where it is possible that increased resources are needed to tackle environmental management, this is very relevant.

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<sup>6</sup> The arguments in this section are drawn largely from Cosbey (2004a, b and c) and Halle (2006).

The “saviour” model, on the other hand, seemingly ignores the fact that some sorts of environmental damage are irreversible, and that many types of environmental damage are far cheaper to prevent than to clean up. These two facts go against the idea that economies can be left to pollute while they grow. The empirical attempts to quantify this model have also been thoroughly discredited. By focusing the debate on just trade and the environment, analysis is usually limited to what impacts trade has on the environment, or what might be the impacts on trade flows of environmental regulations. The broader picture of the development aspects of the trade-environment relationship is often then left out of the analysis (Cosbey, 2004c, p. 2–3).

Although both models have evolved in recent years to counter their critics, a third school of thought has developed that conceptualizes the trade-environment relationship as a trade and sustainable development relationship. Sustainable development as a concept has its roots in the 1980s, when the 1987 UN Commission on Environment and Development Report (the Brundtland Report) outlined a need for “development that meets the needs of the present, without compromising the ability of future generations to meet their own needs.” The report further highlighted that such an approach “contains within it two key concepts: the concept of ‘needs,’ in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs” (cited in Cosbey, 2004c, p. 3).

Sustainable development also entails a fair and equitable distribution of the benefits of development, improved well-being for citizens and respect and care for the environment (Jules, 2005, p. 1). The term “development” itself is described in the UN Declaration on the Right to Development as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and the fair distribution of benefits resulting there from” (OHCHR, 2000, p. 4, cited in Jules, 2005, p. 5). The WTO has also included the linkages in its official pronouncements, with paragraph 6 of the Doha 4th Ministerial Declaration, acknowledging that “not only can open trade and sustainable development be compatible and mutually supportive, they must be” (Halle, 2006, p. 2).

Making sustainable development the ultimate objective of trade allows for the linking of economic growth and environmental management. It also highlights the importance of pursuing both economic growth and poverty reduction at the same time and allows a broader set of interventions to address the objectives of both trade and the environment. This is not to say that the links between trade and the environment should not still be retained and investigated, as to ignore these links is to misread the full extent and nature of globalization and to miss out on critical opportunities to address pressing environmental challenges faced by the world. This emphasis is being considered anew; for example, the Global Ministerial Environment Forum (GMEF) of the United Nations Environment Programme (UNEP) selected environment and globalization as one of its areas of focus for its February 2007 meetings (Najam *et al.*, 2007: 1).

In other words, the linkages between trade and the environment remain very relevant, although developing countries have been cautious about environment in the WTO. This is partly because they fear that it will be used for protectionist purposes by those countries with more demanding environmental requirements. Environment is also viewed as an area where the developed countries have a comparative advantage. At the same time, issues of limited capacity in handling a complex and overloaded WTO agenda mean developing countries are reluctant to see the agenda complicated further



by what most regard as unrelated topics. Finally, although aware of the importance of environmental management, many developing countries resist attempts to push environment higher on the trade agenda when so many issues of greater priority to them remain unresolved (Halle, 2006, p. 1).

It is important to fully unpack the definition of a relationship between trade and sustainable development when utilizing this as an analytical tool. The standard understanding is that economic growth, if it is environmentally sensitive, or overseen by a strong regime of environmental management, leads to sustainable development (Cosbey, 2004c, p. 4).<sup>7</sup> Yet it is not automatic that economic growth leads to economic development, let alone sustainable development. GDP growth may not necessarily lead to improvements in acceptable distribution of income, literacy, nutrition, education, or a number of other non-income elements. For example, Equatorial Guinea currently ranks as sub-Saharan Africa's third largest crude oil producer and has had double-digit economic growth for several years, although the population seemingly enjoys little of the wealth generated. Most live in poverty and the country ranks 127th out of 177 countries in the UN Development Programme's human development index rankings, despite a per capita gross domestic product (GDP) of US\$7,874, making it the 73rd richest country in the world by GDP.

This is why alternative measures of human welfare such as the UNDP's Human Development Index were devised— composites of many diverse indicators were created of which only one is per capita GDP. In the same vein, trade too may not automatically lead to sustainable development. In most cases, it is probably more accurate to say that the objectives of trade deals, if judged by their final outcome, seem more about political compromises than advancing sustainable development (Cosbey, 2004c, p. 7). South Africa's WTO delegation head noted in late 2007 that developing countries had to "safeguard policy flexibility" when negotiating at the WTO, in order to ensure that they have the flexibility, at a national level, to pursue certain priorities, such as industrial development. He added that it is common developmental practice globally for trade policy to serve industrial policy in this way (Creamer, 2007).

In addition, U.S. and EU trade negotiators appear to have identified local health and safety and bio-safety regulations as obstacles when negotiating new FTAs, in order to facilitate access to markets that have been inaccessible due to domestic food safety regulations. By linking acceptance by the target market of lower standards for U.S. imports to the successful signing of a FTA, the developed countries are able to bypass local regulations that otherwise would not be up for negotiation. An example is the recent US-South Korea FTA, where beef inspection standards in South Korea are higher than in the U.S., and had led to bans on less stringently inspected U.S. beef imports. The U.S. successfully insisted that U.S. inspections regimes replace the South Korean ones, thereby allowing U.S. beef imports to resume as a component of the new US-Korean FTA.<sup>8</sup> The FTAs in question have therefore permanently reduced the policy space of the developing country trade partners in an area previously less exposed to foreign pressure, namely food safety. This is in addition to the fact that local producers are often not able to compete against food products from the U.S. and EU that are still highly subsidized.

<sup>7</sup> This apparently is the standard understanding used by the WTO, and also by such NGOs as the IISD, IIED, Oxfam and others. It forms the foundation for their calls for the lowering of barriers to developing country exports, so as to advance sustainable development (Cosbey, 2004, p. 3).

<sup>8</sup> Further examples include El Salvador, Honduras and Costa Rica, which have long-standing zero tolerance policies on salmonella, which effectively prohibit imports of raw poultry from the United States. However in other cases involving developing countries, the developed country may offer technical assistance to allow the developing country to raise the standards of exported food products, which can raise the quality and safety of the exported product.



Another concern is that trade agreements are often concluded without public participation or awareness, thereby undermining the legitimacy of the agreements. Even in countries where trade negotiations are undertaken by democratically elected governments, the national parliaments often do not play any significant oversight role, and stakeholder involvement in negotiations by business and civil society is limited, meaning that trade agreements are often unrepresentative of the country's broader political and business opinion. Given the increasing scope and non-goods impact of trade agreements—the so-called new-generation issues of government procurement, trade in services, etc.—it means that legally binding arguments with direct policy implications are being signed without the consent of many stakeholders and citizens whose lives will be directly impacted by the implementation of such agreements.

Even within the U.S. itself, one of the greatest proponents of free trade agreements, there is growing disquiet at the evidence that free trade has mostly benefited trading companies, but harmed even U.S. citizens' livelihoods. A consequence of free trade agreements also appears to be increasing inequality (Carlsen, 2007), although it is also possible that this could be function of rapid economic growth where spending on public welfare has not matched economic growth. An element of the inequality may then be due to political decisions and related budget spending priorities, as noted in the Equatorial Guinea example above. A direct causal relationship is difficult to establish empirically due to the number of intervening factors, but what is clear is that even in nations where growth has occurred, the gap between the rich and poor has grown faster than efforts to alleviate it. Income inequality in the U.S. climbed again in 2005, to where the top ten per cent received nearly 50 per cent of income. Positive evaluations of FTAs cite increases in trade as proof of trade policy success. Although trade liberalization may lead to an increase in trade volumes, it is not a measure of how the policy has functioned within overall economic policy to improve the standard of living of the general population. Critics of free trade negotiations<sup>9</sup> are calling for a moratorium on FTAs and non-renewal of U.S. Presidential Fast-Track authority<sup>10</sup> (Carlsen, 2007). Supporters claim that FTAs increase the opportunities available to developing countries, create certainty in regulatory and policy regimes and allow them to increase their integration into the global economy. Opponents claim that the NAFTA model is restructuring economies, communities and foreign policy for the worse in the U.S. and its FTA partners. They maintain that a long-term view toward sustainable trade policy must take into account its effect in U.S. society and in other parts of the world, where FTA agreements are sometimes criticized as divisive and prejudicial to the poor (Carlsen, 2007).

In the same way, the process and content of EPAs, the other great wave of FTAs currently occurring globally, is increasingly leading to criticism of the EU and scepticism of its role as a fair partner in global development. Although seemingly focused on development, critics maintain that the process has been captured by mercantilist (i.e., purely economic) interests in the EU.

Rather, trade and its liberalization require the intervention of governments, multilaterals and civil society to ensure that the end result is sustainable development. So the question is, **how can trade and trade liberalization advance sustainable development?** A key ingredient would seem to be strong domestic institutions, not just restricted to environmental management institutions. The influence however extends both ways, trade liberalization has the potential to strengthen or undermine domestic

<sup>9</sup> The FTAs passed by or currently before the U.S. Congress have been criticized for their potential negative impacts: Peru FTA—impact on small and medium sized enterprises, violation of indigenous rights and impact on development policy tools; Panama—meat import standards and labour issues; Colombia—workers rights and restrictive pharmaceutical patents; and South Korea—displacement of small farmers, and loss of labour rights.

<sup>10</sup> The authority of the U.S. President to negotiate trade agreements that the U.S. Congress can approve or disapprove but cannot amend.

institutions, and not just be influenced by them. In a 2004 paper, the IISD's Trade Knowledge Network (Cosbey, 2004c) argued that if a country is to fully exploit the opportunities offered by liberalized trade a number of domestic elements are necessary, such as adequate physical infrastructure for export, access to credit at stable and reasonable interest rates for exporters and a level of macroeconomic stability.

Taking this further, and thereby linking trade to sustainable development, if a country wants to utilize the full potential of trade liberalization to promote sustainable development it will have to not only focus on institutions and measures that support trade, but simultaneously focus on other institutions with aims broader than economic growth, that is, those institutions that support overall national development, such as a strong public education system, public health provision, a healthy finance and credit system, some level of public law and order, democracy and other civil rights, and a strong system of environmental management (Cosbey, 2004c, p. 8). The paper based its argument on the work of Nobel Economics Prize winner Amartya Sen, who identified a set of interrelated freedoms necessary for individual human potential to be fully realized.

In other words, **trade does not happen in a vacuum**, and trade is not obviously conducted just for trade's sake—it is presumably conducted to advance economic growth, and economic growth is generally targeted to support the overall development of a nation. Likewise consensus is necessary on the position that sustainable development is the proper goal of the global trading system, and of trade liberalization (Cosbey, 2004a, p. 59). Without such a consensus, it is unlikely that trade can be made to serve more than the narrow interests of various sectors and actors involved in trade nationally, regionally and globally, yet trade negotiation outcomes often impact not just the immediate sectors and interest groups but the broader economy and society. Specific trade negotiations fall under national trade policy that in turn is a component of national development policies, thus consensus within societies and across regions on the hierarchy or order of these linkages must be achieved. An interesting aspect to this is that a number of decisions of the WTO Dispute Settlement Body (DSB) in recent years<sup>11</sup> have clarified the need for trade policy to be consistent with other policy arenas, both domestic and international. This is a departure from the approaches used to defend GATT obligations. The trade policy community can seemingly no longer ignore the values, laws and practices agreed by states in other policy arenas, or act as if these values, laws and practices do not apply inside the arena of trade policy. As the scope of trade liberalization and trade policy has expanded beyond the scope of border measures and manufactured goods to address key priorities of domestic policy, so the dispute settlement system has evidently taken account of the overlap between trade policy and regulation, and relevant policy and regulation in other areas. Trade law, on its own, is seemingly too narrow to deal with the complex relationships between trade policy and the domestic policy arena (Halle, 2006, p. 8).

The WTO Appellate Body has established that trade law will be interpreted in light of the intentions that States have set out in trade policy bodies and related institutions, including institutions relating to other broader aspects of domestic policy. Importantly, the Appellate Body has shown that it considers sustainable development to be of central relevance in determining both the context in which the trade rules play out and the overall goal that the trade rules are intended to advance. This may help determine the path WTO must take in the future (Halle, 2006, p. 9).

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<sup>11</sup> *United States – Import Prohibition of Certain Shrimp and Shrimp Products (Complaint by India, Malaysia, Pakistan and Thailand)* (1998), WTO Doc. WT/DS58/R (Panel Report); *United States – Standards for reformulated and conventional gasoline (Complaint by Brazil and Venezuela)* (1995), WTO Doc. WT/DS4; *European Communities – Measures concerning beef and beef products (Complaint by US)*, (1996) WTO Doc. WT/DS26; *European Communities – Measures affecting asbestos and products containing asbestos (Complaint by Canada)*, (1998), WTO Doc. WT/DS135.

Such developments reinforce the position that trade and trade policy cannot be the central feature of development, and Rodrik (2001, cited in Cosbey, 2004c, p. 9) noted that no country has developed simply by opening itself up to foreign trade and investment. The example of evidently successful nations in Asia and East Asia, amongst them South Korea and Japan has been to combine the opportunities offered by world markets with domestic investment and institution-building strategies to support and invigorate domestic entrepreneurs, in the framework of partial and gradual opening up to imports and foreign investment. Within the regions there are differentiated approaches to this however, as evidenced by the paths followed by Singapore and Taiwan.

**The key to locating trade liberalization within a country's development context would be to tailor liberalization packages to the needs of the particular country.** This would mean overcoming the bias against special and differentiated treatment in multi-lateral (World Trade Organization) negotiations (Cosbey, 2004c, p. 9), although it should be easier to insist on such customization in bilateral negotiations. However in region-to-region bilateral negotiations or those with large trading partners (e.g., with the EU or the U.S.), developing states have often preferred to submit joint offers, fearful that individual offers would mean holding their own in negotiations with a much larger trade partner. Case-by-case treatment is supported by research, which shows that the linkages between trade and the environment, and by extension between trade and sustainable development, are very complex. Trade, and trade liberalization, can be both good and bad for the environment at the same time. The final impacts in a particular country will depend on, amongst other factors, the sector's economic characteristics, the domestic institutions for managing trade and investment, the strength of allied institutions such as regimes for environmental management, and the details of the liberalizing agreement (Cosbey, 2004b, p. 1).

Such complexity supports a view that high levels of standardization of sustainable development and trade interventions should be the exception rather than the rule. The point to bear in mind is that trade must serve the needs of development,<sup>12</sup> and is essentially just one of a range of tools in this regard. As such it must then be integrated into a country's developmental strategy, which would necessitate arguing for special protections and exemptions for key agents of domestic economic growth such as specific industries and sectors, although this raises the risk that special interests could capture the process, especially in a context of weak institutional capabilities. A clearer conception of the role of trade requires that institutions supportive of broader development, such as public service providers (e.g., water and health), not be subordinated to the goal of improving purely economic trade efficiencies, as occurred under structural adjustment programs in the 1980s and 1990s.

Yet it should be noted that the existing WTO practice of special and differential treatment is not broad enough. It is essentially limited to extending time frames for the implementation of agreements, technical assistance and affirming non-binding best effort commitments for treating developing country development favourably. To be of greater assistance and allow significant options, special and differential treatment should dictate that a given country should not have to undertake obligations if it would not be able to benefit from them due to its domestic context. Supply constraints, the level of competitiveness, the social costs and the institutional capacity could be used as indicators. In terms of institutional capacity—if a country has not yet established an independent regulatory authority for telecommunications, it should not be expected to privatize the sector (Cosbey, 2004a, p. 56).

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<sup>12</sup> Although the liberal argument for freedom to trade as an individual right could be raised, it would have to be compatible with the right to a sustainable future and equitable development, as articulated by the UN and the WTO (see previous sub-section).

However it would also be necessary to guard against special interest groups or “free-riders” capturing the process in order to shield inefficient and burdensome sectors from foreign competition. In other words, where a sector is capturing scarce state resources out of proportion to its contribution to the economy, that is, where a sector holds a greater market share than it should given its efficiencies, and where this sector is able to do this because it is protected due to the political influence it has secured with provincial or national political elites or the overlaps in ownership with such elites. Efforts to restrict such “free-riding” would however need to be balanced with efforts to support sectors that are admittedly economically marginal in their contribution to the economy and that would not survive without protection, but which provide other positive benefits, such as promoting downstream employment, indigenous knowledge formation, innovation or retention, or which contribute to the social or cultural well-being of society or the price stability of an essential resource, such as bread. The nature of such protection must be that it is a component of industrial policy and not a result of cronyism or corruption though. Of course the cost of such protection to the greater economy and the size of the sector concerned would need to be factored into the equation to provide a cut-off point for such ongoing state support.

A point of departure for linking trade and sustainable development could therefore be to include collaborative institution-building in developing countries as part of the WTO program of special and differential treatment (Cosbey, 2004c, p. 10), and align it with other recent multi-stakeholder initiatives on Trade Related Technical Assistance.<sup>13</sup> Such allowances could extend to countries’ obligations by exempting them from certain undertakings until institutions are domestically strong enough. This could also form a feature of bilateral trade negotiations; it is notable that funding for trade facilitation has been a key demand of ACP countries under the Economic Partnership Agreement (EPA) negotiations.

A concluding point would be to highlight that the relationships involved in these matters are complex. In many cases, countries do not even manage to work out the economic implications of trade negotiating scenarios before signing agreements, let alone the web of linkages underlying the few issues examined. This is compounded by the fact that, in many cases, to assess the detail involved would entail a commitment of time and resources, which institutions may not have. However, the first step would be to agree that the goal of such knowledge and analysis is legitimate. Then stakeholders can turn to the pragmatic matter of how best to approach this goal.

The concept of sustainable development has increasingly been recognized and formalized within the United Nations and by its members. A brief history of this process is provided in Box 1.

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<sup>13</sup> The recent collaboration of the WTO, the International Trade Centre, UNCTAD, the World Bank, the International Monetary Fund and UNDP: the ‘Integrated Framework for Trade-Related Technical Assistance’ is an example. Another is the Joint Integrated Technical Assistance Programme to Selected Least Developed and Other African Countries, a joint effort of the WTO, UNCTAD and the International Trade Centre (Cosbey, 2004c: 57).

### Box 1: The United Nations Commission on Sustainable Development

The United Nations Commission on Sustainable Development (CSD) was formed in December 1992 as a high-level commission on sustainable development in the United Nations (UN) and with the mandate of ensuring effective implementation of the outcomes of the United Nations Conference on Environment and Development (UNCED) in 1992, i.e., Agenda 21. As such, CSD provides a forum for considering issues relating to the three core elements of sustainable development (namely economic, social and environmental). In 2002, the World Summit on Sustainable Development (WSSD), which resulted in the Johannesburg Plan of Implementation— agreed there was a need to enhance the role of the CSD to focus on “reviewing and monitoring progress in the implementation of Agenda 21 and fostering coherence of implementation, initiatives and partnerships.” This was manifest in the 11th session of the CSD (CSD 11), which agreed to review the implementation of Agenda 21 and the Johannesburg Plan of Implementation on two-year cycles. The reports are required to review a country’s progress in the implementation of programs relating to specific themes selected over the designated two-year period (South Africa CSD 16 Review Report, 2007: 1). The two-year implementation cycle is divided into a first year of technical review sessions, followed by a second year of policy sessions.

The previous overall report that was prepared for CSD-14 in 2006 focused on issues relating to the thematic cluster of Industrial Development, Climate Change, Air Pollution and Energy for Sustainable Development. The CSD-16 in May 2008 will focus on the thematic cluster of Agriculture and Rural Development, Land, Drought and Desertification and Integrated Water Resource Management (South African NFSD, 2007: 23).

The Johannesburg Plan of Implementation (JPOI) also set out the commitments and priorities for action on sustainable development in specific areas and established 37 negotiated targets, including the target of each state producing a National Strategy for Sustainable Development (an NSDS), as stated in Paragraph 162 of the Plan: “States should take immediate steps to make progress in the formulation and elaboration of national strategies for sustainable development and begin their implementation by 2005.”

The NSDSs actually originated at the United Nations Conference on Environment and Development in 1992, with Chapter 8 of the Conference’s Agenda 21 that should build upon and harmonize the various sectoral economic, social and environmental policies and plans operating in each country. Five years later, the 1997 Special Session of the General Assembly again noted the importance of national strategies and set a target of 2002 for their formulation and elaboration. In 2002, the World Summit for Sustainable Development (WSSD) then urged states not only to take immediate steps to make progress in the formulation and elaboration of national strategies for sustainable development but also to begin their implementation by 2005. Integrating the principles of sustainable development into country policies and programs is also one of the targets contained in the United Nations Millennium Declaration to reach the goal of environmental sustainability (UN Division for Sustainable Development website, 2007).

Lastly, many methodologies could apply to defining and measuring issues pertaining to sustainable development, and many aspects of sustainable development could be prioritized. However, consensus was reached in two areas: on developmental goals and on indicators to assess and track sustainable development. First, in 2000 a particular set of goals and targets, in the form of the Millennium Development Goals (MDGs), was agreed to. The MDGs serve as an analytical tool to illustrate the developmental challenges facing developing countries. Eight MDGs were formulated, namely:

MDG 1: eradicate extreme poverty and hunger

MDG 2: achieve universal primary education

MDG 3: promote gender equality and empower women

MDG 4: reduce child mortality

MDG 5: improve maternal health



MDG 6: combat HIV/AIDS, malaria and other diseases

MDG 7: ensure environmental sustainability

MDG 8: develop a global partnership for development.

The National Strategies for Sustainable Development noted earlier run together with the MDGs, and do not obviate them. Apart from their commitments in the JPOI, countries are supposed to adopt goal-oriented policies and national development strategies to meet the MDG targets.

The second area of international agreement has been in developing a set of indicators to encapsulate and track sustainable development. Chapter 40 of the 1992 Agenda 21 called on countries and the international community to develop indicators of sustainable development. Such indicators are needed to increase focus on sustainable development and to assist decision-makers at all levels to adopt sound national sustainable development policies.

The WSSD JPOI, CSD-11 and most recently CSD-13 encouraged states to conduct further work on indicators for sustainable development in line with national conditions and priorities. CSD-13 further invited the international community to support efforts of developing countries in this regard. A third revised CSD indicator set was therefore finalized in 2006 by an expert group of indicator experts from developing and developed countries and international organizations. The 2006 CSD indicator set is based on two previous editions, which were developed, improved and extensively tested as part of the implementation of the Work Programme on Indicators of Sustainable Development adopted by the CSD at its Third Session in April 1995 and presented to the CSD in 2001. The third revised set consists of a group of 50 core indicators, which are part of a larger set of 96 indicators of sustainable development. These indicators and their detailed methodology sheets have been made available as a reference for all countries to develop national indicators of sustainable development. A list of the indicators is annexed to this report.

### 3. Trade and Sustainable Development in the SACU Region

It is necessary, having illustrated the theoretical background to these issues, to highlight in turn the specific trade and sustainable development context facing the SACU region itself. This section seeks to outline and illustrate some of the key sustainable development challenges facing the SACU region by examining the region using a range of indicators and perspectives, namely macro-economic and trade indicators; and primary UNDP indicators.<sup>14</sup>

<sup>14</sup> Various World Bank and UNDP indicators have been used, covering some aspects of sustainable development. For reference, a full set of UNDP country indicators for the SACU member states may be accessed online at the following webpages:

South Africa – [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_ZAF.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_ZAF.html)

Botswana – [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_BWA.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_BWA.html)

Namibia – [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_NAM.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_NAM.html)

Lesotho – [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_LSO.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_LSO.html)

Swaziland – [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_SWZ.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_SWZ.html)

### 3.1 Background of the Southern African Customs Union

The Southern African Customs Union is comprised of South Africa, Botswana, Namibia, Lesotho and Swaziland. The SACU Secretariat is located in Windhoek, Namibia.

Figure 1: Map of SACU within Africa



Source: The World Bank, 2008

SACU is a full customs union, with a common external tariff and is the longest existing customs union in the world. The earlier versions of this agreement (1910 and 1969) provided for duty-free and quota-free movement of goods between member states while maintaining a common external tariff for non-member states. Historically, SACU was administered by South Africa, through the 1910 and 1969 Agreements. The customs union collected duties on local production and customs duties on members' imports from outside SACU, and the resulting revenue was allocated to member countries utilizing a revenue-sharing formula.

This has been continued in the new agreement (negotiations to reform the 1969 Agreement started in 1994), which was signed in 2002 and has been in force since 2004. The agreement aims to *inter alia* facilitate the cross-border movement of goods between the territories of member states and:

- create effective, transparent and democratic institutions that will ensure equitable trade benefits for member states;
- enhance the economic development, diversification, industrialization and competitiveness of member states;
- promote the integration of the member states into the global economy through enhanced trade and investment;
- promote the equitable sharing of revenue arising from customs, excise and additional duties levied by member states; and
- facilitate the development of common policies and strategies.

The 2002 agreement set in place a new institutional framework for SACU, although not all the elements of this have been capacitated and activated yet. A SACU Tariff Board and Tribunal will be operational

by March 2009 (SACU Presentation, March 18, 2008).<sup>15</sup> Under Article 31 of the new agreement, dealing with trade relations with third parties, all SACU member states must approve of any new agreements. The Article sets out the following:

- member states may maintain preferential trade and other related arrangements existing at the time of entry into force of the Agreement;
- member states shall establish a common negotiating mechanism in accordance with the terms of reference to be determined by the Council...for the purpose of undertaking negotiations with third parties; and
- no member State shall negotiate and enter into new preferential trade agreements with third parties or amend existing agreements without the consent of other member states.

This means that all agreements negotiated prior to the 2002 Agreement can remain in place, but SACU also agreed that any provisions that clash with the 2002 Agreement must be renegotiated.

For the purposes of trade agreement negotiation, a Common Negotiating Mechanism (CNM) is being established. The CNM's objectives are: to develop proper and common mechanisms for trade negotiations; to raise the profile of trade policy in the Customs Union; to link SACU trade negotiations to SACU policy harmonization initiatives; where possible, to use ongoing negotiations with third parties to help in realigning member's policies; and to promote balanced economic growth within the Customs Union. SACU has embarked on an international benchmarking exercise in this regard and plans to establish a formal institutional structure using pooled, ad-hoc resources. Trade negotiations will be coordinated under a chief negotiator. To take the process forward, the following steps have already also been taken:

- the new 2002 SACU Agreement was notified to the WTO under Article XXIV of GATT (1994) on June 25, 2007;
- a draft annex on CNM has been developed and submitted to SACU Council for adoption;
- common negotiating positions on all trade areas under discussion are being developed;
- provision has been made in the CNM Annex for a common trade strategy; and
- current negotiations are already conducted as SACU with a SACU member state appointed as lead negotiator.

SACU and its member states are involved in a number of trade agreements with other countries or regions, with its trade agenda focused on fostering closer relations with these countries or regions; expanding trade and investment; enhancing economic stability; promoting regional integration and regional cooperation; and contributing to the social and economic development of SACU's people.

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<sup>15</sup> Commentators (Interview data, November 2007) have queried what the court of final appeal would be for decisions of these bodies, noting that a regional legal vacuum currently exists in this regard. A related question is whether the Tariff Board Rulings would become case law, thus making it a quasi-judicial organ.



All SACU countries are members of the Southern African Development Community (SADC) and are signatories to the World Trade Organization (WTO). SACU members have been and are still eligible for non-reciprocal preferential treatment under the Generalized System of Preferences (GSP). The member states were also all eligible for preferences under the trade component of the Cotonou Agreement with the EU, which expired on December 31, 2007 and is in varying stages of replacement by Economic Partnership Agreements (EPAs) with the European Union (EU). SACU member states are also all eligible to participate in the U.S. African Growth and Opportunity Act (AGOA) and have all utilized this initiative to increase their clothing and textile exports to the U.S. In addition, a Common Monetary Area (CMA) also exists between South Africa, Namibia, Lesotho and Swaziland. The CMA is based on the South African Rand, and the currencies of Namibia, Lesotho and Swaziland are further pegged to the Rand.<sup>16</sup>

Existing regional trade agreements or negotiations include a free trade agreement with the European Free Trade Association (EFTA) and a preferential trade agreement with Mercosur. Furthermore, SACU countries are members of the SADC EU-EPA group, which is negotiating an agreement with the EU under the proposed EPA framework, although this is not a uniform process, as elaborated below under the section on EPAs. It is also engaged in renewed negotiations with the United States (under the auspices of a SACU-US Trade and Investment Cooperation Agreement) and may embark on negotiations with China and India, and the East African Community (EAC), as well as deepening its relationships with Mercosur, Brazil and India.

### 3.2 Macro-economic and Trade Indicators in SACU

While the other SACU members are much smaller in population and GDP than South Africa, they have generally experienced higher growth rates in the last decade and a half and in the case of Botswana, have a higher level of GDP per capita. The total population of SACU was 53.6 million in 2006.

Over the past two decades, Botswana has experienced much higher growth rates than all other SACU member states based on the successful utilization of its diamond reserves (Kirk & Stern, 2003, p. 4). The mining industry dominates the economy, although its share has been declining as trade, financial and government services expand. Manufacturing accounts for less than five per cent of GDP.

Lesotho remains one of the poorest economies in the world with a GDP per capita of less than \$260 in 2005. It is heavily dependent on remittances from migrants working in South African mines, though the numbers employed have declined over the past decade as the mining sector has declined in South Africa. Since 2000, Lesotho has attracted significant private sector investment in textiles and clothing aimed at exporting to the United States under AGOA preferences.

Swaziland is largely an agricultural economy and over 50 per cent of the population are employed in this sector. Sugar production and processing is the largest single industry, followed by the country's large forestry reserves. Other export commodities include coal, asbestos, cotton and diamonds. The

<sup>16</sup> Under the CMA, SA shares the Rand's seigniorage (revenue earned by a state from the issuing of currency) with Lesotho and Namibia, but not with Swaziland or Botswana. Seigniorage is the difference between the cost of issuing money and its actual value, and is a useful source of revenue for governments. The CMA seigniorage is not used to fund any SACU institutions or activities. Namibia joined SACU at its independence in 1990. Although a large country geographically, much of the country is desert and the economy is dominated by mining, fishing and ranching, although sustainable game products have recently started to eclipse the fishing and small scale cattle farming sectors in size and earnings.

manufacturing sector grew strongly as a result partly of South Africa's economic isolation in the 1980s but many of these strategic investments moved to South Africa after the advent of democracy there. Since 2001, Swaziland has attracted investment from Taiwan focused on supplying clothing to the U.S. using the AGOA preferences.

Namibia joined SACU at its independence in 1990. Although a large country geographically, much of the country is desert and the economy is dominated by mining, fishing and ranching, although sustainable game products have recently started to eclipse the fishing and small scale cattle farming sectors in size and earnings.<sup>17</sup> Diamonds constitute the largest component of the country's total exports, but most Namibians work in the commercial or subsistence agriculture sectors. Growth in future is expected to come from manufacturing and game and bio-products. Namibia has also benefited from AGOA preferences on clothing and textiles (Kirk & Stern, 2003, p. 1).

The South African economy is also based on significant extraction and beneficiation of natural resources, but is much more diversified than any of the other SACU members. This is shown in that mining and agriculture constitute a relatively small share of total GDP, but mineral, metal and agriculture products dominate exports. The manufacturing sector's growth has not matched that of the services sector, which now represents more than 65 per cent of GDP.

All the member states of SACU are also members of the Southern African Development Community (SADC<sup>18</sup>), and outside of the SACU Agreement itself, the SADC trade agreements are the most significant African trading arrangements that all SACU member states participate in. As such, it is useful to place the SACU states in context by illustrating some of the regional indicators for Southern Africa as an overall region. This gives the reader a sense of the developmental challenges that apply to the broader southern African region, and it would encompass for example Angola, Mozambique, Zambia and Zimbabwe as well. Thus, in this section, statistics are often provided for SADC rather than just SACU.

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<sup>17</sup> Interview data, October 2007.

<sup>18</sup> The Member States of SADC are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

**Table 1: SADC population, area, aid and GDP indicators, 2005**

	Population (m)	Urban population (% of total)	Surface area (sq km)	Aid (% of GNI)	GDP per capita (PPP)
Angola	15.9	53.3	1,246,700	1.5	2,335
Botswana ➤	1.8	57.4	581,730	0.7	12,387
DRC	57.5	32.1	2,344,860	26.9	714
Lesotho ➤	1.8	18.7	30,350	3.9	3,335
Madagascar	18.6	26.8	587,040	18.7	923
Malawi	12.9	17.2	118,480	28.4	667
Mauritius	1.2	42.4	2,040	0.5	12,715
Mozambique	19.8	34.5	801,590	20.7	1,242
Namibia ➤	2.0	35.1	824,290	2.0	7,586
South Africa ➤	46.9	59.3	1,219,090	0.3	11,110
Swaziland ➤	1.1	24.1	17,360	1.7	4,824
Tanzania	38.3	24.2	945,090	12.5	744
Zambia	11.7	35.0	752,610	13.9	1,023
Zimbabwe	13.0	35.9	390,760	11.4	2,038

Source: World Bank World Development Indicators

Notes: GNI represents Gross National Income, GDP is Gross Domestic Product and PPP is Purchasing Power Parity.

SACU members indicated with arrowheads (South Africa, Botswana, Namibia, Lesotho and Swaziland).

GDP per capita here is given in US\$.

### 3.2.1 GDP Indicators

The differences in overall economic size, as measured by regional GDP (US\$ m, 2000 prices) is evident in the tables and figure below. In 2005, South Africa contributed 91.4 per cent of SACU's GDP. The smallest member, Lesotho, contributed 0.6 per cent and its economy was 161 times smaller than its neighbour South Africa. The second largest economy is that of Botswana, which is around 19 times smaller than South Africa's.

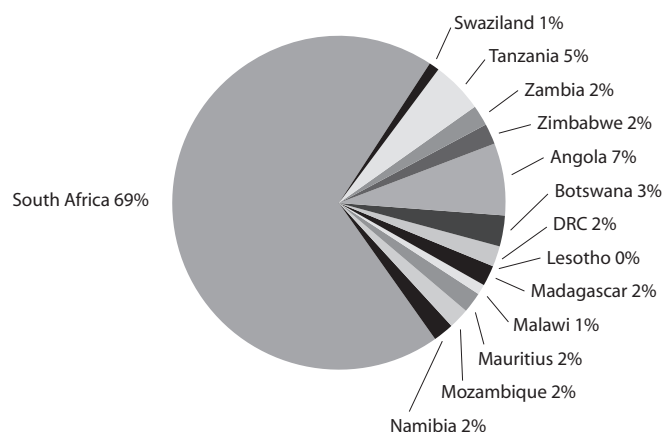
**Table 2: SACU GDP and country percentages**

Country	GDP (US\$m, 2000 prices)	% of SACU GDP
South Africa	159,695	91.4
Botswana	8,204	4.7
Namibia	4,231	2.4
Lesotho	988	0.6
Swaziland	1,548	0.9
Total	17,130,695	100

Source: DNA report on SADC Customs Union Model, 2007

In terms of the broader region, in 2005 South Africa also contributed 69 per cent of SADC's total GDP, whereas SACU's smallest economy, Lesotho, supplied just under 0.4 per cent of SADC's GDP. The closest economy to South Africa in terms of GDP is Angola, but even this economy is 11 times smaller (DNA, 2007, p. 10, 14).

Figure 2: Share of total SADC GDP (US\$ m, 2000 prices)



Source: DNA report on SADC Customs Union Model, 2007

GDP related indicators of macro-economic performance across SACU and SADC vary greatly. provides more detail for 2006.

Table 3: Selected macroeconomic indicators in SADC countries, 2006 (%)

Country	GDP growth (real)	Per capita GDP growth (2005)	Per capita GDP in nominal terms US\$	Domestic Investments /GDP
Angola	19.5	12.3	2,547.0	11.3
Botswana	-0.8	4.1	5,997.2	27.5
DRC	5.1	3.1	89.5	17.7
Lesotho	6.2	0.9	254.1	31.4
Madagascar	4.9	1.6	299.0	24.8
Malawi	8.5	-0.3	232.9	16.3
Mauritius	5.0	2.1	5,180.0	23.8
Mozambique	8.5	5.7	374.4	21.3
Namibia	4.6	1.1	3,297.3	23.7
South Africa	5.0	4.4	5,319.0	17.3
Swaziland	2.8	2.2	2,310.9	17.8
Tanzania	6.2	4.9	322.3	18.9
Zambia	5.8	2.8	766.6	22.9
Zimbabwe	-1.8	-7.6	440.0	7.3
SADC average	5.7	2.7	1,856.4	20.1
SACU average	3.6	2.6	3435.7	23.5

Source: ERB, 2007

Notes: SACU Countries are highlighted in bold. Per capita GDP and GDP growth in this table are not given as Purchasing Power Parity

There is also difference in growth rates across SACU and SADC countries. The table below gives figures for average growth in GDP per capita per annum over various periods from 1960 to 2005.

**Table 4: Growth in GDP per capita (PPP, US\$, 2000 prices), 1960–2005.**

	1960–1980	1981–1990	1991–1999	2000–2005
Angola	1.7	1.5	-1.6	7.3
Botswana ➤	3.4	6.3	2.0	5.7
DRC	0.2	-2.3	-8.8	1.1
Lesotho ➤	1.4	2.0	3.8	2.7
Malawi	1.0	-1.2	2.4	0.4
Mauritius	0.3	5.0	4.1	3.2
Madagascar	–	-1.0	-0.6	-0.5
Mozambique	1.4	-1.9	3.1	6.7
Namibia ➤	n.a.	-3.3	0.7	2.9
South Africa ➤	1.7	-2.1	0.4	2.4
Swaziland ➤	3.4	3.4	0.5	0.6
Tanzania	0.7	-0.4	-0.2	4.8
Zambia	0.5	-2.7	-0.9	3.0
Zimbabwe	1.5	0.1	0.3	-6.2
Average	1.4	0.3	0.4	2.7
Standard deviation	1.1	3.1	3.3	3.4

Note: SACU members indicated with arrowheads (South Africa, Botswana, Namibia, Lesotho, Swaziland)

Source: World Bank Development Indicators, 2007, cited in DNA, 2007

What is also interesting is to look at the distribution of manufacturing, mining and agricultural value added for the SADC economies in 2005. Many of the economies are highly dependent on mining (Angola and Botswana) and agriculture (DRC, Madagascar, Malawi, Tanzania). Manufacturing accounts for over 50 per cent of value added in traded good sectors for South Africa, Mauritius and Swaziland. In both Mauritius and Swaziland, manufacturing is largely concentrated in a few sectors (clothing and sugar in the case of Mauritius and sugar, syrup for soft drinks, dairy, and forestry in Swaziland) (DNA, 2007, p. 18).

**Table 5: GDP structure in SADC countries, 2005 (%)**

Country	Agriculture	Industry	Manufacturing	Services
Angola	7.2	74.0	3.6	18.7
Botswana	2.3	53.3	3.9	44.4
DRC	46.0	25.3	5.5	28.7
Lesotho	17.3	41.4	18.5	41.3
Madagascar	27.9	15.8	14.0	56.4
Malawi	34.7	19.4	12.5	45.9
Mauritius	6.1	28.2	20.2	65.7
Mozambique	22.3	29.8	14.2	47.9
Namibia	9.9	31.7	13.5	58.4
South Africa	2.5	30.3	18.6	67.1
Swaziland	11.5	47.6	36.9	40.9
Tanzania	44.5	17.8	7.5	37.6
Zambia	18.5	25.1	11.7	56.3
Zimbabwe	18.1	22.6	12.8	59.3

Source: ERB, 2007 (sourced from World Development Indicators Report, World Bank)

### 3.2.2 WTO Commitments

To contextualize the discussions on trade agreements in the chapters below, it is useful to consider the profile of tariffs by each SADC member country. The table following shows Simple Average Final Bound as opposed to Simple Most Favoured Nation (MFN) Applied Tariffs. The GATT Article II stated that binding a tariff provides an irrevocable commitment not to raise tariff once bound. In SADC's case there is a big gap between Simple Average Applied MFN Tariffs and the Simple Average Final Bound Tariffs across the member states (ERB, 2007: 11)

**Table 6: Tariffs summary 2006: Final bound and applied MFN averages**

Country	Simple Average Final Bound			Simple Average MFN Applied			Maximum Duty (all products)		No. of Distinct Duty Rates (all products)		No. of MFN Applied Tariff Lines (all products)
	Total	Agri	Non-Agri	Total	Agri	Non-Agri	Bound	MFN Applied	Bound	MFN Applied	
Angola	59.2	52.8	60.1	7.2	9.6	6.8	80	30	5	50	5,385
Botswana	18.8	38.4	15.7	8	9.3	7.8	597	504	56	237	6,664
DRC	96.2	98.2	95.9	12	12.8	11.9	100	30	8	18	5,794
Lesotho	78.5	200	60	7.9	9	7.8	200	96	2	237	6,664
Madagascar	27.4	30	25.3	13.3	14.7	13.1	30	20	13	4	6,145
Malawi	75.9	121.3	42.4	13.5	14.7	13.3	125	>1000	10	7	5,596
Mauritius	93.7	119.6	19.1	3.5	7.1	3	122	219	5	418	6,485
Mozambique	97.4	100	6.6	12.1	16.4	11.4	100	25	3	5	5,377
Namibia	19.1	40.8	15.7	8	9.2	7.8	597	343	57	237	6,664
South Africa	19.1	40.8	15.7	8	9	7.9	597	>1000	57	237	6,664
Swaziland	19.1	40.8	15.7	8	9.3	7.8	597	504	57	237	6,664
Tanzania	120	120	120	12.7	19	11.7	120	100	1	20	5,425
Zambia	106.4	123.3	42.2	13.9	18.8	13.2	125	25	7	4	6,203
Zimbabwe	91.9	139.6	10.8	n	N	n	150	N	46	N	n

Source: ERB, 2007 (World Tariff Profile 2006; ITC and UNCTAD)

### 3.2.3 SADC Trade Flows (includes SACU)

The nature of SACU and SADC imports and exports are presented in the tables below. Intra-SADC trade has increased significantly since the early 1980s, although South Africa's increased trade with the region accounts for a large proportion of this increase. The value of intra-SADC trade as a share of total imports grew from 1.6 per cent in 1980 to 10.6 per cent in 2003. Similarly, the share of intra-SADC exports as a share of total exports grew from 0.9 per cent to 10.6 per cent over the same period.<sup>19</sup> SACU sources only 1.9 per cent of its total imports from the region, although this has grown since 2000, possibly in response to the reduction in SACU tariff barriers against SADC economies in accordance with the SADC Trade Protocol. SADC accounts for 9.7 per cent of SACU exports, which therefore leads to large trade imbalances between SACU and the rest of SADC (DNA, 2007, p. 15). What is also revealed though is that SADC is a much smaller trade partner to SACU, than SACU is to SADC.

South Africa is the largest contributor to export and import flows in the region. SACU receives between 71 and 78 per cent of total intra-SADC exports (i.e., exports by SADC member states to each other).

<sup>19</sup> In the tables on trade given here, SACU is treated as a single region. If SACU members are treated separately, then the share of intra-SADC trade rises in response to the very high proportion of intra-SACU trade by BLNS economies (DNA, 2007: 15).

The region is even more dependent on South Africa as a source of imports. Around 90 per cent of SADC (excluding SACU countries) imports from the region are sourced from SACU. The conclusion is that although SADC economies have increasingly traded with each other, most of this is bilateral trade with South Africa. Trade flows between SADC members outside of SACU are very low (less than 10 per cent of total trade), except for Zambian exports (DNA, 2007, p. 15). Trade between Zimbabwe and its neighbours has fallen dramatically in the last few years, with Botswanan respondents reporting that this trade had been replaced by trade with South Africa (Interview data, November 2007).

The table immediately below shows the percentage of imports that each SADC member is sourcing from other SADC states.

**Table 7: Share of SADC trade in SADC country imports**

	1980	1985	1990	1995	1999	2003	Proportion from SACU 2003
Angola	0	0.6	0.8	7.1	10	Na	100
DRC	0.4	1.6	1.1	18.1	31.5	Na	74
Malawi	36.7	53	24.8	49.2	64.4	57.5	65
Mauritius	14.5	4.2	9.9	11.3	11.2	13.2	97
Mozambique	3.7	5	7.6	55.5	58.6	39.5	97
SACU	0.1	1.8	1.8	2.1	1.9	2.7	–
Tanzania	0.7	0.7	1.3	13.9	13.3	15.0	66
Zambia	1.2	10.9	7.9	49.1	65.5	65.0	95
Zimbabwe	8.3	31.7	33.1	51.2	51.2	56.1	94
Intra-SADC share	1.6	4.7	5.1	9.9	10.2	10.6	90 <sup>a</sup>

Notes: Data for Madagascar were not available. 2002 values used for Zimbabwe.

<sup>a</sup>. Ninety per cent of SADC (excluding the SACU countries) imports from the region are sourced from SACU.

Source: DNA, 2007 (DNA calculation using statistics obtained from SADC trade database.)

The following table illustrates the other dimension to the regional trade flows, that of the percentage of exports that each SADC member is exporting to other SADC states.

**Table 8: Share of SADC trade in SADC country exports**

	1980	1985	1990	1995	1999	2003	Proportion from SACU 2003
Angola	0.03	0	0.01	0.03	0.7	Na	–
DRC	0.05	0.03	0.1	6	0.3	Na	–
Malawi	12.4	15.4	1.6	17.2	16.9	20.1	74
Mauritius	1.4	0.1	1.2	1.4	1.4	2.1	76
Mozambique	1.1	0.3	0.2	32.1	17.41	24.6	74
SACU	0.7	2.8	2.5	10.7	11.5	9.7	–
Tanzania	5.2	0.1	0.5	1.4	7.4	9.4	45
Zambia	0.9	3.1	0.8	3.8	7.8	40.6	50
Zimbabwe	1.3	25	30.7	31.7	28	30.5	79
Intra-SADC share	0.9	3.4	3.1	9.9	10	10.6	68 <sup>a</sup>

Note: Data for Madagascar were not available. Zambian exports to SADC grew from 29 per cent of total exports in 2000 to 51 per cent in 2004. A value from 2002 is used for Zimbabwe.

<sup>a</sup>. Sixty-eight per cent of SADC (excluding the SACU countries) exports to the region are destined for SACU markets.

Source: DNA, 2007 (DNA calculation using statistics obtained from SADC trade database.)



Finally, the following table reflects the main destinations for SACU exports, grouped into three main categories, the U.S., the EU and the rest of the world.

**Table 9: Main destinations for SACU exports**

Destination Member state	EU	USA	Other
Botswana	82	5	13
Namibia	61	9	29
Lesotho	13	84	3
South Africa	36	10	54
Swaziland	16	28	56

Source: DNA, 2007

### 3.3 Sustainable Development in SACU

For the SACU region, sustainable development (SD) is essentially the sum of its member states' sustainable development needs and concerns, given that the region has yet to define SD regionally. This position is further reinforced by the fact that member states sign multilateral agreements in their individual capacity, SACU as an institution does not sign such agreements. In a sense it is not possible to define a common overall SD focus for the region, given the variety of issues and contexts found across the five member states of SACU, although all the SACU states are (along with other UN members) encouraged to utilize the UN Commission on Sustainable Development's set of indicators as a reference to develop their own national indicators of sustainable development.<sup>20</sup> This section therefore outlines the key SD issues facing each member state, as identified in various literature.

UNDP Country Factsheets dealing with the information below may be found online at the following webpages:

South Africa – [http://hdrstats.undp.org/countries/country\\_fact\\_sheets/cty\\_fs\\_ZAF.html](http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_ZAF.html)

Botswana – [http://hdrstats.undp.org/countries/country\\_fact\\_sheets/cty\\_fs\\_BWA.html](http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_BWA.html)

Namibia – [http://hdrstats.undp.org/countries/country\\_fact\\_sheets/cty\\_fs\\_NAM.html](http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_NAM.html)

Lesotho – [http://hdrstats.undp.org/countries/country\\_fact\\_sheets/cty\\_fs\\_LSO.html](http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_LSO.html)

Swaziland – [http://hdrstats.undp.org/countries/country\\_fact\\_sheets/cty\\_fs\\_SWZ.html](http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_SWZ.html)

#### 3.3.1 Primary UNDP Indicators of Development

An overall comparison of country rankings within SACU using the primary UNDP indicators of human development provides a useful summary of human development differences in the region.

- **The Human Development Index (HDI)**

Each year since 1990, the Human Development Report has published the Human Development Index (HDI), which tries to capture a broader definition of well-being than merely GDP provides. The HDI

<sup>20</sup> Inter-UN agency collaboration ensures coherence of CSD indicators with other indicator processes such as the MDG indicators, the 2010 Biodiversity Indicators Partnership, and the Hyogo Framework for Action on disaster reduction (UN Division for Sustainable Development SD Indicators Factsheet 2007).

provides a combined measure of three dimensions of human development: that of living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by Purchasing Power Parity [PPP], and income). The index is not meant to be a final measure of human development, as it does not, for example, include important indicators such as gender, income inequality, respect for human rights and political freedoms. What it does provide is a broadened prism for viewing human progress and the complex relationship between income and well-being. However, by examining some of the most fundamental aspects of people's lives and opportunities, it provides a much more complete picture of a country's development than other indicators, such as GDP per capita (UNDP Country Factsheets, 2007).

**Table 10: SACU member states' Human Development Index (HDI)**

Country	HDI value	HDI Rank (a)	Life expectancy at birth (years)	Adult literacy rate (% ages 15 and older)	Combined primary, secondary and tertiary gross enrolment ratio (%)	GDP per capita (PPP US\$)
Botswana	0.654	124th	48.1	81.2	69.5	12,387
Namibia	0.650	125th	51.6	85.0	64.7	7,586
Lesotho	0.549	138th	42.6	82.2	66	3,335
South Africa	0.674	121st	50.8	82.4	77	11,110
Swaziland	0.547	141st	40.9	79.6	59.8	4,824

Note: (a) 177 countries were ranked for the HDI by the UNDP

Source: UNDP Website: Country Factsheets, 2007

As can be seen by the above table, all the SACU member states fall into the lower half of the countries ranked for the purposes of the HDI. South Africa and Botswana's low life expectancies, in spite of their higher GDP per capita are a reflection of the impact of HIV/AIDS on the two countries (a challenge faced by the other SACU member states as well).

- **The Human Poverty Index (HPI)**

The HDI measures the average progress of a country in human development. The Human Poverty Index for developing countries (HPI-1) focuses on the proportion of people below a threshold level in the same areas of human development as the human development index—living a long and healthy life, having access to education and a decent standard of living. The key concept behind the HPI though is that by looking beyond income deprivation, the HPI-1 represents a multi-dimensional alternative to the \$1 a day (PPP US\$) poverty measure commonly used (UNDP Country Factsheets, 2007).

The HPI-1 measures any severe failures in standards of health by including the proportion of people who are not expected to survive beyond age 40. Education is measured by the adult illiteracy rate, and a decent standard of living is measured by the unweighted average of people without access to an improved water source and the proportion of children under age 5 who are underweight for their age (UNDP Country Factsheets, 2007).

**Table 11: SACU member states' Human Poverty Index (HPI)**

Country	Human Poverty Index (HPI-1) 2004	HPI Rank (a)	Probability of not surviving past age 40 (%) 2004	Adult illiteracy rate (% ages 15 and older) 2004	People without access to an improved water source (%) 2004	Children underweight for age (% ages 0-5) 2004
Botswana	31.4	63rd	44	18.8	5	13
Namibia	26.5	58th	35.9	15.0	13	24
Lesotho	34.5	71st	47.8	17.8	21	20
South Africa	23.5	55th	31.7	17.6	12	12
Swaziland	35.4	73rd	48	20.4	38	10

Note: (a) 108 countries were ranked for the HPI by the UNDP

Source: UNDP Website: Country Factsheets, 2007

As with the prior table, this table on the HPI reveals that health issues continue to remain the significant variable for the SACU member states, specifically HIV/AIDS. This can be seen in the case of Botswana for example, where, although the other variables are positive, the probability of not surviving past age 40 is still high. What can also be noted from the above tables is that SACU states are fairly diverse when it comes to their rankings, with a clear gap between the top three, South Africa, Namibia and Botswana, and the remaining two members, Swaziland and Lesotho. South Africa ranks at the top of the table overall in both cases.

- **The Gender Development Index (GDI)**

The HDI measures average achievements in a country, but it does not include the degree of gender imbalance in these achievements. The Gender-related Development Index (GDI), introduced in the Human Development Report 1995, measures achievements in the same areas and using the same indicators as the HDI but captures inequalities in achievement between women and men. It is simply the HDI adjusted downward for gender inequality. In other words, the greater the gender disparity in basic human development, the lower a country's GDI relative to its HDI. This can be expressed as shown in the following table, where GDI is given as a percentage of HDI. When this is applied to all the 155 countries, which have been ranked for the HDI and the GDI by the UNDP, then a ranking can be derived (UNDP Country Factsheets, 2007).

**Table 12: SACU member states' Gender Development Index (GDI)**

Country	GDI value	GDI as a % of HDI	Rank (a)
Botswana	0.639	97.7	131st
Namibia	0.645	99.2	68th
Lesotho	0.541	98.51	05th
South Africa	0.667	99.0	86th
Swaziland	0.529	96.7	143rd

Note: (a) 156 countries were ranked for the HDI and GDI by the UNDP

Source: UNDP Website: Country Factsheets, 2007

When it comes to the GDI, the picture deviates from the rankings of the HDI and HPI in that Namibia is ranked much higher than South Africa, and Lesotho is ranked much higher than Botswana and Swaziland, revealing that gender disparities are not automatically linked to HDI or HPI rankings.

- **General UNDP Indicators – Carbon Dioxide Emissions**

As a result of past emissions of carbon dioxide (CO<sub>2</sub>) and other greenhouse gases (GHGs), the world is now evidently heading for future climate change. The 2007 UN Human Development Report has identified a 2°C rise in temperature as the threshold above which irreversible and dangerous climate change will become unavoidable. The report also explains why scientists believe countries have less than a decade to reverse this trend and start living within a sustainable global carbon budget identified at 14.5 gigatonnes of CO<sub>2</sub> (Gt CO<sub>2</sub>) per annum for the remainder of the twenty-first century. Current global emissions are running at twice this level. If these current trends continue, the carbon budget of the planet will be matched during the 2030s, setting in motion processes that can lead to temperature increases of 5°C or above by the end of this century—roughly similar to temperature changes since the last ice age 10,000 years ago, with potentially significant consequences for the planet. The SACU region is expected to be directly affected, along with most of Sub-Saharan Africa. In fact the impact is expected to be heavier in Sub-Saharan Africa due to the vulnerable nature of many forms of economic activity (e.g., agriculture), and the economic, social, health and other developmental constraints already affecting most African countries. Climate change in Southern Africa will have many effects, one of the most significant of which is that it is expected to alter rainfall and water table patterns in the SACU region, affecting land use and crop production, and thereby soil quality, land degradation and urbanization patterns (UNDP Country Factsheets, 2007).

High-income OECD countries meanwhile are the main “CO<sub>2</sub> transgressors.” With just 15 per cent of the world’s population, they account for almost half of all emissions. As an example of the unsustainable nature of current developmental paths and patterns of consumption, if the entire world emitted like high-income OECD countries—an average of 13.2 tonnes of CO<sub>2</sub> per person—we would be emitting six times our sustainable carbon budget. This fact alone has placed issues of sustainable development at the centre of global climate change debates.

All the SACU member states have signed and ratified the Kyoto Protocol. Countries are divided by the Protocol into Annex 1 and non-Annex 1 parties. Annex 1 parties comprise developed countries and countries with economies in transition. Developing countries comprise non-Annex 1 parties. The Protocol does not commit developing countries to any limitations or reductions in emissions. Annex 1 parties on the other hand are obliged to return to 1990 levels of greenhouse emissions. As developing countries, and therefore non-Annex 1 Parties to the Protocol, none of the SACU member states are bound by specific targets for greenhouse gas emissions. It is expected however, that with the successor agreement to Kyoto (to be negotiated during 2008 and 2009 and signed in 2009), developing countries, including SACU member states, will agree to some form of targets for their greenhouse gas emissions. Developing countries have, as a group, been critical of any agreement on limitations on emissions that would prevent them accelerating their own development. The problem faced by the world is that whilst emissions must be curbed and reduced, to do so would entail scaling down polluting industrial and power plants and technologies, many of which are essential components of current developing countries’ industrial and power systems. In the absence of agreement on the rollout and funding of extensive, effective replacement technologies, developing countries are expected to resist any binding agreement that limits their emissions as part of a successor agreement to the Kyoto Protocol, which expires in 2012.

Table 13: SACU member states' carbon dioxide emissions (CDE)

Country	Total emissions (MtCO <sub>2</sub> ) (a)		CO <sub>2</sub> emissions share of world total (%)		Carbon intensity of growth: CO <sub>2</sub> emissions per unit of GDP (kt of CO <sub>2</sub> per million 2000 PPP US\$)		CO <sub>2</sub> emissions per capita (tCO <sub>2</sub> )	
	1990	2004	1990	2004	1990	2004	1990	2004
Botswana	2.2	4.3	–	–	0.27	0.23	1.7	2.4
Namibia	–	2.5	–	–	–	0.19	0.0	1.2
Lesotho	–	–	–	–	–	–	–	–
South Africa	331.8	436.8	1.5	1.5	1.03	0.99	9.1	9.8
Swaziland	0.4	1.0	–	–	0.13	0.2	0.5	0.8
High Income OECD	10,055.4 (total)	12,137.5	44.3	41.9	0.52	0.45	12.0	13.2
Sub-Saharan Africa	454.8 (total)	663.1	2.0	2.3	0.55	0.57	1.0	1.0

Note: (a) "Carbon dioxide emissions" refers to emissions stemming from consumption of solid, liquid and gaseous fossil fuels as well as from gas flaring and the production of cement. Original values were reported in terms of metric carbon tonnes, in order to convert these values to metric tonnes of carbon dioxide a conversion factor of 3.664 (relative molecular weights 44/12) was applied.

Source: UNDP Human Development Report 2007

The clear difference in economic output and the attendant emission costs between South Africa and its SACU neighbours can be seen from the table above, where the figures for South Africa are closer to the average for a high income OECD country than a Sub-Saharan African country.

The conclusion to be reached from the above data is that the sustainable development challenges facing the SACU region are very diverse, and although a deeper analysis is beyond the scope of this report, the challenges that underpin these indicators are evidently even more varied. As a result, a similar multi-faceted challenge exists in harmonizing country positions on sustainable development, to country offers with regard to market access in trade. Yet for sustainable development to be coherently incorporated into trade negotiations and trade agreement preambles, texts and parallel agreements, this challenge must be met.

## 4. Trade Agreements and Negotiations in the SACU Region

This chapter commences with a brief explanation of what constitutes a free trade agreement and then examines the various agreements in the region, whether existing, under negotiation or planned, with a view to assessing their status. Chapter 6 assesses their potential outcomes in terms of trade-related aspects of sustainable development, assessed primarily in terms of trade expansion and market access improvements. Reference is also made at the end of the paper to potential areas of further research beyond the scope of this paper.

### 4.1 Free Trade Agreements

Throughout the world, many governments have signed, or are negotiating, new free trade and investment agreements. These agreements are seen in a global context as stepping-stones towards full integration into the global economy (Kalenga, 2004). They are based on assumptions that free trade and the removal of regulations on investment will lead to economic growth, the reduction of poverty, increased living standards and employment opportunities.

Most trade agreements aim at expanding market access, strengthening the links between trade and economic development strategies, encouraging greater foreign investment, and promoting regional economic integration and growth. Most countries place greatest emphases on free and reliable market access for exports of goods and services in world markets as well as access of both consumers and producers to a variety of imported goods and services on the best possible terms. Attraction of foreign direct investment (FDI) has also been one of the main trade agendas for most countries. This is motivated by the fact that multinational corporations can bring along with their investment technological transfer, modern management skills and financial resources. Consequently, as a strategy to achieve export-led growth, FDI has featured significantly in most countries' trade agendas. However, it has become evident that environmental issues are in most cases rarely taken into consideration by trade agreements.

According to economists Free Trade Agreements (FTAs) can theoretically unlock new trade as they reduce or remove a "chilling effect" caused by tariffs. This can allow for trade to grow in areas where the two parties are already trading. However, there is evidence, for example from New Zealand's trade liberalization with Australia (under the Australia-New Zealand Closer Economic Relations Free Trade Agreement or ANZCERTA), that trade agreements can also encourage a "widening" of trade, i.e., trade in goods or services that were not traded prior to the signing of the FTA (Sandrey, 2006a). As most projections of the benefits of trade liberalization focus on existing trade flows, this widening can often only be ascertained post-liberalization. Thus it is useful for parties to assess in detail post-FTA trade flows to determine the competitiveness of exporters and their willingness to export. This can guide future trade negotiations.

A potentially negative consequence of trade liberalization is that of loss of tariff revenue. This is especially important to developing countries, as tariff revenue often constitutes a high proportion of their government revenue, certainly much higher than in developed countries. A recent IMF study on tariff loss from trade liberalization concluded that high-income countries have recovered almost all lost tariff revenues easily in other ways through tax reforms, middle-income countries have recovered only 35–55 per cent, and low-income countries have recovered almost none of the revenues they have lost (Sandrey *et al.*, 2006, p. 6). This then raises an interesting point, if low-income developing or least developed countries depend heavily on tariff revenues for their government income and are unlikely to be able to diversify their revenue basket to offset revenue losses through trade liberalization, then the welfare effects of trade liberalization would need to be substantial in order to safely offset such losses. This proviso might render many trade agreements "unsafe." In such resource-constrained countries, the negative impact on sustainable development of continued liberalization in terms of revenue loss would then likely outweigh the negative impact of less trade liberalization.<sup>21</sup>

Even the gains from trade liberalization on a global scale may be shrinking with regard to developing countries, when the EU's expansion and China's WTO accession are taken into account (Ackerman, 2005, cited in Sandrey *et al.*, 2006, p. 6). This may occur in two respects. First, the increased trade and investment opportunities presented by these countries to international investors, due to their increased openness, may divert investment to them. Investors may not be as taken with the overall increased access to other developing countries flowing from the WTO Rounds, but will instead

<sup>21</sup> However, at the same time it needs to be noted that if trade liberalization increases imports and exports, the import tariff revenue and taxes on export profits might make up at least for part of the revenue loss resulting from lower tariffs, although the country would need to be able to absorb such imports as well. There is also the possibility that the impacts of such revenue loss on sustainable development priorities, such as education or health care, could be less severe in areas where government funding is already significantly supplemented by donor funds.



be distracted by the Eastern European, Indian and Chinese markets. Second, the increased integration of the Eastern European countries, India and China into the global economy has allowed them to compete more directly with other developing nations as exporters in their own right.

This chapter gives an overview of the past (i.e., since 1995), present (i.e., on-going) and planned trade negotiations involving SACU and its member states.

## 4.2 SACU and its Trade Relations – Existing Agreements

### 4.2.1 SADC Trade Protocol

As indicated above, all SACU countries participate in the Southern African Development Community (SADC). Therefore this regional trade agreement (RTA) is included here under the SACU agreements section as it is common to all SACU member states. The Southern African Development Co-ordination Conference (SADCC), the forerunner to SADC, was established in 1980 to coordinate opposition to South Africa's politicized economic dominance of the region. SADCC became the Southern African Development Community (SADC) in 1992 as the organization's role shifted from harmonizing economic development among Southern African countries to creating a regional common market. The main objectives of SADC are to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support social upliftment through regional integration (Joubert, 2004).

The SADC Trade Protocol was signed in 1996 but only came into force in September 2000 after being ratified by two-thirds of the member states.<sup>22</sup> The main objective of the Trade Protocol is to provide increased intra-SADC free trade by creating conditions that are conducive for free trade between member states. The Protocol aimed to progressively move towards a Free Trade Area over a period of eight years. The Protocol aims: (i) to further liberalize intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements, complemented by Protocols on other areas; (ii) to ensure efficient production within SADC reflecting the current and dynamic comparative advantages of its members; and (iii) to enhance the economic development, diversification and industrialization of the region. SADC's development integration approach recognizes the political and economic diversities of regional integrating countries including their diverse production structures, trade patterns, resource endowments, and development priorities among others.

#### ***Liberalization of trade under the SADC FTA***

To create the FTA, products were grouped under three main categories (A, B and C). Category A products (mostly capital goods and equipment) were liberalized in the first year after the Protocol's signing. This category constituted about 76 per cent of SACU's trade with SADC, and carries the zero tariff rate applicable in SACU countries. Category B products (e.g., goods constituting important sources of customs revenue) were to be liberalized gradually by 2008. Category C consists of products deemed sensitive by SADC member states (e.g., sensitive imports for domestic industries such as sugar for SACU

<sup>22</sup> The SADC Protocol on Trade is being implemented by Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Madagascar acceded to the SADC Protocol on Trade in 2006 and has submitted a tariff offer that has now been accepted and is ready to commence implementation. Angola also acceded to the Protocol and submitted a tariff offer in 2007. The Democratic Republic of Congo is not yet party to the Protocol on Trade (Services Group, 2007, p. 4).



countries). These goods were limited to a maximum of 15 per cent of each member's total merchandise trade, and were to be liberalized between 2008 and 2012. A fourth category of products, Category E, covers products ineligible for preferential treatment under general and security exceptions permissible under Articles 9 and 10 of the Protocol. These comprise a small list of products, so that by 2012 about 98 per cent of SADC merchandise trade will be subject to zero tariffs. The phase-down offers are country-specific and are in the process of being implemented. The principle of reciprocity is being followed in the implementation of the Protocol, i.e., tariff preferences will be extended only to member states that have submitted their instruments of implementation (Kalenga, 2004).

SADC members made "differentiated offers" to non-SACU SADC countries and Botswana, Lesotho, Swaziland and Namibia, and "general offers" to South Africa. In return, SACU members made offers to the other SADC members for immediate reductions to achieve zero tariffs after five years, except for sensitive products. Offers for tariff reduction to BLNS countries were largely front-loaded, while offers to South Africa were mid- to back-loaded. This was done so that offers by the other SADC members to South Africa thereby delay tariff reductions on category A and B products. Similarly, tariff reductions by other SADC members to South Africa on the sensitive products (category C) are further delayed from the eighth to the twelfth year. This asymmetrical implementation was designed to enhance equity in the region, given South Africa's more developed economic status. Similarly, Zimbabwe and Mauritius agreed to start their tariff reductions earlier than other non-SACU members to compensate the other members for the perceived advantages that their more advanced economies would enjoy in regional trading. Although the Trade Protocol identified several non-tariff barriers to be eliminated, such as import quotas, customs procedures and export subsidies, it excluded other important non-tariff items, such as local-content requirements, levies and other border charges and import (and export) licensing (Kalenga, 2004). Importers have to produce a certificate of origin, guaranteeing that the goods do come from other SADC member states.

### **Implementation challenges**

Analysts have noted weaknesses in the implementation of the SADC Trade Protocol, and believe these challenges spring from the design and implementation of the Protocol, and specifically from: the differentiation and back-loading of tariff reduction schedules, restrictive rules of origin, ongoing member state concerns about the costs and risks of intra-regional tariff liberalization and the slow pace itself of implementation of the agreed commitments. In order for these ongoing issues to not undermine the potential benefits to be gained from the upcoming implementation of the SADC FTA, these would need to be urgently addressed during 2008 so that the FTA can be launched on a solid foundation and indeed deliver practical results. They include the need to:

- fast-track the tariff liberalization process so that by the end of 2008 substantial intra-SADC trade is duty free;
- design a clear program to eliminate non-tariff barriers to trade within a transparent rules-based framework;
- reform the SADC Rules of Origin to promote international competitiveness and investment; and
- continue moving towards the reduction and harmonization of external levels of protection (Kalenga, 2004).

#### 4.2.2 SACU-EFTA Trade Agreement

Negotiations towards a free trade agreement (FTA) between SACU and the members of the European Free Trade Association (EFTA)<sup>23</sup> commenced in 2003, and an agreement was signed in June 2006, but it has not yet entered in force as it has not been fully ratified by all the member states. The trade balance is in SACU's favour, with a trade surplus of US\$1.5 billion for SACU recorded in 2006 (Fundira, 2007, p. 7). South Africa is the major trading partner with a share of about 94 per cent of SACU trade. Lesotho and Swaziland comprise only one per cent of SACU's trade with EFTA. The agreement aims to strengthen links between the two parties and to promote regional cooperation, economic integration and trade liberalization as well as increase investment opportunities between the Southern African and European countries. Since SACU comprises countries at different levels of development, the special needs and interests of these countries are taken into account by the agreement. It covers trade in goods and provides for further engagement of the Parties with regard to intellectual property, competition, trade in services, investment, public procurement and cooperation and assistance (Fundira, 2007, p. 3). In terms of services, investment and public procurement, the Joint Committee that oversees the agreement must take a decision within five years of its coming into force as to whether these issues will actually be negotiated or not.

The agreement covers sustainable development. It stipulates that the two parties "desire to create new employment opportunities and improve working conditions and living standards in respective territories while promoting sustainable development." Articles 30 and 31 of the agreement further build on this. To strengthen economic cooperation between the two parties, EFTA states will assist SACU states to realize sustainable economic and social development as well as take into account environmental conservation. They will also provide technical assistance to the SACU states in order to assist them in the implementation of the Agreement (Fundira, 2007, p. 6). More specifically, EFTA states undertake to provide assistance to those sectors, in SACU countries, that will be affected by the process of liberalization and restructuring of the economy of the SACU states. Further assistance will be offered to sectors likely to bring the economies of the EFTA states and the SACU states closer together, particularly those generating growth and employment. Assistance will be in the form of technical and administrative assistance, exchange of information, transfer of expertise and training and implementation of joint actions such as seminars and workshops. The implementation of the agreement will be phased-in over a period of 10 years.

#### ***Issues around ratification of the EFTA Agreement***

All SACU member states successfully ratified the main SACU-EFTA FTA and deposited the instruments of ratification with the Norwegian Government. Namibia was the last SACU Member state to have ratified the FTA. All SACU member states had completed the process of ensuring that the necessary legislative mechanisms were in place to allow for the full implementation of the agreements on January 1, 2008, in accordance with Article 43(4) of the Agreement. However, in late 2007 EFTA notified SACU that two countries, Botswana and Lesotho, had not ratified accompanying deferential agreements as part of the EFTA ratification process. The ratification documents in the two countries only referred to the main agreement. This is now being attended to, and will be completed in early to mid-2008 (Interview data, January 2008; SACU, 2008).

<sup>23</sup> EFTA comprises the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation. The European Free Trade Association (EFTA) is a trade bloc established as an alternative for European states who were either unable to, or chose not to join the EU. For the Agreement see: <http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/SACU/view>

Commentators have noted that the incomplete ratification of the EFTA agreement by SACU member states a year and a half later raises questions concerning the coordination between the various stages of trade negotiations within SACU, specifically, negotiating, ratifying and implementing. The delays also highlight that the SACU Secretariat needs to have the capacity as well as the powers to monitor and ensure that ratification takes place quickly once trade deals are completed. The SACU Common Negotiating Mechanism should therefore also deal with ratification and implementation. The problems around the EFTA agreement's full ratification show that though the negotiations have been completed there is no joint responsibility regarding ratification and implementation. This institutional issue would need to be remedied if SACU is to effectively conduct trade negotiations as a unit, as it is bound to do under the new SACU Agreement. An interesting question that arises in the light of this EFTA experience is what will occur with EPA ratification and the linkages between the interim and final phases of the EPA agreement (Tralac Newsletter, October 31, 2007).

#### 4.2.3 SACU-Mercosur Preferential Trade Agreement

A Preferential Trade Agreement (PTA) was signed between the Mercado Común del Sur (Mercosur)<sup>24</sup> and SACU in December 2004, as a first step towards the creation of a Free Trade Area. It was the first agreement that SACU concluded in accordance with the provisions of the 2002 SACU Agreement. It was also the first agreement that SACU concluded with another developing country regional body. Trade flows between the two groups had been quite low historically, and the PTA was signed in a bid to boost trade. The two regions want to forge closer relations in order to strengthen South-South cooperation by reducing their dependency on the markets of developed countries and endeavouring to diversify their own economies. The agreement aimed at increasing trade through mutual granting of tariff preferences. The negotiations took into account the principle of special and differential treatment for small and lesser-developed economies in Mercosur and SACU. Closer ties between the two trading blocs are expected to contribute to the social and economic development of people in the two regions and advance South-South cooperation and trade flows.

In 2004, total trade between South Africa and Mercosur amounted to US\$1.83 billion. South African exports were US\$304.2 million, whereas its imports from Mercosur stood at US\$1.52 billion. The trade surplus at the time of the agreement was therefore in Mercosur's favour. The agreement covered only a narrow range of products in industrial and agricultural goods. Mercosur granted preferential access to 958 product categories of SACU products. These included organic chemicals (492 product categories), electrical machinery and equipment (74) and pharmaceutical products (59). Organic chemicals accounted for more than 50 per cent of the identified products. On the other hand, SACU's offer list to Mercosur contained 952 product categories, major ones being electrical machinery equipment (159 products), boilers, machinery and mechanical appliances (132) and plastics (92) (CUTS-CITEE, 2005).

#### 4.2.4 Attempted SACU-US Free Trade Agreement

The United States and SACU launched FTA negotiations in June 2003. SACU members agreed to explore this FTA on the basis of the following objectives:

- to expand trade and market access opportunities that support efforts to eradicate poverty, improve living standards and promote economic development;

<sup>24</sup> Mercosur is a customs union comprising of Argentina, Brazil, Paraguay and Uruguay (with Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela as associate members) that came into effect in December 1994.

- to ensure that non-tariff barriers (standards, trade remedies) do not frustrate enhanced market access opportunities arising from the FTA;
- to promote agricultural and industrial development through enhanced market access;
- to promote the broader processes of regional integration in the continent and support the New Partnership for Africa's Development (NEPAD);
- to establish a framework for broader development cooperation between the parties; and
- to ensure that the process of negotiations strengthens SACU's structures and negotiating capacity.

The negotiations agenda covered a broad range of issues. These included traditional market access issues in such areas as industrial and agricultural tariffs, product standards, customs procedures and trade remedies (anti-dumping). Tariff negotiations on the SACU side sought to obtain greater access for SACU exports in the U.S. and to grant access to the SACU market on terms and conditions already offered to the EU in the context of the Trade and Development Cooperation Agreement. Other issues negotiated in the agenda included "new generation" trade issues such as services, investment, intellectual property, competition, government procurement and environment.

In the Joint SACU-US Terms of Reference/Framework and Modalities for FTA Negotiations, the concepts of special and differential treatment, as well as the asymmetrical treatment for SACU in relation to the tariff phase-down process, were embraced. Moreover, built-in were efforts at trade capacity building for the BLNS countries especially. Thus, trade capacity building was to be a key component of the negotiations; both to ensure that SACU countries had the resources they needed to participate effectively in the negotiations and to implement the final agreement.

However, these negotiations were suspended in April 2006 due to the divergent views between the parties on the scope and level of ambition for the FTA. This breakdown was largely due to disagreement on the new generation issues. The South African Department of Trade and Industry noted in a briefing to Parliament that:

The U.S. approach is not developmental. When we engage in trade negotiations through the World Trade Organization, we make the point that countries must open their economies to the extent that their economies are able to cope. We want to be able to phase in liberalization, and exempt certain items. They [the U.S.] want free trade now and they want everything. They want to retain the right to subsidise their agriculture. They have a template-based approach.

The Department further noted a concern that U.S. agencies did not appear to want to negotiate, but merely wanted to "put a paper down and show you this is where you sign" (Business Report: November 16, 2006). A respondent confirmed this during the current research study. Following these divergences, in November 2006, the two parties agreed to rather pursue a Trade and Development Cooperation Agreement (TDCA) that could lead to a FTA in the longer term. The TDCA is noted in the section on Current Trade Negotiations below.

## 4.3 SACU and its Trade Relations – Current Trade Negotiations

### 4.3.1 SADC Free Trade Area

The SADC Trade Protocol envisaged and clearly targeted the establishment of a substantially liberalized, WTO compliant Free Trade Area by 2008,<sup>25</sup> and the background to this is noted under the ‘Existing SACU Trade Agreements’ section above. In October 2006, an Extraordinary SADC Summit Meeting was held in Midrand, the Republic of South Africa to review progress made with regard to the regional economic integration agenda. The Summit mandated the Ministerial Task Force to accelerate and finalize the negotiations on the outstanding issues pertaining to the FTA. As a result of this mandate and the recommendations of the Mid-Term Review (MTR) on the SADC Protocol on Trade, which identified implementation challenges, an Audit Study was carried out by the SADC Secretariat to examine the gazetted tariff phase-down program. The SADC Executive Secretary, Dr Tomaz Augusto Salomão reported in October 2007 that the results of the Audit Study were positive and that they validated the launch of the FTA in 2008. Specific actions to support those member states that are lagging behind in implementing fully the tariff phase-down programme were identified (SADC, 2007). However the audit report itself found “significant non-compliance in conjunction with serious compliance constraints, which result in the majority of member states selecting to trade under alternative preferential trade agreements” (Services Group, 2007, p. 57). It noted “significant commitment and implementation is required in order for the SADC Protocol on Trade to be implemented in accordance with the original schedule” (Services Group, 2007, p. 57). As a result the scheduled implementation of the FTA on January 1, 2008 has apparently been delayed by SADC until the end of 2008.

The table below shows the tariff offer made by SADC countries to each other, excluding South Africa, under the SADC Trade Protocol.

**Table 14: Tariff phase-down offers: SADC excluding South Africa per cent tariff lines at zero**

Country	Tariff lines	2001	2005	2006	2007	2008	2012
Malawi	5,443	33.4	33.4	48.7	85.3	85.3	99.7
Mauritius	5,479	69.7	90.5	90.5	90.5	90.5	100.0
Mozambique	5,246	30.1	30.1	30.1	30.1	94.0	99.6
SACU	7,802	63.9	94.6	99.3	99.3	99.3	99.3
Tanzania	6,215	17.5	24.4	42.8	43.1	86.3	99.3
Zambia	6,066	54.2	54.2	95.9	95.9	95.9	100.0
Zimbabwe	7,167	30.7	30.7	72.2	72.2	89.8	98.7

Source: Draft SADC Customs Union Study, ERB, 2007

### 4.3.2 SADC Services Protocol

The SADC region is in the final stages of negotiating a protocol to liberalize services trade and create a regional services market. A draft Protocol on Trade in Services was finalized in July 2007. Objectives of this Protocol (Article 3) include:

- to progressively liberalize intra-regional trade in services on the basis of equity, balance and mutual benefit with the objective of achieving the elimination of substantially all discrimination between member states and a liberal trading framework for trade in services with a view to creating a single market for trade in services;

<sup>25</sup> In terms of Article XXIV (GATT, 1994), meaning that at least 85 per cent of intra-SADC trade would be duty free and no major sector would be excluded.



- to promote sustainable economic growth and development, thereby raising the standard and quality of life, support the socially disadvantaged and alleviate poverty through regional integration in the area of services;
- to enhance economic development, diversification, local, regional and foreign investment in the services economies of the region; and
- to enhance the capacity and competitiveness of the services sectors of member states.

The draft Protocol aims to provide a framework for progressive liberalization of trade in six priority service sectors among member states and provides for flexibility or progressive liberalization of services, in line with WTO provisions, for those countries that may be disadvantaged either because of their size, structure, vulnerability or level of development of their economies. Priority sectors include communication, construction, energy-related, financial, tourism and transport services. The concept of such a Protocol was first formalized in 2002 when trade ministers agreed during a meeting in Gaborone to add an Annex on Trade in Services to the SADC Protocol on Trade. Since 2005, the process has been given new impetus by the rapid growth in services trade within the region and between the region and other countries, facilitated by developments in information and communication technology and boosted by demand for transport and travel services. In addition, the upcoming SADC Free Trade Area would be boosted by liberalizing intra-regional trade in services (INSAT 10, 2007, p. 2).

**Table 15: SADC's exports and imports of services (US\$ millions), 1994 & 2004/5**

Sector	Exports		Imports	
	1994	2005	1994	2004
Travel	3,067	9,182	2,510	4,350
Transport	1,423	2,255	3,805	8,265
Insurance	309	197	610	682
Government services	305	368	569	1,040
Communications	63	298	192	290
Financial services	7	709	14	348
Royalties and license fees	72	116	149	1,187
Construction	1	96	8	1,451
Computer and information services	15	129	16	152
Other business services	739	687	2,876	816
Total	6,002	14,891	10,751	23,988

The inconsistencies between the total exports/imports of services and the sum of the various sub-categories are from the original database.

Source: UNCTAD, cited in ENSAT 10, 2007

### 4.3.3 SADC-EU Economic Partnership Agreement

Preferential market access agreements between the European Union and the African Caribbean and Pacific Group (ACP) of countries have long existed, for almost 40 years. These relations have, in the recent past, been governed by the Cotonou Partnership Agreement, which came into force in 2000 to replace the Fourth Lomé Convention. Trade between the EU and ACP countries under these agreements was non-reciprocal. The trade component of the Cotonou Agreement allowed the export of products from ACP countries into the EU market free of customs duties or in certain instances at preferential rates of duty. The agreement aimed to alleviate poverty and to promote sustainable development and the integration of the ACP countries into the world economy (Articles 1 and 20<sup>26</sup>).

Because it is a preferential agreement, the trade component of the Cotonou Agreement<sup>27</sup> however was criticized by some non-ACP developing country members of the WTO for not being compatible with Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994. It was perceived to grant unfair advantages to the ACP countries alone, to the exclusion of other developing countries. Therefore, this non-reciprocal trade relationship between the EU and the ACP countries has been the subject of negotiations to establish new, largely reciprocal economic partnership agreements (EPAs) between the EU and the ACP group that will be WTO compatible, by progressively removing all barriers to trade between them and enhancing cooperation in all areas related to trade.

Although the SADC-EPA configuration was aligned generally with SADC itself, it does not accurately reflect the regional economic community on which it was based. It originally comprised the SACU members Botswana, Lesotho, Namibia and Swaziland plus the three LDCs Angola, Mozambique and Tanzania. South Africa, was supposed to act as observer, but later joined the SADC EPA as a full participant. The other SADC countries, namely DRC, Malawi, Mauritius, Zambia and Zimbabwe opted to negotiate in the Eastern and Southern Africa (ESA) EPA (Meyn: 2004), although, the DRC left the Eastern and Southern Africa EPA at the end of 2005 to join the Central African EPA, and Tanzania will now have to leave the SADC-EPA group since the announcement and initialling of an EAC EPA in November 2007.

The membership of this group changed with the creation of the EAC EPA as well, in that Tanzania cannot not have signed two EPAs, and so cannot now be included in the SADC group. Out of the remaining SADC members, the four BNLS states and Mozambique initialled Interim EPAs. Only Angola did not initial an IEPA, but has stated that it will accede to the full EPA once it has been concluded.

### ***Disagreement over “new-generation issues”***

The SADC-EU EPA negotiations were launched in July 2004 and negotiations were to end in December 2007. However, due to disagreements between the two parties on “new generation” trade issues (trade in services, intellectual property rights, investments, competition policy, government procurement, labour standards, and trade and environment),<sup>28</sup> negotiations proceeded very slowly. The EC maintains that concluding an EPA with disciplines on new generation issues would enhance the regional integration of ACP countries, and facilitate development and economic growth. The EC insists that the SADC-EPA countries should make binding commitments on new generation issues, particularly services, government procurement and competition. The EC maintains that without these issues the EPA deal will not be full and comprehensive. However, the SADC-EPA position was that it would not be timely to negotiate these issues. In some cases, specifically South Africa, the concern was raised that commitments to these issues would go beyond what is expected under current WTO commitments, and that such commitments would severely curtail the policy space available to a government to craft economic policy to address development challenges. With negotiations going very slowly, and the regional integration agenda under threat from the divisive effect of the EPAs, the SADC-EPA Trade Ministers decided to try and align the SADC-EPA with a review of the S.A.-EU TDCA at

<sup>26</sup> Available online: <http://www.acpsec.org/en/conventions/cotonou/accord1.htm>

<sup>27</sup> The trade component of the Agreement expired at the end of 2007.

<sup>28</sup> Some of these issues are more recent than others, e.g., trade in services and trade-related aspects of intellectual property are already subject to WTO rules, while investments (other than a small subset of investment trade-related investment measures), competition policy, government procurement and labour standards are not (although trade and the environment are to a very limited extent).



least. To this end, they drew up a range of Strategic Framework proposals in February 2006 and presented them to the EU for consideration in early March 2006.

The framework proposals recommended that the BLNS countries be incorporated as de jure members of the TDCA, taking into account their trade sensitivities, and with regard for the Least Developed Country (LDC) status of Lesotho. The MAT countries (Mozambique, Angola and Tanzania) as LDCs were to adopt the EU's Everything But Arms (EBA) preferences,<sup>29</sup> while the so-called new generation issues would be excluded from the negotiations. An EPA does not have to include these issues to be WTO compliant. The EU's response to the framework proposals came only a year later and agreed to South Africa's inclusion as a member of the SADC-EPA configuration. It recommended that the MAT countries remain part of the negotiations, and that new generation issues and regulatory supply-side commitments remain part of the negotiations. In addition, the counter-proposal demanded that a differentiated approach be followed in market access to the EU between South Africa and the other SADC-EPA members due to South Africa's level of development and degree of competitiveness. Reference was also made to development and regional integration. By incorporating South Africa into the SADC-EPA, the EU was essentially agreeing to the formation of a "SACU-EPA," alongside individual EPAs for the remaining three original SADC-EPA members, the MAT.

### ***Initialling of an Interim EPA***

Towards the end of 2007, most countries negotiating under the EPAs appeared unable or unwilling to sign anything. For SACU countries, in particular Botswana, Namibia and Swaziland, any decision not to sign the SADC-EPA implied that these countries would lose goods access to EU markets after the Cotonou waiver expired in December 2007, with attendant hikes in tariffs and export losses. South Africa on the other hand still had the existing TDCA to regulate its relationship with the EU while Lesotho had the Everything But Arms trade regime to fall back on.

The EC finally agreed to settle for a limited SADC-EPA on the basis that further negotiations on the new trade generation issues for a full EPA would continue through 2008, and therefore initialled Interim Economic Partnership Agreements (IEPAs) on trade in goods with those states who were prepared to do this. Botswana, Lesotho, and Swaziland initialled these Interim EPAs with the EU in November 2007, primarily to secure continued access for their products into the EU market. Namibia at first refused to initial the deal to the great dismay of its agricultural and livestock sectors but changed tack and initialled in December 2007, however it refused to agree to further negotiations on services and trade related issues. South Africa did not initial the text, largely due to the EU's insistence on the inclusion of services commitments in any final EPA, and also apparently due to the inclusion of a Most Favoured Nation clause in the IEPA (see below). However, South Africa expressed support for those countries in the SADC-EPA that had signed interim agreements. The SADC-EPA countries (excluding Namibia) that initialled the IEPA agreed to negotiate services in conjunction with support for their services sectors and government institutions to increase their capacity to handle such trade. As a result, SACU trade with the EU for now is governed by both by the TDCA in the case of South Africa and the IEPA in the case of the other SACU member states.<sup>30</sup>

<sup>29</sup> Under the EBA initiative, the EU grants duty-and quota-free market access to least-developed countries for all goods (other than arms), with unrestricted market access for sugar and rice currently being phased in (by 2009).

<sup>30</sup> Commentators argue that the IEPAs will be unenforceable by law without South Africa's consent since the 2002 SACU Agreement forbids its signatories from agreeing individual preferential trade deals without the consent of all the SACU member states. The TDCA was however signed in 1999 before the launch of the 2002 SACU Agreement and thus would have only been subjected by the 2002 SACU Agreement to a provision calling for pre-existing trade agreements to be renegotiated or harmonised with the terms of the 2002 Agreement.

The objectives of the SADC-IEPA as outlined in Article 1 of the Interim Agreement are to:

- contribute to the reduction and eventual eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement;
- promote regional integration, economic cooperation and good governance thus establishing and implementing an effective, predictable and transparent regional regulatory framework for trade and investment between the Parties and in the SADC EPA region;
- promote the gradual integration of the SADC-EPA states into the world economy, in conformity with their political choices and development priorities;
- improve the SADC-EPA states' capacity in trade policy and trade related issues;
- support the conditions for increasing investment and private sector initiative and enhancing supply capacity, competitiveness and economic growth in the SADC-EPA region; and
- strengthen the existing relations between the parties on the basis of solidarity and mutual interest. To this end, consistent with WTO obligations, the Agreement shall enhance commercial and economic relations, consolidate the implementation of SADC Trade Protocol and support a new trading dynamic between the parties by means of the progressive, asymmetrical liberalization of trade between them and reinforce, broaden and deepen cooperation in all areas relevant to trade.

With respect to sustainable development issues, the parties are committed to reducing and eventually eradicating poverty in a way that is consistent with the objectives of sustainable development by

- fully taking into account the human, cultural, economic, social, health and environmental best interests of their respective population and of future generations and
- ensuring that the decision-making methods embrace the fundamental principles of ownership, participation and dialogue.

Furthermore, the agreement states that the role that agriculture plays in alleviating poverty will be taken into account to achieve sustainable development.

From the above objectives, it is evident that the SADC-EPA, incorporates the issues of sustainable development in its text, although the implementation of this, and especially the financing provided for this, will be the key to its impact on development.

#### **4.3.4 SACU-U.S. Trade, Investment and Development Cooperation Agreement**

As noted above, the SACU-U.S. Free Trade Agreement negotiations that commenced in 2003 ended in April 2006 due to the divergent views between the parties on the scope and level of ambition for the FTA. This breakdown was largely due to disagreement on the new generation (Singapore) issues such as investment, government procurement and trade in other services (similar to the issues that have led to

the breakdown of the EU-SA component of the SADC-EU EPA negotiations<sup>31</sup>). Following these developments, the two parties agreed in November 2006 to pursue a Trade and Investment Cooperation Agreement (TICA) that could possibly lead to a FTA in the longer term. Consultations then occurred between SACU and the U.S. Trade Representative on the sidelines of the July 2007 AGOA forum. These consultations tried to reach agreement on the draft text of the TDCA. South Africa, in cooperation with the SACU Secretariat, then developed SACU's final response to the draft text. The SACU Council approved the text and it was delivered to the U.S. negotiators. The U.S. has not responded to SACU's position on the draft as yet. The parties apparently also need to reach agreement on how to capture the development aspect in the draft agreement, and ensure that it meets U.S. Congress definitions as well. The second phase of negotiations thus concluded in December 2007 (Interview data, January 2008). Negotiations are expected to conclude in 2008, and the agreement is to be signed in 2008 (SACU, 2008).

#### **4.3.5 SACU-Mercosur Preferential Trade Agreement Revision**

The original SACU-Mercosur Preferential Trade Agreement was signed in 2004. SACU is currently finalizing negotiations around a new or revised PTA with the South American common market, Mercosur. The eleventh round of negotiations were held in Pretoria, South Africa in early October 2007. At this meeting, final product lines were discussed as well as outstanding issues around Rules of Origin, Free Zones, Sanitary and Phytosanitary (SPS) and customs cooperation. Outstanding details were to be resolved prior to the signing of the agreement in December 2007. As part of this process it was also agreed that a Memorandum of Understanding would be signed noting the intention to continue consultations in notable tariff lines should no agreement be reached before December 2007. The process of resolving outstanding details was not concluded in time and so the last round and signature of the agreement was postponed to end March 2008 (Interview data, January 2008).

### **4.4 SACU and its Trade Relations – Planned Trade Agreements**

#### **4.4.1 SADC Customs Union**

The SADC Regional Indicative Strategic Development Plan (RISDP) is the basis for the SADC Regional Integration Strategy and Programme. The RISDP called for the establishment of the SADC FTA by 2008, a SADC Customs Union by 2010, a SADC Common Market by 2015, a SADC Monetary Union by 2016, and a Single Currency by 2018. To ensure that the milestones as contained in the RISDP are reached, a Ministerial Task Force, comprising Ministers responsible for Finance and Investment, Trade, Development and Planning was set up in 2007 to spearhead the acceleration and implementation of the SADC Economic Integration Agenda. The Task Force is meant to ensure consistency in the process of implementation and it reports directly to Summit (SADC, 2007).

The SADC Secretariat commissioned research in 2007, which analyzed the implications of the process required for the launch of the Customs Union. The study noted the high dependence on trade-related taxes among some SADC countries, which could affect their enthusiasm for the creation of a Customs Union for fear of revenue losses. However, SADC's broader development agenda may still convince SADC to press ahead. The study also noted that SADC had to prioritize the reduction of the overall

<sup>31</sup> Similar issues are also increasingly the subject of opposition and protest by civil society within the NAFTA countries (the North American Free Trade Agreement), to the extent that the leading democratic presidential candidates have aligned themselves with calls for the renegotiation of NAFTA to address these problems.

cost of trade within and outside the regional trading block, by reducing logistical, institutional, and regulatory barriers to trade.

The study further recommended that a four band Common External Tariff (CET) be adopted:

- (a) Zero per cent to cover capital goods
- (b) Ten per cent to cover intermediate goods
- (c) 25 per cent to cover finished manufactured products.
- (d) Over 25 per cent—for a special category of sensitive goods to meet special revenue and other policy requirements.

Although the above bands are meant to be Most Favoured Nation (MFN) applied tariffs, members of SADC could use specific and other non *ad valorem* tariffs. The study argued that four bands introduce greater flexibility and are better able to capture degrees of processing, sophistication of industries and level of industrial linkages (ERB, 2007, Executive Summary, p. 7).

In its case, SACU's current CET is complex, with 100 MFN bands, but the average applied rate is relatively low at 8.2 per cent. Tariff peaks remain on many consumer goods and are particularly high in the motor, clothing and textile sectors (DNA, 2007, p. 43).

International experience shows that no region has yet been able to implement all aspects of a customs union close to one another. What occurs is that a Customs Union (CU) is “launched” at a particular time with certain key decisions taken but others waiting for further discussion and implementation. The process is usually known for lengthy transition periods, slow movement towards the “ultimate goal,” and occasional reverses (DNA SADC Customs Union Policy Brief, 2007, p. 1–2).<sup>32</sup> The goal for SADC therefore would be broad agreement on these core issues, with the progressive implementation of the various facets. Likewise, not all SADC member states would necessarily be able to, or required to, join the CU at its launch, perhaps a two track approach would be used, with the first track comprising the Rand-based Common Monetary Area—namely South Africa, Lesotho, Swaziland, Namibia and outside the CMA—Botswana, Mauritius, Mozambique and Tanzania, those countries that are currently meeting most of the requirements for SADC macro-economic convergence. However, the timeline proposed by SADC's RISDP of five years between 2010 and 2015 may be too brief. An important element in this timeline would be the full implementation by all SADC members of the current SADC Trade Protocol. The longer this takes the longer it may take to finalize the preparations for the Customs Union.

#### 4.4.2 SACU-India Trade Negotiations

Member states of SACU and India publicly announced in 2006 a mutual interest to conclude a PTA. The agreement is aimed at cementing and expanding the burgeoning trade relations between SACU (predominantly South Africa) and India (Soko, 2006). Apart from offering mutual benefits, the PTA is expected to add depth to the trilateral India-Brazil-South Africa (IBSA) initiative (CUTS-CITEE, 2005).

<sup>32</sup> A Namibian respondent noted that SACU took six years to reach agreement on its CU, and still only managed to agree on a framework Treaty, which must be supplemented with relevant Annexes. The respondent noted however that the launch of a SADC CU was in the end going to be a political decision (interview data, November 2007).

By engaging in this bilateral negotiation, SACU expects to benefit from India's rapidly expanding economy and consumer market which is currently quite highly protected (Stern and Stevens, 2000). In October 2007 SACU trade representatives met with their Indian counterparts for the first round of exploratory PTA talks. The two parties planned to sign a memorandum of understanding to guide any negotiations. The two sides exchanged information on trade flows, on volumes, duties and custom regimes and industrial policy issues. The MoU has since been approved by the Indian Cabinet and now awaits signing by SACU. The second round of negotiations occurred in mid-February 2008 in Walvis Bay, Namibia. This meeting was more technical and discussed the formation of a Technical Working Group and offers. It is expected that initial negotiations will focus on between 500–1000 tariff lines (Interview data, January 2008). The negotiations are expected to conclude in December 2009 (SACU, 2008).

#### 4.4.3 SACU-China Trade Negotiations

A Preferential Trade Agreement (PTA) between China and the SACU region has been raised as a possibility, although the exact nature of such an agreement is still up for discussion. Actual negotiations are currently on hold so that the SACU member states can investigate areas and markets of potential interest. Initial research on trade implications has commenced (SACU, 2008). The negotiations process is expected to continue in late 2008 (Interview data, January 2008).

#### 4.4.4 SACU, India, Mercosur Trade Negotiations

An additional trilateral agreement between India, Mercosur and SACU is under consideration to widen the scope of South-South cooperation and thus enhance trade (PTI, 2007). This would be built on the foundation laid by the IBSA agreement between India, Brazil and South Africa, and the fact that a Mercosur-SACU PTA has been signed, as has a PTA between Mercosur and India, and India and SACU are currently negotiating a PTA. A trilateral exploratory meeting took place in early October 2007. The three parties agreed to the principle of such negotiations, but a decision was taken to allow the conclusion of other related negotiations, namely those between SACU and India, and those between SACU and Mercosur, before taking the trilateral concept further.

#### 4.4.5 SACU-EAC Trade Negotiations

The possibility of a FTA with another regional customs union in Africa, the East African Community, is currently being investigated by SACU. Terms of Reference for an impact analysis study on a possible FTA between SACU and the EAC were developed and a study was commissioned in September 2007. Botswana has been mandated as current Chair of SACU to officially consult the EAC counterpart structures to communicate SACU's desire to consider trade negotiations with the EAC. The initial discussions are planned for April 2008 (SACU, 2008).

### 4.5 Trade Agreements by Individual SACU Member States

The SADC Audit Report conducted in 2007 concluded that outside of SACU most of the intra-SADC trade is still taking place under either Common Market of Southern Africa (COMESA<sup>33</sup>) or bilateral

<sup>33</sup> COMESA is made up of 19 states, namely Burundi; Comoros; Democratic Republic of Congo; Djibouti; Egypt; Eritrea; Ethiopia; Kenya; Libya; Madagascar; Malawi; Mauritius; Rwanda; Seychelles; Sudan; Swaziland; Uganda; Zambia; and Zimbabwe.



preferences, and that following the implementation of the SADC Protocol on Trade, several non-SACU countries (e.g., Malawi, Mozambique and Zimbabwe) renewed “dormant” bilateral agreements to incorporate reciprocal preferences (Services Group, 2007). This points to the continuing importance of bilateral agreements in the region, although not all the agreements are active or extensively utilized.

The SADC Trade Protocol does not prevent member states from belonging to more than one preferential trade arrangement. Article 27 of the Protocol stipulates the following:

Member States may maintain preferential trade and other trade related arrangements existing at the time of entry into force of this Protocol;

Member States may enter into new preferential trade arrangements between themselves, provided that such arrangements are not inconsistent with the provisions of this Protocol.

SADC members can therefore belong to more than one trade arrangement, as long as it does not clash with the main objectives of the Protocol. Article 28 of the Protocol, also requires member states to accord Most-Favoured Nation treatment to one another. Article 28(2) states:

Nothing in this Protocol shall prevent a Member State from granting or maintaining preferential trade arrangements with third countries, provided such trade arrangements do not impede or frustrate the objectives of this Protocol and that any advantage, concession, privilege or power granted to a third country under such arrangements is extended to other Member States.

Therefore any SADC Member State that gives trade preferences to another country, regardless of whether that new trade partner is a SADC member or not, that are better than the preferences negotiated in the liberalization schedules of the SADC Trade Protocol will then be required to extend such preferences to all other SADC member states. If they refuse to do so, then such bilateral actions could be labelled as arbitrary and unjustifiable discrimination between member states they risk the withdrawal of trade concessions they receive from other member states (Joubert, 2004). Thus any agreements still active that were negotiated before the entry into force of the Trade Protocol in 2000 have to be renegotiated to fulfil the stipulations of the Protocol or alternatively they must be discontinued.

#### 4.5.1 South Africa's Trade Agreements

South Africa participates in a number of trade relationships: regional, bilateral and multilateral. As noted, South Africa is a member of SADC<sup>34</sup> and has been a member of the WTO since 1995. The country is a beneficiary of the U.S. Africa Growth and Opportunity Act (AGOA) and the Generalised System of Preferences (GSP).<sup>35</sup> In addition to its multilateral agreements, South Africa has preferential agreements with Malawi, Zimbabwe and Croatia plus a non-reciprocal trade arrangement with Mozambique. At present, it is considering further bilateral deals with Kenya, Nigeria, China, Singapore, South Korea and India in addition to its current bilateral trade agreements with the EU (the TDCA<sup>36</sup>), and Mauritius, Kuwait and the Arab Emirates.

<sup>34</sup> South Africa joined SADC in August 1994.

<sup>35</sup> South Africa is accorded GSP status by European Union countries as well as Canada, Czech Republic, Hungary, Japan, Norway, Switzerland and the U.S.

<sup>36</sup> EU-South Africa Trade and Development Co-operation Agreement.

**The India-Brazil-South Africa (IBSA) Agreement** was launched by the Foreign Ministers of India, Brazil and South Africa launched the IBSA Dialogue Forum in June 2003 as a means to support political consultation and coordination, to strengthen cooperation in sectoral areas and to improve economic relations (CUTS, 2005, p. 4). IBSA aims to promote South-South links, mainly through trade and investment. It operates by way of regular, high-level gatherings and biannual summits. Since then two summits have been held to strengthen ties and cooperation in a range of non-trade areas, the most recent held in October 2007. It addressed issues such as wind resources, health and medicines, culture, public administration, higher education, customs and tax administration, human rights, terrorism and nuclear weapons, human settlement development, and reform of the UN (all three countries have declared their desire to obtain permanent seats at the Security Council. Defence has been identified as an area for future cooperation.

Accords were signed in the areas of public administration and governance, tax administration, arts and culture cooperation, higher education, wind resources, health and medicines and social development (bilaterals.org, October 17, 2007). The three countries declared their intention to double intra-IBSA trade to US\$15 billion by 2010, and the group re-affirmed its goal of achieving a free trade agreement between India, Mercosur and SACU (bilaterals.org, October 21, 2007).

The countries further plan to pool their strengths in the areas of science and technology, including joint research and development projects in manufacturing, pharmaceuticals, ICT and energy technology to achieve energy security for their expanding economies. Brazil has comparative strengths in ethanol and bio-fuels, South Africa in coal-to-liquid and gas-to-liquid technologies and India has strengths in wind and solar energy. The Indian prime minister called for viable trilateral business models to be developed. Reinforcing the predominantly non-trade aspects of the relationship, India called for a common social development strategy including public-private partnerships, targeting eight elements—rapid economic growth, inclusive growth, human resource development, building equitable infrastructure and grassroots institutions, promoting environment-friendly strategies, preventing short-term distress mitigation and integration into world economy (bilaterals.org, October 17, 2007). The next IBSA summit will take place in India, in 2008.

**The Trade, Development and Cooperation Agreement (TDCA)** between the European Union and South Africa was signed in December, 1999 to establish a Free Trade Area (FTA) by 2012. According to the Agreement, the TDCA is to establish a FTA, which will be in conformity with the WTO provisions for FTAs. The objectives of the TDCA are, amongst others, to (i) promote regional cooperation and economic integration in the Southern Africa region to contribute to its harmonious and sustainable economic and social development; and (ii) to promote the expansion and reciprocal liberalization of mutual trade in goods, services and capital. The EU is to liberalize 95 per cent of its imports from South Africa over a 10-year period while South Africa has to liberalize 86 per cent of its imports from the EU over a 12-year period.

To protect vulnerable and sensitive sectors on both sides, a number of products have been kept outside the ambit of the free trade agreement, and are to be reviewed periodically. Products excluded from the South African side include beef and beef products, some pork and pork products, wheat and wheat products, barley and barley products, sugar, some dairy products, petroleum oil, motor components and passenger vehicles. On the EU side, products excluded include live animals, meats, dairy products, sugar, rice, some cut flowers, fresh and preserved fruits and vegetables, cereal, some fish and unwrought aluminium.

The **Malawi-South Africa Preferential Trade Agreement** was reached in 1967 and provided for preferential rates of duty, rebates and regulations on certain goods traded between the two countries. The agreement was amended in 1990 and all goods of Malawian origin enter South Africa duty-free,



provided that certain rules of origin are satisfied. The agreement stated that goods would be considered as originating in Malawi if at least 25 per cent of the production cost is presented by material produced and labour performed in Malawi. The final production of such goods also had to take place in Malawi. A similar arrangement applied to South African goods exported to Malawi (tralac, 2003). The two countries took their trade relationship further in 2007 when they established a Joint Permanent Commission of Cooperation (JPCC) aimed at enhancing socio-economic development in the two southern African states. The agreement covers economic and technical cooperation.

South Africa's bilateral trade agreement with **Zimbabwe** dates back to 1964 and consensus on a new trade agreement was reached in August 1996. In line with the new agreement, tariff and quota levels on textile imports into South Africa will be lowered. South Africa also grants non-reciprocal preferential treatment to Mozambique, and is involved in a bilateral agreement with Mauritius. However it must be borne in mind that the upcoming SADC FTA should supersede such bilaterals.

The growing importance of the Middle East and the Far East as trading destinations and sources of investment for South Africa also led to the signing of bilateral agreements with **Kuwait** and the **United Arab Emirates** in 2005.

Additionally, free trade agreements are apparently under consideration with **Japan** and **Singapore**, with these two countries keen to proceed. Actual negotiations have yet to commence, with South Africa noting that its capacity was being stretched by the number of negotiations that are ongoing. It should be noted that although these potential agreements are listed here under South Africa, they could also be listed as potential SACU agreements, given that such proposed agreements would obviously have to go through SACU in the end, and would require the consent of the other Customs Union partners, something noted by President Mbeki of South Africa with regard to talks with Singapore. The agreements are placed here as Japan and Singapore have noted that they would initially proceed with free trade agreement talks with South Africa with an eye to eventually concluding a free trade pact with the entire SACU. The South African private sector has expressed concern at the number of free trade deals being negotiated, urging government to concentrate rather on concluding existing negotiations successfully before entering into any new ones.

#### 4.5.2 Botswana's Trade Agreements

Botswana is a signatory to a number of bilateral, regional and international trade agreements. Botswana has bilateral trade agreements with India,<sup>37</sup> Malawi,<sup>38</sup> Zimbabwe,<sup>39</sup> Angola, Zambia and the EU. The country is a member of regional trade agreements such as SADC. Botswana is also a member of the WTO and is participating in AGOA<sup>40</sup> (Botswana's Trade Policy Review, 2006).

Botswana has MFN trade agreements with the following countries; China, Czech Republic, Cuba, India, Slovakia, Romania, Russia, Republic of Korea and Zambia. Furthermore, Botswana is eligible for GSP treatment from Australia, Canada, EU, Japan, New Zealand, Norway, Switzerland and the United States. These arrangements have particularly benefited craft and leather exports.

<sup>37</sup> A bilateral arrangement with India was signed in 2001.

<sup>38</sup> Botswana has an old reciprocal customs agreement with Malawi dating back to 1956 and this agreement is rarely used.

<sup>39</sup> Botswana's bilateral trade agreement with Zimbabwe, signed in 1988, provides for reciprocal duty-free entry of each other's goods. Data shows that trade between the two countries has declined in relative importance; Zimbabwe represented only about two per cent of Botswana's merchandise exports and four per cent of imports in 2001. A respondent noted that Zimbabwe has been an erratic trade partner. Every time trade picked up in Botswana's favour, Zimbabwe would apparently raise non-tariff barriers (Interview data, November 2007).

<sup>40</sup> Botswana qualified under the "Wearing and Apparel Provisions" in October 2001.

Botswana also had preferential access to the EU market under the trade section of the Cotonou Agreement. Under this pre-EPA agreement, exports of hides, skins and leather products were duty-free and quota-free while beef exports to the EU are dutiable at a reduced rate of ten per cent of the specific element of the tariff. Botswana's business community is interested in trade with Angola, but is waiting for Angola to ratify the SADC Trade Protocol (Interview data, November 2007).

### 4.5.3 Lesotho's Trade Agreements

Lesotho maintains a bilateral agreement with Mozambique. Lesotho is a member of the WTO<sup>41</sup> and participates fully in the Doha Development Agenda and other aspects of the WTO negotiations. In addition to the WTO, the country is a member of the SADC, and the African Union, as well as a signatory to the Cotonou Agreement. Lesotho, as a least developed country, also benefits from unilateral duty-free access to the EU market for "everything but arms" (EBA) under special commitments made by the EU in the WTO. Furthermore, Lesotho is also a beneficiary of the U.S. AGOA.<sup>42</sup> Lesotho also benefits from preferential access to the markets of most developed countries under the Generalized System of Preferences (GSP).

### 4.5.4 Namibia's Trade Agreements

Namibia<sup>43</sup> is a member of the WTO, and SADC. Namibia is a signatory to the EU-ACP trade agreement and is participating in the SADC-EPA negotiations. The country signed a bilateral Preferential Trade Agreement with Zimbabwe in 1992<sup>44</sup> and another one with Angola in 2004. Furthermore, Namibia is a beneficiary under the U.S. AGOA.<sup>45</sup> Namibia receives preferential market access for some of its products in certain developed countries' markets, under various GSP schemes. The country receives GSP treatment from Australia, Canada, European Union, Hungary, Japan, New Zealand, Norway, Switzerland, U.S., Poland, Czech and Slovak Republics, Russia and Bulgaria.

Namibian stakeholders interviewed noted that trade with Zimbabwe under their FTA had decreased significantly, except for trade in sugar, but that the negative impact on Namibia had been very small as it was off a low base. Initially, the concept of a Namibia-Zimbabwe FTA had been resisted by SACU, as it wished to set up a SACU-Zimbabwe FTA, but these processes were overtaken by the differentiated offers between South Africa and the rest of SADC under the SADC Trade Protocol (Interview data, November 2007).

Although geographical neighbours and thus in theory natural trading partners, Namibian trade with Angola is largely still in South African products. Namibian exporters find the absence of a common language and business culture to be barriers to trade, although they believe the potential for trade to be good, once Angola ratifies the SADC Trade Protocol and FTA (Interview data, November 2007).

<sup>41</sup> Lesotho joined the WTO on May 31, 1995.

<sup>42</sup> Lesotho was the first of the BLNS countries, the second SACU country (after South Africa) and the fifth of the 35 originally qualifying sub-Saharan African countries to qualify for AGOA benefits, as from April 23, 2001 (Lesotho National Development Corporation: [www.lndc.org.ls](http://www.lndc.org.ls)).

<sup>43</sup> Namibia became a member of SACU in 1990

<sup>44</sup> This provides for reciprocal duty-free entry of each other's goods, subject to rules of origin requiring at least 25 per cent local content for manufactured goods, and Namibia or Zimbabwe (as exporter) should be the last place of substantial manufacturing. Other eligible products include mineral products, vegetable products, live animals and their products, forest products and seafood, provided they are wholly produced or obtained in either country.

<sup>45</sup> Namibia was declared eligible for AGOA benefits by the United States on October 2, 2000, and eligible for the apparel provisions on December 3, 2001.

#### 4.5.5 Swaziland's Trade Agreements

Swaziland has bilaterals with Tanzania, Malawi, Mozambique, Zambia and Zimbabwe. Swaziland is a member of the WTO, SADC and COMESA.<sup>46</sup> Swaziland is also a beneficiary of the U.S. AGOA<sup>47</sup> trade arrangement, and General System of Preferences (GSP) between Africa and the U.S.

### 4.6 References to Sustainable Development in SACU FTAs

From the research conducted for this study, it appears that the greater majority of trade agreements or negotiations undertaken by SACU or its member states tend to focus only on one pillar of sustainable development, mainly the economic aspects of trade. More specifically, emphases are on achieving easier market access, promoting increased trade and promoting regional integration. Alleviation of poverty and improvement of living standards are occasionally mentioned in the preambles. Specific poverty alleviation and social development issues and commitments seemingly feature rarely in the text however. Only a few agreements, the SACU-EFTA and the SADC-EU EPA agreements, as well as the text of the failed SACU-U.S. agreement cover economic, social and environmental aspects of sustainable development. In addition, no mention is made in any agreements of the UN Commission on Sustainable Development indicators, the 2002 Joburg Plan of Action, or the 1992 Agenda 21 agreement. Agreements signed prior to 1992 would not have referred to the last two items though.

Although there are efforts to address sustainable development at a national level in the region, not much has been done to link trade and sustainable development in formulating regional and bilateral agreements, beyond noting trade's direct impact on specific sectors of the various economies. This raises the necessity for SACU and its member states to link the achievement of Agenda 21 and JPOI targets to current and future trade negotiations, and integrate development and the environment in regional and national trade policies.

## 5. Regional Policy and Institutional Contexts

### 5.1 SACU Policy and Institutional Context

As this paper seeks to locate the analysis within SACU itself, it is useful to briefly consider some aspects of the regional context that have a bearing on development, namely the rationale for the 2002 Agreement itself, the 2002 Agreement's revenue sharing arrangements, and common approaches to policy making as exemplified by the possibility of a regional industrial policy.

#### 5.1.1 The 2002 SACU Agreement

As noted above, SACU was renegotiated in 2002 to take account of the new socio-political environment in the region following the demise of Apartheid. Negotiations commenced in 1994 and a new agreement was signed in 2002 and became operational in July 2004. The renegotiations were necessary due to the asymmetries in decision-making, and policies evident in the original agreement. The new agreement seeks to build a democratic approach to trade policy while minimizing revenue instability, by means of shared decision-making and the new revenue sharing arrangement.

<sup>46</sup> The COMESA Free Trade Area was launched on November 1, 2000. Swaziland ratified the COMESA Treaty in 2002, but has been a member for longer than this.

<sup>47</sup> Swaziland has been eligible for AGOA benefits in the United States since January 2001.

The SACU agreement has been shaped by unique political and economic circumstances. The 1969 Agreement reflected both the dominance of South Africa during a period of political isolation, and the revenue concerns of the landlocked countries of Botswana, Lesotho and Swaziland (BLS) following their independence from the United Kingdom. The agreement was based on a dispensation managed unilaterally by South Africa, and where the smaller economies were compensated for both their lack of participation in decision-making and asymmetry effects, South Africa assumed absolute discretion over external trade policy. This remained acceptable to its smaller customs union partners because they considered the customs union a vehicle for the collection and distribution of customs and excise revenues, and to a lesser extent for facilitating imports. Whilst the possible costs of the customs union were recognized, calls for reform were muted by the increasing size of the revenue transfers.

The democratic transition in South Africa however provided an opportunity to comprehensively renegotiate the customs union. These negotiations allowed long-standing policy debates to be reopened, including the extent of trade diversion in SACU and its impact on the development of the less-developed members. The negotiations and new political circumstances even held out the possibility of deeper economic cooperation and regional integration in SACU. But revenue issues remained the key focus, with all parties looking to stabilize future payments and receipts (World Bank, 2003, p.1). The 2002 SACU Agreement that resulted did not however explicitly address sustainable development issues and did not spell out specific measures to achieve this, beyond the revenue sharing agreement. It does, however, aim at balancing the development of its members. Article 38 of the 2002 SACU agreement states that common policies aimed at balanced development are to be adopted in at least four areas: industrial development, agriculture, competition and unfair trade practices. In addition, it requires SACU members to agree on a joint industrial policy. However it does not include an reference to “sustainability” or to environmental issues. The previous 1969 agreement did not appear to achieve balanced development (Adongo, 2006, p. 2).

Given the historical dominance of South Africa in all matters of SACU policy making, this move towards regional policy making in the 2002 Agreement was a significant departure from the 1969 model. It has not yet been translated into any institutional processes or action though, and does not appear to have impacted on South African policy-making to date, as evidenced by the silence around SACU in some key recent South African developmental policy outputs—the CSD 16 report, the NSDS and the National Industrial Policy Framework. Recent comments by South Africa’s official opposition party, the Democratic Alliance, over policy formulation in SACU indicate the level of concern amongst some stakeholders in South Africa over the future of SACU. The party’s trade spokesman noted that SACU has been seemingly unable to turn political fancy into the economic reality of a union serving a common purpose. He called for an urgent, in-depth discussion involving member states and the private sector regarding the role of SACU and the stalled development of common regional policies and mandates. The party noted that despite the 2002 SACU agreement committing members to explore common regional policies, such as agricultural and industrial development policies, even South Africa’s chief trade negotiator has admitted that SACU has failed to do so.

The political commitment to regional integration proclaimed by members has not been channelled into trade policy and strategy. The diverse interests of SACU members and the vast divide in their respective levels of development lie at the heart of the problem. These issues need to be addressed before SACU can serve the common interests of all members. At present, member states have vastly different ideas as to how the customs union can address their specific developmental goals (I-Net Bridge, March 3, 2008).

### 5.1.2 The SACU Revenue Sharing Formula

Although SACU does not directly focus on sustainable development issues through its institutions, the Revenue Sharing Formula of the SACU Common Revenue Pool plays an important role in the region in significantly supplementing the budgets of the smaller SACU states, thus enabling them to concentrate more resources on developmental activities if they wish. The revenue pool is made up of the customs pool and the excise pool. Although excise duties are not usually included in Customs Union revenue pools, they were included in SACU's pool in order to ensure greater revenue stability for the BNLS (Kirk & Stern, 2003, p. 13). This also helps to offset the reduction in tariff revenue due to South Africa's policies on tariff liberalization, phasing out import surcharges and the use of import rebates to lower input costs. The contribution of excise duties has risen by 19 per cent on average since the late 1980s, while the real value of the customs pool has shrunk by 35 per cent over the same period (McCarthy, 2006, pp. 13–14).

Under the terms of the renegotiated 2002 SACU Agreement, the total SACU customs pool is divided according to a formula based proportionally on each country's share of total trade within SACU (intra-SACU imports).<sup>48</sup> This is quite unusual for a Customs Union, where the duties are normally divided according to each state's contribution to the common revenue pool. Due to the fact that South Africa exports much more to its neighbours than it imports from them, the revenue split strongly favours the other states, giving it a strong distributional or developmental aspect. South Africa currently gets around ten per cent of the intra-SACU customs pool, and the others around 90 per cent. However, as the revenue pool grows, so do the transfers to the BNLS states, and the flows are in excess of what they would receive if the payments were tied merely to actual imports.

The excise pool is divided differently: in proportion to each country's share of total SACU GDP. The GDP figure is used as a proxy for value of excisable goods consumed per country (Kirk & Stern, 2003, p. 10). This means that about 85 per cent of it comes to South Africa, and the remaining 15 per cent to the other states, but it's a much smaller pool than the customs revenue pool. Note that the funds for the development component (15 per cent of the total excise pool) are subtracted first before the remaining excise funds are distributed.

So this means the revenue distribution essentially functions as follows: all custom, excise and additional trade duties collected in the common customs areas are paid into a common revenue pool. The cost of funding the SACU bodies is subtracted from this revenue, and the remainder divided up in three components:

- customs revenue is divided according to each member state's share in intra-SACU imports. This means that the BNLS get a disproportional share of this revenue, because South Africa runs a large trade surplus with them;
- a development component is also provided, funded by 15 per cent of the excise revenue; and

<sup>48</sup> Although re-exports by wholesalers and retailers, e.g., where vegetables are bought by South African companies from BNLS companies and then re-packaged and re-exported to the BNLS probably distort these figures slightly, the 2002 Agreement does not explicitly take note of this, probably because they cannot easily be identified (Kirk & Stern, 2003, p. 9). A larger distortion would be re-exports from the rest of the world, where goods are imported into South Africa from outside of the region and then re-exported to the BNLS. Strictly speaking, these should then be classified as South African imports, and not as BNLS imports. The value of such goods might be much higher, especially given South Africa's unilateral trade liberalization of the last decade, and probably inflate the BNLS customs pool share (McCarthy, 2006, p. 16).



- the remaining 85 per cent of the excise pool is divided among member states in proportion to their share of the SACU GDP. This means that South Africa gets the largest share of this part of the excise pool.

The revenue sharing agreement is essentially a compensatory mechanism to offset the trade distorting effects for the small states in being in a Customs Union with South Africa, which is massively larger in terms of GDP and manufacturing and export capacity. South Africa effectively compensates the other member states to offset the negative effects of its regional economic dominance, whereby trade and investment flows are naturally attracted to South Africa rather than her neighbours, and where South African exports crowd out local manufacturing in the same states. Although the BNLS industries would benefit from lower input tariffs if they had control over these tariff levels, the interests of these sectors are outweighed by the importance of the revenue flows to the BNLS core budgets. In fact, to compensate for the loss of the revenue, the BNLS would ironically have to raise tariff levels (Flatters & Stern, 2006, pp. 4, 6). It should be noted that the new SACU agreement in 2002 is a far more democratic arrangement, giving the smaller states a greater role in the operation of the customs union than previously was the case.

An extremely high proportion of government revenues in Swaziland, Lesotho and Namibia come from the overall SACU fiscal transfers. For the two poorest member states, the SACU revenue pool fiscal transfer accounted for 28 per cent of GDP in the case of Lesotho and almost 24 per cent in Swaziland in 2006. Namibia also gets a large net transfer of 12 per cent of GDP and even Botswana, the richest country in SACU, gets a net transfer of almost nine per cent of its GDP, as illustrated in the table below. The cost of these transfers to South Africa, the only net donor, is one per cent of its GDP. However because of the lack of reliable data on BLNS imports from the rest of the world, and the fact that members compete for a fixed pool, therefore increasing the possibility of inflated import figures; these figures are in all likelihood an underestimate of the benefits of the net fiscal transfers to the BLNS and of their cost to South Africa. In addition, to use this Revenue Sharing Formula SACU has to track and carefully record all intra-SACU imports and so maintains border controls, even though this goes against the idea of a customs union, where internal controls on goods are minimal. To resolve this data conflict would require even more stringent border controls or a Rules of Origin regime, either of which would further undermine the free flow of goods within SACU (Flatters & Stern, 2006, pp. 3, 18–20).

**Table 16: Receipts from SACU revenue pool, 2004**

	Excise	Development	Customs	Total	Total	Total	Total
	R million				% of GDP	% Gov Rev	per Capita
Botswana	586	483	4,565	5,634	9.0	20.1	3,692
Lesotho	85	560	2,191	2,836	28.2	53.0	1,398
Namibia	357	523	4,584	5,463	12.2	41.0	2,695
Swaziland	152	534	3,023	3,708	24.1	56.9	4,256
South Africa	13,512	493	3,620	17,625	1.0	3.9	666

Source: World Bank African Economic Indicators 2004 and SACU budget documentation (Flatters and Stern, 2006)

Even disaggregating this on a net basis in combined customs and development components, that is, the amount received after contributions to these sections of the revenue pool, the redistributive effect is substantial, accounting in 2006 for 23 per cent of GDP in the case of Lesotho and almost 18 per cent in Swaziland. Namibia also gets a net transfer of 12 per cent of GDP and even Botswana, the richest country in SACU, gets a net transfer of almost five per cent of its GDP. The net customs duties alone comprise 16.3 per cent of GDP in the case of Lesotho, 14 per cent in Swaziland, 10.5 per cent for

Namibia and 4.1 per cent for Botswana. However, it must also be noted that these funds go to the respective governments, and are not necessarily earmarked for development, but contribute only generally via support for the national budgets (Flatters & Stern, 2006, pp. 16, 20).

This compensatory arrangement is perhaps a key reason for the durability of the customs union. However, South Africa's National Treasury in particular feels that a large proportion of this money should be redefined as development assistance.<sup>49</sup> This designation would ensure that these transfers do not fund recurring expenditure, but rather are directed towards purely developmental areas (SAIIA, 2007). However, this approach is opposed by the other SACU member states, as it would no doubt allow the volume of the funds to be reduced once separated from the Revenue Sharing Agreement. It would also give South Africa more discretion over the distribution of funds, whereas at present the other SACU member states are free to use the proceeds from the Revenue Sharing Agreement for whatever budgetary purpose they see fit. The central problem is that the SACU states see the CU as a source of revenue, whereas South Africa sees the tariffs as a negligible source of revenue but a useful industrial policy tool. This automatically creates conflict in the regional arrangement (McCarthy, 2006, p. 16).

### ***The SACU Revenue Pool Development Component***

As noted, a development component is also provided, funded by 15 per cent of the excise revenue. This is distributed almost equally, with roughly 20 per cent of the funds going to each SACU member state. However, it is important to note that in reality this fund is not apparently used for traditional development purposes, and the monies are merely allocated as recurrent revenue in the member states, budgets (McCarthy, 2006, p. 15).

Those countries that receive the largest share of excise duties contribute most toward and benefit the least from the development component (essentially South Africa funds around 90 per cent of the development component and is the only net contributor). This gives it a very developmental, distributional nature. Furthermore, the shares accruing to each member state are adjusted slightly in favour of the less developed countries in SACU (the development component is designed to account for differences in per capita income, but these differences are then deflated by an adjustment factor that ensures that each country receives this nearly equal share (Flatters & Stern, 2006, p. 1). In 2001–02 the Development Fund comprised around eight per cent of the total revenue pool, and the South African contribution totalled R1, 319 billion. If these figures were to be extrapolated using the excise figures from the 2006 Budget Overview, it is possible that South Africa's contribution to the Development Fund could be currently in the range of R2 billion (own calculation, corroborated by figures taken from Flatters & Stern, 2006, p. 16).

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<sup>49</sup> South African's National Treasury has publicly expressed dissatisfaction with the revenue sharing formula, saying that it is not sustainable. An anonymous official was quoted in April 2007 (<http://www.24.com/news/?p=tsa&ci=481154>) as saying: "This is development aid disguised as revenue-sharing. If we're going to give aid we must call it aid—but we can't go on giving like this." The 2007 Budget Overview notes that: "Although the revised [SACU] agreement has been in effect since 2004, there is a need to further refine the revenue-sharing formula." South Africa is expected to contribute around R23 billion to the arrangement in 2007/2008 in the context of a rising current account deficit that has weakened the Rand and led to a surge in imports and therefore import duties, with motor vehicle imports a significant contributor (Flatters & Stern, 2006, p. 21). SACU payments in 2006 apparently accounted for 4.9 per cent of South Africa's current account deficit (<http://business.iafrica.com/news/344928.htm>). However, as the revenue transfers comprise often significant components of the BLNS states, core budgets, it is to be expected that they will resist any revision of the current SACU revenue sharing arrangement.



The table below shows the net transfer in terms of this component, i.e., the amount they receive after the value of their contribution to this part of the revenue pool is deducted from the amount they receive.

**Table 17: Net development component transfers under SACU RSF, 2006**

	Net Transfer (R millions)	Net Transfer (% of GDP)	Net Transfer (R per capita)
Botswana	380	0.7	216
Lesotho	545	6.8	257
Namibia	460	1.4	235
Swaziland	507	3.5	469
South Africa	-1,891	-0.1	-41

Source: Flatters & Stern's calculations based on official SACU data (Flatters & Stern, 2006)

The development component does function as a redistribution mechanism from richer to poorer SACU members, but due to the generic nature of the formula, one anomaly is that Botswana, SACU's richest member state on a per capita income basis, is a net recipient rather than donor. Nonetheless, within the BLNS group, the transfers are progressive when measured relative to each country's GDP (second column of the table above). However, when measured on a per capita basis, the effect is less progressive, with the difference between the richer poorer countries not as marked as it perhaps could be (Flatters & Stern, 2006, p. 15) although it is still progressive.

The SACU revenue distribution formula is also very responsive to changes in trade policy. If external tariffs decline, the amount of compensation from South Africa to the BLNS falls in line with the relative size of the customs pool, thus creating a decline in revenue for the smaller member states. This was one of the motivators for establishing the development component as an alternative method of compensation that is independent of customs revenues. The size of the development component is therefore likely to become increasingly important over the next decade as South Africa continues to liberalize its trade with other non-SACU trading partners. Any amendment to the size of the development component (i.e., changing the share of total excise revenue allocated to "development") requires the consent of all the member states. With South Africa being the only net contributor to the development component, it is uncertain whether they will agree to raise their contribution to compensate for reduced tariff revenue. If the development component remains unchanged the BLNS may therefore need to diversify their revenue base and review government expenditure policies (SARPN, 2003, p. 15).

National Treasury notes that SACU and CMA financial transfers accounted for some 87 per cent of overall South African government transfers to Africa in 2004. The inclusion of such transfers is apparently normal practice amongst international donors in reporting on their overall international aid, although it would probably be counted under the OECD's Development Assistance Committee definitions as Other Official Flows (OOF) and not ODA (Official Development Assistance). These OOF transfers are official flows that are not primarily meant for development, but are still directed to developing countries, although it should be noted that National Treasury described the SACU agreement in its 2006 Budget Overview as reflecting "a shared commitment to a development-oriented distribution of customs and excise revenue between [SACU] members" (National Treasury, 2006, p. 10). However it is arguable that the SACU transfers do not strictly count even as OOF, as they are partly made up of actual customs and excise revenue that would accrue to the states concerned even without the Customs Union, although admittedly at a much lower level. It would be difficult but possible to largely disentangle the portion that would otherwise accrue to each SACU member if the current revenue formula did not deliberately allocate a higher percentage of the pool to the less developed member states. To be exact, the SACU transfers should be disaggregated according to what South Africa's partner states would receive if the customs and excise pool were not

weighted in their favour. Essentially, the redistribution of the customs pool provides far more compensation than necessary for the “cost raising effect” of the SACU tariff, with the result that it also provides a very large net fiscal transfer to the BLNS (Flatters & Stern, 2006, p. 26).

The difference between the actual customs flows and what they currently receive under the 2002 agreement could in theory then be described as actual Other Official Flows, that is, not traditional development assistance, but a voluntary transfer nonetheless. The exception to this is the development component, which although not used strictly for development projects, has been created explicitly as a development fund, and therefore could presumably be included under an ODA heading, even if it falls under a Customs Union agreement.

### ***Future paths for the SACU Revenue Sharing Formula?***

If SACU is to expand and even integrate with a proposed SADC Customs Union, then the Revenue Sharing Formula (RSF) will need to be reformed. Possible reforms could include treating some of the current functions of the RSF separately, perhaps through splitting the revenue collecting and development functions of the revenue pool. Possible mechanisms could include:

- a) Removing most of the redistributive effect of the current customs-sharing arrangement by basing the shares of all members on imports from everywhere, i.e., of intra-SACU and extra-SACU imports. Ideally, shares of customs revenues would be based on extra-SACU imports, but this would probably face the same data problems as are currently faced in measuring intra-SACU imports. Trade data disputes could possibly be overcome by agreeing to fix customs shares at some recent average levels.
- b) Developing a separate development budget that would draw on the common revenue pool but not necessarily be strictly tied to it. This would allow the development component to be redesigned in terms of development criteria.
- c) South Africa agreeing to increase the development component to offset the decline in redistributive flows.

Whatever is done would also need to include measures aimed at coordination of border posts, value added tax and other tax harmonization, and disciplines on arbitrary trade restrictions (Flatters & Stern, 2006, p. 30). Another factor must be added into the equation—South Africa’s economic outlook is less positive now in 2008 than it was for much of the last decade. Inflation is rising fast, driven by external, global price rises in food and fuel. Energy expenditure is rocketing as the country races to build new power plants, and increased government expenditure on security and pension reform may be necessary given the high crime rate and low savings rate. In this context, continuing transfers to SACU may be seen as an increasing burden, and the recent division of SACU over the EPAs may prove to undermine regional consensus if a resolution cannot be found by the end of 2008. In this atmosphere, it is possible that South Africa may push harder than ever for a reform of the current Revenue Sharing Formula. However, at the same time, the developmental, redistributive nature of the formula has not been called into account, merely the mechanisms by which it is occurring (McCarthy, 2006, p. 14).

### **5.1.3 Towards a Common Industrial Policy for SACU**

Although the 2002 SACU Agreement revised the nature of the relationship between the partner states, it is in the areas of democratized policy-making where the foundations for a region-wide approach to

sustainable development could be laid. SACU has been in existence for nearly a century in various forms, yet developmental regional integration in SACU is still in its infancy.<sup>50</sup> A regional industrial policy has been promoted as one method of correcting this, and is useful to examine as an illustration of one aspect of sustainable development. It is also necessary, given the trade mandate contained within the 2002 Agreement that SACU would now negotiate trade agreements as a unit, that the region develop as a unified market with a common industrial vision (McCarthy, 2006, p. 20).

The problem with SACU's revenue sharing is that it can lead, and may have led, to some of the problems found in countries with a significant natural resource, the so-called "resource curse" whereby a country is slow to diversify its economy, its skills capacity and its tax base due to over-reliance on one particular natural resource. An example would be oil-producing nations. What makes the SACU revenue more disadvantageous is that it does not evidence the dependability that a natural resource would. It is less secure and is subject to unilateral change by the actions of South Africa. In a sense the 2002 Agreement and recent mutterings by senior officials in South Africa's National Treasury (noted above) about the unsustainability of revenue sharing serve as a warning to the other members of SACU that diversification is no longer an option. That the revenue is of great importance to them is not in dispute, as evidenced by the table on revenue receipts above, where it was shown that SACU tariff revenue comprises 20.1 per cent of revenue for Botswana, 41 per cent for Namibia, 53 per cent for Lesotho, 56.9 per cent for Swaziland, yet only 3.9 per cent for South Africa.

This gives the process of diversification added urgency. Such a policy would also have to be more than just South Africa setting a common industrial policy for the SACU region. At the same time it must be borne in mind that industrial policy has different schools of thought, and while the case for industrial policies in the wide sense, including reference to a stable macro-economy, education and training etc., is generally accepted, the case for specific interventions directed at specific industries is more contested. But in general analysts agree that interventions should attack any problem of market failure closest to its source. The World Bank maintains that the real question is not how fast an economy can industrialize, but how to structure the industrial sector so that it supports economic growth. The development of industry should, like trade, thus not be seen as an end in itself, but as a means to achieve other goals, such as economic growth, employment, or income distribution. Likewise, it should not be seen in isolation from other sectors of the economy (World Bank, 1993, cited in Andango, 2006). The success of industrial policy in SACU may depend on state competence, the effectiveness of interventions and policy space to address local development in the context of increasing numbers of international trade agreements

However, in spite of the 2002 Agreement's progressive goals, the character of SACU appears to be changing very slowly, and there does not appear to be movement towards setting up bodies that would initiate and guide the process of harmonizing the SACU industrial policies.<sup>51</sup> At present, SACU members still compete for, rather than pool, resources, including international capital. The net effect of this has been a polarization of development, industrial, labour and social policies, as investors negotiate differing agreements with host SACU countries. A harmonized industrial policy might minimize competition by the other members with South Africa for investment capital. To show the challenges

<sup>50</sup> One respondent remarked that industrial development in the BNLS had been "stifled" by the existence of SACU due to the interests of South Africa, although another noted that SACU had prevented Botswana at least from protecting too many infant industries, leading to fewer but stronger industries. It also forced the BNLS to maintain open economies (Interview data, November 2007).

<sup>51</sup> There does however appear to be movement on a common agricultural policy, and stakeholder consultations are occurring (Interview data, November 2007).

facing sustainable industrial development on a region-wide basis, a set of potential interventions are listed below that identify both what is not currently being done in most instances, and yet what should be attempted to facilitate regional industrial growth:

- Industrial policies within SACU need to be harmonized;
- SACU member states need to ensure that revenue from the revenue sharing formula is used to diversify their economies and promote industrialization;
- Any window period of protection for infant industries in the region must include interventions in the respective sectors to enhance competitiveness and must be monitored and evaluated to ensure that competitiveness-targeting is taken seriously by both private sector and government;
- Linked to the above, government and the private sector should collaborate in identifying and targeting new niche products and regional or international markets, for industries that cannot, for example, compete directly with South African multinationals;<sup>52</sup>
- In line with Article 28 of the 2002 SACU agreement member states should strive to harmonize product standards and technical regulations within the Common Customs Area (CCA);
- Efforts should be made to reduce non-tariff barriers in the region;
- Resources must be allocated to reduce infrastructural challenges to industrialization in the region;
- South Africa's SACU neighbours should attempt to leverage their relative advantages when attempting to attract industrial investment—where applicable, tax rates, lower crime rates and greater social stability. Industrial facilities or estates could be established at border towns; and
- It may make sense for segments of the BLNS industrial sectors to enter into integrated manufacturing agreements with major South African manufacturers, to supply components rather than directly competing (e.g., industries like motor vehicle manufacturing, electronic and household appliances and agricultural equipment). A government-to-government approach could be used to facilitate this.

Essentially, the BNLS states would wish to pursue a regional industrial policy that encourages a vibrant regional economy, rather than one that sees the BNLS as merely a market for South African goods (Interview data, November 2007). However, the absence of any significant mention of SACU or regional policy formation in the new South African Industrial Policy Framework has made the BNLS concerned that South African policy will once again be the dominant policy foundation for the region (Interview data, November 2007).

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<sup>52</sup> The problem of a lack of common industrial policy is especially important to trade in genetically modified (GM) seed or plants. Namibia has declared itself a GM organism-free country and uses this to boost the attractiveness of its exports to Europe, which restricts Genetically Modified Organism (GMO) imports. However, South Africa allows GMO trials and plans to grow and market GM crops. Ideally a GMO labelling policy is needed in the region, but the private sector in the region as a whole is not pushing for this (Interview data, November 2007).

## 5.2 SACU Member States and International Agreements

The respective SACU members are signatories to various international agreements, as shown by the table below.

**Table 18: SACU member state treaty ratifications**

Treaty	Cartagena Protocol on Biosafety	Framework Convention on Climate Change	Kyoto Protocol to the Framework Convention on Climate Change	Convention on Biological Diversity	Vienna Convention for the Protection of the Ozone Layer	Montreal Protocol on Substances that Deplete the Ozone Layer	Stockholm Convention on Persistent Organic Pollutants	Convention of the Law of the Sea	Convention to Combat Desertification
	2000	1992	1997	1992	1988	1989	2001	1982	1994
South Africa	2003 (a)	1997	2002	1995	1990	1990	2002	1997	1997
Botswana	2002 (a)	1994	2003	1995	1991	1991	2002	1990	1996
Namibia	2005 (a)	1995	2003	1997	1993	1993	2005	1983	1997
Lesotho	2001 (a)	1995	2000	1995	1994	1994	2002	2007	1995
Swaziland	2006 (a)	1996	2006	1994	1992	1992	2006	1984	1996
Total states parties (b)	140	190	173	189	190	190	145	154	
Treaties signed, not yet ratified	18	0	4	1	0	0	35	23	

Notes:

(a) Data are as of 1 July 2007. Data refer to year of ratification, accession approval or succession unless otherwise specified. All these stages have the same legal effects. Bold signifies signature not yet followed by ratification.

(b) Countries or areas, in addition to the countries or areas included in the main indicator tables, that have signed at least one of the nine environmental treaties listed in this table.

### 5.2.1 SACU Member States and the CSD

As can be seen from the table below, progress is uneven in the region insofar as formulation and implementation of National Strategies for Sustainable Development are concerned. South Africa is at final draft stage, and Lesotho is likewise busy with the formulation of a NSDS. Botswana has not yet embarked on this process, and Namibia and Swaziland have completed their NSDSs. It is not certain whether these strategies will be harmonized under the SACU umbrella.

**Table 19: Status of national strategies for sustainable development (NSDS) in SACU**

Country	Status of NSDS
South Africa	Final draft of NFSD <sup>53</sup> completed end 2007
Botswana	NSDS not yet formulated
Namibia	NSDS completed, busy with implementation
Lesotho	Currently formulating NSDS
Swaziland	NSDS completed, busy with implementation

Source: UN CSD

Botswana, Namibia, Lesotho and Swaziland all submitted review reports to the fourteenth session of the United Nations Commission on Sustainable Development (CSD 14) in 2006 and participated in the CSD 15 process. South Africa has recently completed a further Review Report in November 2007 for CSD 16, held in May 2008.

<sup>53</sup> South Africa refers to its NSDS as a National Framework for Sustainable Development (NFSD)

In terms of a national strategy for sustainable development, South Africa has reached the point of producing a final draft of a National Framework for Sustainable Development, South Africa's version of an NSDS. A 2004 South African Cabinet Memorandum mandated the Department of Environmental Affairs and Tourism to manage a stakeholder, consultative and research-based process to formulate a national strategy for sustainable development, in order to meet the JPOI target that requires all countries to formulate a national strategy. The mandate referred to the long-term scenarios that were developed to inform the South African Government's 2004 Ten Year Review Report, and South Africa's need for what the Ten Year Review called a framework of "encompassing interest" that defines a long-term development vision. The Cabinet Memorandum defined the nature of the NSDS as follows:

It should also be an integration of governance, multiple voices, processes and action in decision-making towards a common goal with a consensual vision to set parameters and define policy choices for promoting a sustainable development agenda. This includes improving the performance of the state through focus on implementation, better integration and alignment across all spheres and direct contact with the people.

The Cabinet Memorandum also made it clear that the NSDS is not meant to be a new "super policy" but rather a framework that builds on existing programs and strategies (SA NFSD, 2007, p. 25).

What is evident from the South African NSDS is that regional considerations are reflected only in terms of SADC or NEPAD, and no reference is made to coordination within SACU, or links to regional trade agreements concluded by SACU or South Africa. This is in line with the analysis in the overall paper, that shows that sustainable development and trade have yet to be linked in any meaningful way by SACU or its member states.

Boxes 2 and 3 provide interesting examples of policy making at a national level and at the broader SADC regional level, to highlight different policy processes around sustainable development in the region.



**Box 2: Sustainable development policy-making in Namibia**

Within the region, Namibia has evidently achieved the most success in integrating bio-safety and environmental issues into policy formulation, implementation and monitoring, and into its national development plans. The most recent example of this is the Namibian Environmental Management Act, passed in late 2007. This process has been underway since independence and was supported by political will to change previous policy regimes inherited from South African administration. A specialist Directorate staffed by a combination of government, private sector and NGO personnel (including resource economists, environmental lawyers, ecologists and social scientists) was created within the Ministry of Environmental Affairs to assess the country's environmental and bio-diversity challenges and opportunities and advise on the drafting of necessary legislation (Interview data, November 2007). By doing this, a type of "scholar-practitioner" was created, attracted by the dynamism of the process and the opportunity to participate in creative policy formation. The unit outsourced research to NGOs and independent consultants and oversaw the program management. The relevant Minister allowed the process to operate with some autonomy.

The concept was seemingly very successful and facilitated policy formulation in areas such as genetically modified organisms, desertification, land degradation, livestock management, trade in wildlife and plant products<sup>54</sup>, water and climate change. Environmental Impact Assessment procedures were set in place, and related Fast-Track Mechanisms devised for areas of development where this was acceptable.

**Box 3: Institutional policy making in the SADC Secretariat**

SADC is currently developing an Environmental Protocol although it is not certain which SADC division will be the coordinator. SADC wants to speak with one voice in multi-lateral bodies on these issues. Related areas of sustainable development are often housed in different sections of the secretariat, e.g., water and energy, but sustainable development is a cross-cutting issue, making it harder to develop holistic regional policies in this regard. During 2004 and 2005, environment posts were frozen in the SADC Secretariat and so the environment and sustainable development units are only now picking up speed. A Natural Resource Management Unit was only capacitated in 2007. Another problem is that the terms "environment" and "sustainable development" have no single interpretation in SADC structures and are open to change.

## 6. Outcomes of the Trade Agreements

It is argued that getting the maximum benefits from trade negotiations is highly dependent on the skills of the negotiators and their access to reliable information. A well-articulated trade agenda that gives policymakers and negotiators the option to choose and pursue offers on the basis of expected returns for the country is also vital. However, policymakers tend to respond reactively to the ever-increasing trade policy issues in both the domestic and global economy, and requests by new partners to initiate trade negotiations, with little time to reflect on opportunities and risks. In the trade agreements discussed in

<sup>54</sup> The innovative regulation of sustainable trade in wildlife products (including related land use) has meant that the sector now contributes more to the Namibian economy than fisheries or small livestock farming. Game products can also be marketed as "organic" to the EU. These and sustainable plant products are viewed as important non-traditional export sectors by government, and their potential has only been slightly explored to date. Stakeholders note that indigenous bio-diversity can support market returns if properly regulated, and can be the new "green commodity" for the semi-arid SACU region. Many of the species are only found in the region and so are globally competitive niche products as well (Interview data, November 2007).

this report, it is clear that these problems are real and at the least have led to a focus largely on market access issues alone, to the exclusion of social or environmental issues. At the same time, even with regard to market access, the need to compensate for structural or economic weaknesses that could lead to reduced opportunities or even increased risks has largely been overlooked as well. Where a more holistic approach has been taken it has been at the initiative of the non-SACU trade partner, in line with a developmental mandate that they are legally obliged to fulfil (due to their domestic legislation) via the negotiations (e.g., in the case of the U.S. and the EU) rather than at the behest of the SACU partners.

The reasons for this could be quite varied, and might include:

- a lack of coordination between government departments in each SACU state in preparing country positions prior to negotiations, for example, a national level Environmental Affairs department, and a Social Development department and a national level Trade department not discussing and integrating their priorities. Related to this, differing levels of influence of the various departments may affect whose input is prioritized;
- a lack of awareness and/or research into the linkages between trade and sustainable development;
- a lack of capacity, both in personnel and institutional structure, at national and Secretariat level, to integrate sustainable development into trade policy;
- a lack of collaboration among government, business and civil society in the lead-up to negotiations; or
- an unwillingness to insist on adjustment support from the more developed trade partner(s) during negotiations. Similarly, an unwillingness to insist on sufficient resources for and time to implement such support where such support is raised by developed country trade partners.

It is worth noting that any trade agreement presents, at best, a collection of potential benefits, however, there is of course no guarantee that these benefits will be realized. Market access is a necessary but not sufficient condition for the potential benefits of trade to be realized either by firms, consumers or countries. Sibisi (2005) argues that free trade alone is not enough to justify a FTA. However, good agreements hold the potential to promote fundamental socio-economic objectives such as economic growth and poverty reduction.

This section primarily examines the actual and potential sustainable development outcomes of the above-mentioned trade deals in terms of the expansion of trade and improvements in market access. Due to scarcity of data, the study was unable to assess the broader sustainable development impacts of the agreements, such as poverty reduction, environmental impact, health and education and infrastructure development, except in a few instances. In addition, the impact of various trade agreements on regional integration in SACU and the broader region is explored.

## 6.1 Outcomes of Existing Agreements

### 6.1.1 SADC Trade Protocol Outcomes

As noted briefly in the section on the Trade Protocol, in 2004 a Mid-Term Review of the SADC Trade Protocol was conducted and it identified a number of implementation issues including Rules of Origin

constraints, back-loaded tariff liberalization schedules, and inconsistency in executing tariff reductions. The Committee of SADC Ministers accepted the key recommendations of the Mid Term Review and commented that:

- “SADC Rules of Origin are complex and restrictive and SADC should strive for clear, straightforward, transparent, and predictable Rules of Origin that will encourage trade;
- For consistency and transparency in implementation, tariff phase-down schedules should be effected annually on January 1;
- For the purposes of harmonization, member states should update their tariff offers, which originally were based on the Harmonized System (HS) 1996 tariff classification, to the current HS 2002;
- For countries that had back-loaded their tariff cuts, it was suggested that they should implement their tariff cuts twice a year;
- As far as possible, tariffs below five per cent should be eliminated;
- In cases where the Most Favoured Nation (MFN) rate has been reduced, member states are encouraged to also reduce the SADC preference rate in order to ensure a minimum preference margin;
- Initial phase-down schedules for sensitive products should be reviewed in view of the decision by SADC to move towards a Customs Union by 2010 as well as the need to take into account latest economic developments;
- There is need for improvement of the capacity for monitoring and communication among all stakeholders on the implementation of the SADC Protocol on Trade both at national and regional level. A section within the Trade, Industry, Finance and Investment (TIFI) Directorate, dedicated solely to implementation of the SADC Protocol on Trade, would be able to undertake the following:
  - Improve the collection and dissemination of information including the status of implementation, trade flow data and changes in tariff regimes;
  - Update and verify the original tariff phase-down offers against the gazetted schedules in order to reflect any changes in coding systems or in the overall tariff regime.” (Services Group, 2007, pp. 4–5).

The SADC Regional Indicative Strategic Development Plan (RISDP), finalized in 2003, recommended that SADC establish a customs union to further regional integration. Following the Mid-Term Review, the SADC Council of Ministers and an Extraordinary Summit formally agreed in 2006 to proceed with the establishment of a SADC Customs Union. Both structures endorsed the following:

- that the Mid-Term Review recommendations be expeditiously implemented;
- that the Secretariat undertake an assessment and outcomes audit of SADC member states’ gazetted tariff schedules, in the first quarter of 2007;

- that the results of the audit be used to update SADC on compliance with the Protocol on Trade commitments ahead of the coming into force of the FTA in 2008;
- that negotiations on revised and more flexible rules of origin be finalized by the first quarter of 2007;
- that the Secretariat set up an effective monitoring mechanism to assist member states in the implementation of the Protocol on Trade; and
- that the relevant Ministerial Task Force develop an Action Plan for the monitoring and elimination of Non-Tariff Barriers (NTBs)<sup>55</sup> in the first quarter of 2007 (Services Group, 2007, p. 5).

The SADC Secretariat proceeded under this mandate to hire independent consultants to conduct an audit of member states' implementation of the SADC Protocol on Trade. The findings of the audit were released in late 2007, and comprise the following:

- “Four Member States – Malawi, Mozambique, Zimbabwe and Tanzania are not up to date on the implementation of their tariff phase-down schedules;
- Malawi made only one tariff reduction in 2001. No further reductions have been implemented by Malawi;
- Mozambique and Tanzania made block approvals of their tariff phase-down programmes but have not implemented these in accordance with the agreed phase-down timetable;
- Zimbabwe has not implemented the tariff reduction offer to SADC excluding South Africa. Their tariff reduction for 2007 is the offer to South Africa, which applies to all SADC countries that do not have bilateral or other preferential trading arrangements with Zimbabwe;
- The non-SACU members who heavily back-loaded their tariff preference offers will experience a decline in tariff revenue as they eliminate tariffs on more than 50 per cent of their tariff lines in a one year period. However, in all cases the reduction in revenue is expected to be less than five per cent of total government revenue;
- Following unilateral tariff reductions to the MFN rates by some member states, a number of tariff lines' MFN rates are lower than current SADC applied rates. Furthermore Tanzania has implemented concessions to Kenya and Uganda through implementing the EAC CET;
- Outside of SACU most of the intra-SADC trade is taking place under either COMESA or bilateral preferences. There has been a very modest increase in trade between the non-SACU members and South Africa except for the recent increase in apparel exports from Mauritius following the removal of the SACU tariffs;

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<sup>55</sup> Even among the BNLS, NTBs are still a problem, and between S.A. and the BNLS. Botswanan respondents note that Botswanan exporters face South African NTBs; VAT was mentioned as an example (Interview data, November 2007).

- Following the implementation of the SADC Protocol on Trade several non-SACU countries (Malawi, Mozambique and Zimbabwe) renewed “dormant” bilateral agreements to incorporate reciprocal preferences;
- Most member states had not revised their tariff offers for sensitive products, with the exception of Mauritius and Zimbabwe, which had updated a small number of products;
- The new trade being created by the SADC Protocol on Trade is modest—the private sector has complained about the complexity of the SADC rules of origin. Some progress to complete outstanding issues for a number of products has been recorded;
- All SADC members are implementing either all or most of the trade facilitation instruments that had been rolled out by SADC, however, there are important trade facilitation instruments governing transit trade and bond guarantees that remain at the pilot stage and have yet to be rolled out to the region. These need to be implemented to enable member states to maximize the benefits from establishing an FTA;
- Member states recognized the need for more capacity building for trade officials, customs officers and the private sector (customs brokers and traders) on the administration of the rules of origin, customs valuation and administrative procedures;
- There is a need to publicize the benefits of SADC trade integration more widely. Both traders and government officials at many of the border posts visited were lacking information on the SADC Protocol on Trade;
- Effective implementation of the FTA will facilitate the implementation of the SADC Customs Union Implementation Roadmap” (Services Group, 2007, p. 2–3).

These sets of findings would appear to illustrate that the SADC Trade Protocol in its eight years has not had a significant impact on intra-regional trade flows and the ease of exporting with SADC, and thus may have not had a significant impact on job creation and poverty alleviation within SADC.<sup>56</sup> In addition, it would appear to cast doubt on the readiness and capacity of SADC and its member states to effectively launch and implement a Customs Union as scheduled in late 2008.

The capacity of the SADC structures and Secretariat therefore form part of the challenges facing SADC in its continued implementation of the Trade Protocol, and the FTA. In order to juggle trade policy and market integration efforts, a certain level of institutional and organizational capacity is required to cope with the challenges of regional integration and globalization. In particular, this challenge requires a Secretariat that is more than a mere platform of exchanging instructions from member states but a proactive institution focused on effective policy formulation and implementation. This necessitates sufficient human resource capacity at the SADC Secretariat but also a Secretariat that is empowered to monitor and ensure the effective implementation of commitments by member states (Kalenga, p. 2004: 8). This perspective has been echoed by other commentators, who note that the SADC and SACU Secretariats have often been treated as “post-boxes.”

<sup>56</sup> This is seemingly true for Botswana and Namibia according to respondents interviewed for this study. However some of the other SADC Protocols have apparently had a positive developmental impact on the BNLS, especially in terms of infrastructure, e.g., power and transport systems (Interview data, November 2007).

The SADC Chairperson, Dr. Levy Mwanawasa (who is also president of Zambia), stated recently that unless the Secretariat's lack of capacity to absorb financial aid meant to assist SADC was urgently corrected, the regional body risked failing to attain the set milestones such as attainment of the Free Trade Area and Customs Union by 2010. He expressed a desire for a quick solution to be found so that delivery could increase (bilaterals.org, March 29, 2008). In contrast the EAC's experience seems to be that a professional, capacitated and empowered Secretariat is able to greatly facilitate the overall integration process. The political support of the regional leaders and senior civil servants seems to have been the pivotal factor (Braude, 2008a).

### 6.1.2 SACU-EFTA FTA Outcomes

The SACU-EFTA agreement has generous Rules of Origin, allowing SACU clothing-makers to use imported fabric and still qualify for duty- and quota-free access. This may provide a new market for Lesotho and Swaziland, as these two countries comprised only one per cent of the SACU trade flows to EFTA in 2006, and both countries currently have the capacity to export clothing and textiles due to their AGOA investments. Swaziland may be able to increase its sugar exports as well. Similarly, for Botswana, an unexplored area seems to be beef, as it comprises a very small percentage of the overall trade between Botswana and EFTA. For Namibia the potential lies in fish and marine products, which were previously protected behind high tariff barriers. These barriers have been retained by EFTA for most agricultural products though. For South Africa the potential for new exports is in sugar. The agreement is the first signed by EFTA with a developing regional community and appears as if it could make a positive impact on employment, poverty reduction and investment in the sectors mentioned at least due to the clear market potential in various sectors in each of the SACU member states. Further outcomes related to sustainable development may be possible due to the trade facilitation and cooperation clauses (Fundira, 2007, pp. 9–11).

### 6.1.3 SACU-Mercosur PTA Outcomes

CUTS-CITEE (2005) noted that the PTA might take years to have any visible impact on the trade flows between the two trading blocs. Furthermore, because the PTA is limited in scope, and does not address NTBs, its impact on the trade flows and economic benefits between Mercosur and SACU may be minimal. The two blocs do not appear to have much potential for increased trade if their exporting profiles are considered although trade “widening” could occur as a result of the PTA, however this is more likely under a FTA. Trade diversion is also expected to lower the gains. It is possible that a FTA would boost trade prospects further and bring wider market access benefits for both sides than the current PTA. Using South Africa<sup>57</sup> as a proxy for the SACU group, CUTS-CITEE indicates that there has been increased trade between South Africa and Mercosur since 2000. Trade between the two regions more than doubled in the years up to 2004 prior to the PTA's launch. However, an important outcome of the PTA may prove to be broader, in the sense of deeper ties between the two blocs leading to increased momentum for the IBSA process and South-South cooperation (CUTS, 2005). Information on broader sustainable development outcomes was not readily available.

## 6.2 Potential Outcomes of Current Negotiations

### 6.2.1 SADC FTA Potential Outcomes

Analysts note that there is a great degree of uncertainty about the outcome of this agreement. Concerns have been raised that underlying competitiveness issues and industrialization of the region have been neglected in favour of regional trade liberalization only (Bennett, 2007, p. 1–2).

<sup>57</sup> From the Mercosur point of view, almost all trade with SACU is done with South Africa.



For the FTA to deliver real benefits, it would have to be based on a real reduction in tariff rates in the region, yet the Trade Protocol audit of 2007 showed that many countries are still delaying their tariff reductions. This is mainly because countries fear the implications of the Protocol's implementation on existing industries' ability to survive increased regional competition, the cost of industrial restructuring on employment creation and, perhaps most important, the tariff revenue implications for countries which depend on tariff revenue for a significant proportion of their recurrent and development expenditure. (Kalenga, 2004, p. 4).

A number of limiting factors can be noted in respect to intra-SADC trade. The comparative advantages of SADC countries are similar and in similar products. They also have the similar comparative disadvantages, especially in manufactured products. This would apply to the BNLS. The existing South African trade surplus in the SADC region suggests that the scope for further trade is perhaps limited, and that growth in trade will not be significant under the FTA, that is to say the low hanging fruit has already been picked and many areas of potential growth will remain protected as they are considered sensitive sectors. South Africa's economic structure, although more sophisticated also suggests that the capacity of the South African economy to absorb significant growth in SADC exports to SACU is limited (Chauvin & Guillaume, 2002, p. 32).

Where trade expansion does appear promising is in the area of vertically differentiated goods. South Africa could specialize in high quality food products, while importing from regional partners for middle and low range products. Along these lines, some studies suggest that the development of intra-industry trade and vertical integration of supply chains within the region would benefit the regional integration process (Chauvin & Guillaume, 2002, p. 32).

At the same time, regional trade integration by itself may not be enough to boost economic development in SACU and SADC under the fully implemented SADC FTA, although as noted elsewhere in the report, a FTA can set the conditions for trade-widening to new sectors alongside more traditional trade-deepening within existing traded goods. Dynamic national industrial policies including improvement in infrastructure may be necessary for real growth in trade in the SADC region to occur. Member states will then have to ensure that economic growth is translated into real benefits for pressing sustainable development issues such as healthcare, poverty alleviation and institutional capacity.

### **6.2.2 SADC Services Protocol Potential Outcomes**

The final draft of the Services Protocol and its annexes will no doubt contain more specific sectoral provisions on the various sectors and sub-sectors and liberalization will need to be negotiated progressively in line with the region's development priorities. Some of the benefits of a regional agreement on services would be enhanced integration of the regional market by harmonization of relevant regulations and increased institutional coordination in the region. As the East African Community experience shows, the progressive building of a regional "techno-cratic web" based on harmonization and standardization is a very useful platform upon which to achieve closer integration (Braude, 2007a). A much larger, cohesive regional market would also offer more promise to investors in various services sectors. Examples of this include regional tourism, which is an important foreign exchange earner but which is currently hampered by the lack of coordination and regulatory harmonization across the region, especially in the areas of transport networks (road, rail and air) and movement of persons (visas). The Services Protocol could address these issues. It can also be used to identify priority areas for regulatory harmonization.

However, the Protocol would also need to take into account regional developmental disparities and priorities. The draft as it stands includes very broad and open-ended flexibilities for least developed member states. The SADC member states will need to avoid the temptation though of using this to set a low threshold or overly weak targets for the Protocol. Any liberalization that results will need to be sensitive to development priorities, but also avoid capture by special interest groups that seek to advance national concerns purely over regional progress (INSAT 10, 2007, p. 2).

At the same time, liberalization will need to be researched and implemented only where the liberalization will advance broader, equitable, developmental goals of the various members and the region. Benefits from liberalization would need to be sustainable, and not advance the interests of small sectors of society. A useful strategy to facilitate this in countries that obviously will not easily be able to commit themselves to services provisions would be to offer SADC LDCs longer, but realistic, implementation periods during which these countries could receive technical assistance without delaying the overall implementation schedule (i.e., a variable geometry approach). Development needs could be addressed under a program of technical assistance and capacity building for regulatory reform, built into the Protocol. As can be learned from the pitfalls evident in the current EPA negotiations, any support for countries that need it would have to be clearly spelt out, agreed to by consensus, well-funded, and wisely sequenced in order for it to be effective.

### 6.2.3 SADC Economic Partnership Agreement Potential Outcomes

From the EU perspective, the EPAs have potential benefits for the ACP countries because of the benefits that will come from reciprocity and regional integration (Bilal and Rampa, 2006). On the issue of reciprocity, the EU argues that consumers in the ACP will benefit from low cost imports. Further, there will be increased competition in the ACP that will encourage efficiency and competition according to comparative advantage, increased investment and technological transfer from the EU to the ACP. In addition to these benefits, regional integration is expected to assist the ACP countries to achieve economies of scale in production and thus become competitive which will assist them to become globally competitive. The EC further believes that for EPAs to deliver on their development objectives the key is policy reform, which will increase trade and will deliver growth. This will seemingly generate a larger sustainable development impact than traditional development assistance (allAfrica.com, September 28, 2007).

The ACP perspective on the above issues ranges from cautious optimism on the behalf of governments to negative assessments by NGOs and some private sector bodies. According to the ACP and numerous NGOs, the benefits of reciprocity and regional integration will not be realized unless adjustment costs for the ACP, together with their supply constraints, are addressed (Bilal and Rampa, 2006). If this is not done, the adjustment costs to the ACP countries, and the foreign exchange earnings losses from reduced exports due to preference margin erosion,<sup>58</sup> will exceed the envisaged potential gains. The potential impact on sustainable development will largely be due to a loss of tax revenue on exports and profits, which could be used by the state for development, and, second, due to a reduction in employment in the

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<sup>58</sup> Preference erosion occurs when ongoing trade liberalization by Country A reduces the advantage previously accruing to a trade partner (Country B) who was party to an earlier trade agreement with Country A. The ongoing trade liberalization results in additional countries gaining preferential access to Country A's market, often on similar terms to those granted Country B. Thus Country B no longer has a competitive advantage over the other, newer trade partners of Country A, and at the same time a general lowering of Country A's tariffs may also occur through multilateral trade liberalization at the WTO, thereby bringing them closer to the low preferential levels granted to Country B years previously. As a result, Country B's preferential access to Country A's market can be said to have been "eroded" by both processes of trade liberalization.

export sectors, as well as a potential downward pressure on labour costs and even working conditions as exporters struggle to retain any competitive cost advantage.

The ACP believes that to ensure economic growth and sustainable development, the EPAs should be internally coherent, that is, all facets of EPAs should be tackled with a view to development. This would entail special and differential treatment for the ACP, commensurate with their level of development, greater flexibility in the application of trade rules, enhanced and effective access to EU markets and sustained and effective trade capacity building measures. ACP representatives have also requested binding commitments on EU development support, aimed at responding to supply side constraints, negotiating and implementing EPAs, utilizing market access and coping with the loss of government revenue associated with EPAs. Existing resources within the European Development Fund (EDF) are seen as insufficient to cover the expected costs and major adjustments of ACP economies (allAfrica.com, September 28, 2007).

Of most immediate concern to ACP states is to minimize and compensate for potentially significant import tariff revenue losses due to trade liberalization and the erosion of trade preferences for the ACP countries. A real worry and threat to the BLNS states out of any EPA deal concluded is the shrinking of their fiscal income through a shrinking SACU revenue pool. Given the relevance of tariff revenue to their economies, the BLNS states will be losing out far more than South Africa from any shrinkage in tariff collections, yet at the same time the impact of the SADC EPA on the BNLS will be vastly reduced, compared to other countries in the broader region, due to the nature of the Revenue Sharing Formula as well—that it is based on shares of intra-SACU imports, not on the traditional measure of a share of overall Customs Union imports from the rest of the world. At the same time, most of the BNLS have for years been de facto implementing the TDCA by not charging a tariff on EU goods coming in through SA, so the “competition shock” will be less as well (Bilal *et al.*, 2008, p. 55). Namibia will, however, experience a bigger impact, in that since the launch of the TDCA, EU goods that enter SACU via Namibia have apparently been charged the full MFN tariff set out in the SACU CET. However, EU goods coming in from another SACU member were not charged this rate, but allowed in at the TDCA rate, as the BLS have been doing. Namibia did not then apply a top-up rate to bring such imports in line with the tariffs it charges on EU goods entering its territory directly. BLS were already applying the TDCA and will see tariffs fall further only to the extent that the EPA brings forward tariff cuts in the TDCA or extends them to products excluded from the TDCA. Namibia, though, will experience a change in the tariff on all goods imported directly from the EU that face EPA liberalization in 2008 (Bilal *et al.*, 2008, p. 44).

However, as it is not certain yet whether South Africa will sign the interim EPA, it is uncertain what the extent of the revenue loss would be, although it is probable that South Africa will not agree to tariff cuts deeper than those already negotiated under the TDCA. The impact from South Africa’s side is therefore essentially “priced in” to current revenue flows already as the TDCA has been progressively in effect since 1999, although the reductions will continue until 2012. What can be observed though is that the liberalization schedules are among the more rapid of those agreed by African countries, in spite of the presumed negotiating capacity of SACU, (i.e., although all the SACU members participated in the SADC EPA negotiations since 2007 and have between them more capacity than almost any other African EPA group members barring the EAC states, they were still unable to secure slower liberalization than other EPA groups, barring the EAC, which secured the best deal) (Bilal *et al.*, 2008, p. 55). This may be a reflection of the very busy liberalization agenda of SACU, although in theory these negotiations with other trade partners should have built up experience in the Customs Union. It may therefore indicate a predisposition towards rapid trade liberalization or a lack of negotiating capacity or

a belief that the de facto impact of the TDCA negated the need for slower liberalization. Whatever the reason, the rapid liberalization entailed in the interim SADC-EPA will hit Mozambique harder than the BNLS, even though it is one of the poorest countries in the group.

Increased access into the ACP markets by the EU may result in the more technologically advanced EU firms exporting their products into the ACP markets, out-competing the latter's less efficient firms, leading to de-industrialization, and increased unemployment and poverty. UNECA research conducted in 2005 concludes that the sequencing of any reforms in the African ACP states is crucial to offset this: unless Africa is given sufficient time to address its chronic infrastructural and supply-side constraints, tariff reductions will both destroy the industrial infrastructure and erode the revenue base (UNECA, 2005 presentation, cited in Sandrey, 2006b, p. 8). This position applies to Southern Africa as well (SAIIA Trade Policy Working paper No.2, 2004). This means that issues of liberalization timelines and adjustment support must be realistically addressed and defended by ACP states, including SACU member states.

In the same way, the process and content of EPAs, is increasingly leading to criticism of the EU and scepticism of its role as a fair partner in global development. Although seemingly focused on development, critics maintain that the process has been captured by mercantilist (i.e., purely economic) interests in the EU. The methods and content of the EPAs may backfire in that they could tarnish the EU's image in the developing world precisely at a time when they were meant to secure the EU's positions in the face of increasing competition from India and China. Ironically, while the EU is very concerned with illegal migration from Africa, the EPAs, if not developmental in their impact, may at the same time contribute to conditions of dislocation and displacement in which more and more people try to get into Europe to eke out a livelihood.

At the same time, analysts note that the EU's approach to the SADC-EPA, especially with regard to its insistence that trade in services and trade-related areas be included in the final agreement may be an effort to set a precedent by pushing for a far-reaching liberalization of the services sector in the SADC countries. Once this has been achieved, it would then be able to seek similar provisions in deals with countries with larger markets that offer even greater potential for European firms. For example, in April 2007 the EU decided to launch trade talks with India, South Korea, South East Asia, Central America and the Andean Community. The Commission predicted that if successfully concluded, the resulting agreements could result in an extra 40 billion Euros (US\$54 billion) for the EU annually. Thus the "hard-line" approach to the SADC-EPA negotiations may have more to do with the potential India and other markets than SADC itself. If African countries, many of which are less developed, sign up to liberalization of services, India will have less case for saying no to similar agreements.

It is theoretically possible though, where differences of opinion prevail in a region, for a full EPA to contain both regional provisions that would be applied to all members in the group, and country specific ones (for instance on services or investment) that would be applied on an individual basis (TNI, 2008a, p. 3) This may prove controllable if the sectors in question are limited to new generation issues, not goods, as goods are harder to control and track, but would make agreement on future regional industrial or wider economic policies harder to reach, and these policies harder to implement.

### ***Regional integration in SADC and SACU and the EPAs***

The EPAs also stand to undermine regional integration in Africa, specifically within COMESA and SADC, in that the EPA configurations or groupings do not overlap existing regional economic

communities (RECs). This is not only the EU's fault, as the large overlaps between COMESA and SADC ensured that EPA groupings would never be able to exactly align to the existing RECs. Likewise the failure of SADC and even COMESA to harmonize their EPA offers effectively is partly due to the sometimes vastly different trade and economic profiles historically found within their membership. However, the EU has been accused of displaying very little flexibility in ensuring that the EPAs do the least damage to the regional integration aims of COMESA and SADC. The EU itself pursued the EPAs on a regional scale in order to avoid having to negotiate dozens of bilateral agreements with individual ACP states. To its credit, it noted at the time that such bilaterals would have unavoidably led to highly unequal negotiations.

Commentators have noted that SADC will be in a three-way split given the successful conclusion of EPAs according to the EU agenda. This would significantly undermine the years of effort, and related EU funding, that have gone into deepening regional integration in the SADC region. The EU has also been accused of policy incoherence in the EPA process, in that the EC Directorate-General Trade has seemingly played a larger, more dominant role than the DG Development, even though development is meant to be a central feature of the EPAs. Analysts note that the development needs in Africa in terms of attaining the MDGs outshine the trade needs, and this is true of the majority of the SADC-EPA members. Therefore, treating development as a parallel track in trade negotiations, and confining it to adjustment assistance, and the European Development Fund or EDF, as the EU has consistently done during the EPAs process is seemingly not conducive to the production of development-friendly outcomes in SACU or SADC.

Within SACU, Botswana, Namibia and Swaziland, as developing countries, would have been forced to adopt the GSP system of tariffs for trade with the EU, potentially endangering their competitiveness in the EU market (Lesotho would however be allowed to utilize the EBA system as a LDC), due to the fact that it is much less favourable than the Cotonou Agreement for many ACP exports. All non-LDC ACP states would experience a jump in the EU tariff applied to some of their exports. Although many of the increases would be relatively small, 267 of the goods they export will experience a tariff jump of at least ten per cent *ad valorem* and/or the imposition of new or increased specific or compound duties, some of which are very high. Nearly two-thirds of non-LDC ACP states would see tariffs increase over 25 per cent by value of their current exports to the EU; for just over one quarter the proportion affected will be over 50 per cent. Countries with a relatively high proportion of exports in products will face the steepest tariff jumps: twenty states affected on over 25 per cent of their exports will face very or moderately high tariff jumps. Belize, Kenya, Namibia, Suriname and Swaziland would suffer the most (TNI, 2007).

Likewise, the IMF (2004, cited in Mold, 2007) has identified a group of countries where the estimated losses through preference erosion will exceed two per cent of export unit values. Among sub-Saharan African countries, the most notable cases are Mauritius (-11.5 per cent), Malawi (-6.6 per cent) and Mauritania (-4.8 per cent). Other countries negatively affected include the Seychelles, Swaziland, Cape Verde, São Tomé and Príncipe, Tanzania, Ivory Coast and Comoros. Thus both Kenya and Tanzania fall under groups of countries that would suffer significant trade losses if the EPAs were merely replaced by the GSP. The GSP also suffers deficiencies in areas such as rules of origin, exclusions and speed of diversification.<sup>59</sup>

The only other option is that of the GSP+, but the EU has seemingly deliberately left this off the table. The GSP+ is a preferential access arrangement that currently applies to a set of Latin American

<sup>59</sup> However what it does offer in non-reciprocal access, i.e., access only for the ACP, and not for the EU into ACP markets, which many commentators note is the real problem with the EPAs.



countries, and was introduced to reward them for a reduction in dependence on drug production and for increased governance. If the EU were indeed prepared to replace the Cotonou agreement with something other than the EPAs, it would have to allow the ACP states access not only to the GSP+, but a GSP+ that had been expanded or enhanced to approximate the proposed EPA preferences. However, if such an expanded GSP+ were to become permanent, it would be difficult for the EU to avoid offering the extensions that are necessary to make GSP+ attractive to the ACP, to all current GSP+ beneficiaries. But this could seriously reduce the level of ACP preference, which now still exists through the EPAs. The EPAs, although offering an added preference, still manage to be WTO compatible because they comply with Article 24 of GATT 1994, which requires duties to be eliminated on “substantially all the trade” with “a plan and schedule for the formation of the trade agreement within a reasonable length of time.” In addition the EPAs compatibility requires reciprocity from developing country beneficiaries (TNI, 2007). So a permanent and enhanced GSP+ would involve sharing the level of Cotonou style preference that EPAs still give the ACP nations to a wider group.

As a result, the BNLS were anxious to sign or initial at least, an EPA before the expiry of the Cotonou agreement. The problem for the BNLS in regard to the EPAs and TDCA was that the TDCA market access concessions given to South Africa by the EU are more restrictive than those offered to the rest of the ACP, due to South Africa’s competitiveness. Thus it would have been harmful for the BNLS to agree to a SACU-EPA merely based on the TDCA.

At the same time, the BNLS have more bargaining power in a SACU-EPA structure than in the fractured SADC-EPA. The goal is to achieve a result that boosts sustainable development, not undermines it. The compromise would therefore appear to be a SACU EPA that operates as a parallel agreement to the TDCA, collectively negotiated by the BLNS with the EU in consultation with South Africa. Such an EPA would provide for the official implementation of the TDCA liberalization schedule but with different market access packages for South Africa and BLNS countries. In a sense, it would be a *de jure* version of what has been occurring *de facto* under the Cotonou Agreement and the TDCA, but with two important differences—the current EPA negotiations for the BNLS give them the opportunity to adjust their market access to suit their development needs, and the EPAs hold out the promise of EU funding for trade facilitation, competitiveness enhancement and direct developmental projects (Meyn, 2004, p. 2). The advantage of a SACU-EPA over continuing to negotiate under the SADC-EPA is that the SACU-EPA would provide more support for ongoing integration in SACU itself, and is more manageable in terms of negotiating positions, which would strengthen the negotiating position of the BNLS in the 2008 negotiations for a comprehensive EPA. The EU and South Africa have already expressed their support for such an EPA configuration.

The question for the BNLS to decide as they continue to negotiate with the EU is whether this configuration is something they would support as a final EPA agreement, and if so, which conditions of the TDCA and the Cotonou Agreement are in the interest of the BLNS countries and which factors under these two agreements are likely to constrain their exports to the EU market. The BNLS would need to protect and enhance their current trade preferences under the Cotonou Agreement. Specifically, this refers not only to improved market access for beef products, grapes, processed sugar products, canned fruits, textiles and apparels but also improved technical assistance in the fields of industrial restructuring,<sup>60</sup> fiscal reorganization and trade capacity building (Meyn, 2004, p. 20).

<sup>60</sup> The European Research Office (2002, 15–16, cited in Meyn 2004), noted that the restructuring assistance could take the form of a cost-sharing grant scheme or a concessional loans facility to enable the companies to afford the costs of restructuring. In addition, a trade development program supposed to assist the companies on a firm level in order to identify new trading opportunities is recommended.



### ***The SADC-EPA and divisions within SACU***

The division between SA and the BNLS in the run up to the initialling of the Interim SADC-EPA in December 2007 was very negative for intra-SACU relations, with commentators even saying that both Botswana and South Africa were prepared to dissolve the Customs Union if no compromise could be reached. However, by March 2008, the SACU members were softening their positions, stating that the Union was not in serious danger and that compromises would be reached. Essentially, the EPA process has brought to the fore the divisions and differences within SACU, and the fact that the member states have yet to build a solid set of common policies and institutions, in spite of the many political statements that have been made in favour of this. Commentators note that, in reality, there seems to be disengagement at political level from what would be required to practically establish common policies and institutions and affect the economic reality on the ground. Without the legal and institutional infrastructure to implement political commitments, the benefits of the commitments have not filtered through economically. The problems may be due to the large differences in development, economic size and interests within the Union.

Although the 2002 SACU Agreement commits member states to pursue common regional policies, such as agricultural and industrial development policies, this has not happened to date, and the SACU Secretariat appears to have been left without sufficient capacity or authority to take the process forward. Analysts note that this analysis could be applied to the SADC Secretariat as well. Within SACU, Botswana may be keen to have control over setting import tariffs again, and S.A. has been expressing unhappiness with the size of the revenue transfers that occur as a result of the Common Revenue Pool and wants them reclassified as aid. SACU members have been slow to pursue common developmental policies and attempt a united thrust to integrate in the global economy, with analysts noting that S.A.'s partners are more focused (to a lesser degree in Botswana's case) on maintaining transfers from the customs revenue pool so as to support core budgets. It may be useful that the EPAs process has forced these issues into the open, and the process leading up to the signing of a comprehensive EPA will no doubt force the SACU member states to seriously address these issues, although it is unlikely that such matters can be addressed in the short period of time allowed by the EU for the conclusion of the negotiations, in December 2008.

### ***South Africa's refusal to initial the IEPA***

South Africa's position in not signing an interim EPA in December 2007 was outlined in a media briefing by the country's High Commissioner to Botswana, Mr. Dikgang Moopeloa, in late March 2008, where he commented that EPAs should not be made superior to other trade negotiations such as the WTO Doha Round. South Africa noted that SADC EPA member states have limited institutional and negotiating capacity, and that SADC has no common policies on the "new generation" issues. Yet interim EPAs contain, in effect, an upfront agreement to accept new disciplines on services and investment. This runs the risk of creating a deal that may be prejudicial and limit national development, officials said. South Africa further stated that the Interim agreement created differential policy and institutional obligations between SACU and SADC member states, thus driving wedges between states in the two ongoing regional integration projects. South Africa also highlighted that it currently is the only member state with the legal and institutional framework to deal with trade remedies (anti-dumping, subsidies and safeguards). South Africa observed that it had also not signed the EPA because it contains no protection for infant industries. South Africa regards both trade and industrial policies as equals and noted that any clause that favours one over the other will not benefit South Africa and the region.

Namibia supports South Africa's decision. It believes that further concessions under the TDCA as part of a SADC-EPA deal including South Africa would impact negatively on Namibia's exports to South Africa. In June 2007, the country's Trade and Industry Minister, Immanuel Ngatjizeko, stated that Namibia cannot afford to further open up its markets beyond TDCA levels under such a regime as it can be considered to have made autonomous liberalization under the TDCA already. Namibia is keen to retain and further expand its share of the South African market, in line with Namibian industrial development and national export strategies (Geostrategy, June 22, 2007). In the SADC-EPA's case, the benefits of safeguarding long-term sustainable development appear to have outweighed the risks of standing their ground for South Africa and Namibia.<sup>61</sup> Namibia has also opposed the inclusion of services in the SADC-EPA, and refused to include this in its IEPA. Stakeholders have noted that Namibia has not even documented its services sector yet, and has not established any regulatory bodies and so is not in a position to negotiate its liberalization (Interview data, November 2007).

Additional areas, necessary for pro-sustainable development EPAs, have been noted by stakeholders in SACU and the other African EPA groupings and would need to be addressed as the negotiations towards a comprehensive SADC-EPA proceed. Stakeholders have noted that increased participation by all stakeholders, including business, labour and civil society, is necessary to ensure that the EPA meets the actual needs for the region.

### **Renegotiation of the IEPA**

Willingness by the EC to renegotiate elements of the Interim SADC-EPA initialled by the BNLS, if requested, is also very important given the pressure negotiators were under to conclude the IEPA by the end of 2007. South Africa has already called for renegotiation to occur.<sup>62</sup> Namibia apparently only agreed to sign on the understanding that such renegotiation would be entertained by the EU (IGD Roundtable, April 2008). The WTO Transparency Decision specifically provides for the possibility of renegotiating an already-notified agreement. WTO members have done this on five occasions already.<sup>63</sup> The only requirements are that the renegotiated agreement be re-notified to the WTO and that it remain WTO-compliant (TNI, 2008, p. 5). Should the European Commission refuse any request to reconsider some provisions contained in the Interim Agreements, it would be a blow to the notion that EPAs are based on equal partnerships.

Commissioner Mandelson however stated at a SADC Ministerial meeting on the March 4, 2008, that he was not prepared to renegotiate the Interim SADC-EPA, but would consider adjustments in the context of the next stage of the negotiations (Business Report, March 5, 2008). However, the danger also exists that re-opening the interim negotiations could also then lead to new demands from the EU itself, thus adding risk to such a strategy.

It would be very useful to the ACP countries who will now negotiate comprehensive EPAs if, instead of moving from interim agreements directly to full EPAs, they were to address different areas of negotiations step-by-step through a built-in agenda consisting of rendezvous clauses with different issue-specific deadlines to finalize negotiations in these areas. Implementing commitments in line with this agenda could further be made conditional by the ACP states on the availability of support for capacity building.

<sup>61</sup> Trade in services and other trade related issues are not required for an EPA to be WTO compatible. As a result Namibia's IEPA would still be WTO compliant.

<sup>62</sup> The Deputy Minister of Trade and Industry in South Africa, Rob Davies, has gone as far as to say that African countries should ignore the EPAs as the continent is not ready for them (bilaterals.org, April 25, 2008).

<sup>63</sup> For further examples, see: [www.wto.org/english/tratop\\_e/region\\_e/notif\\_changes\\_e.htm](http://www.wto.org/english/tratop_e/region_e/notif_changes_e.htm)

### **Funding for adjustment**

The experience of the East African Community in regard to securing funding is instructive. The EU confirmed (EAC Press Release, November 27, 2007) that it would contribute towards the resources required for development within the EAC EPA, using the 10th EDF Regional Indicative Programme, and via Aid for Trade (through enhanced allocations for Official Development Assistance and the EU budget). The fact that additional funding sources apart from the EDF, specifically the EU budget, were included in this statement is very interesting, because the EU has been accused by many stakeholders in the ACP of trying to limit adjustment funding to the EDF only, which commentators note would be insufficient to cover expected adjustment and trade facilitation costs.

### **United negotiating position by the BNLS**

Regardless of how South Africa's inclusion is resolved, it is necessary for the BNLS to adopt a coherent, united negotiating position and stick to it, although it would obviously undermine SACU's continued implementation if two EPAs were to be implemented in parallel, i.e., the TDCA and a SADC-EPA.

The East African Community, as an example of another customs union negotiating an EPA, appears to have been quite successful in its negotiations with the EU. This may be as a result of the unity the East African Customs Union members have displayed in the negotiations thus far. The EAC adopted a consistent common position, taken at a meeting of EAC trade ministers in early November 2007. The ministers harmonized their negotiating positions so as to present a common front to the EU in respect of such key issues of concern for the EAC, namely extension of the negotiating timeline, maintenance of the integrity of the EAC's CET (harmonization of any EPA with the EAC Customs Union provisions), exclusion of many sensitive products, flexibility in terms of rules of origin, long transition periods, substantial technical and financial support to help with implementation of the new arrangements, and clear benchmarks and budgeted priorities for development issues. The ministers stated that approaching the development issues in this fashion would establish a clear and long-term partnership. The EU provisionally agreed to many of these requests. In addition, the flexibility the EU showed in terms of the timeline, giving the EAC an additional six months over the ESA and SADC dates, was notable even given the late launch of the EAC EPA.

It also reveals the necessity for negotiators to be highly experienced, with detailed knowledge of the compromises possible in their region and the accompanying political and elite constraints. Recent detailed comparative research into the Interim EPAs reinforced the researchers' hypothesis that countries able to negotiate hard, knowing their interests, obtained a better deal than those lacking these characteristics (Bilal *et al.*, 2008, p. xii).

The EAC is in fact the only ACP region that has initialled IEPAs where all the members joined the EPA and accepted identical liberalization schedules, thus reinforcing rather than splintering a regional economic community. The ESA countries and the SADC-minus states that have initialled, have done so to single agreements, but there is considerable dissimilarity in the country liberalization schedules and exclusion baskets (Bilal *et al.*, 2008, p. xiii).

### **Inclusion of a Most Favoured Nation clause**

The inclusion of the controversial Most Favoured Nation (MFN) clause<sup>64</sup> is cited by South Africa as one of the reasons for its refusal to sign the Interim SADC-EPA.<sup>65</sup> This clause requires EPA signatories

<sup>64</sup> Inclusion of a MFN clause is not required for an EPA to be WTO compatible (TNI, 2008, p. 4).

<sup>65</sup> Anecdotal evidence suggests that the EC introduced new issues, including the MFN and export tax prohibition in the last month of negotiations, in November 2007, thereby undermining the previous negotiations (IGD Roundtable, April 2008).

to extend to the EU any trade concession that they grant in future to a third party as long such third party is a developed country or has a one per cent share of world merchandise exports (this would include China, India and Brazil), or is a grouping with a minimum 1.5 per cent share of such exports. In SACU's case, South Africa and Namibia have objected to this provision (TNI, 2008b, 1-2). Brazil, supported by other developing countries such as South Africa, China, India, Paraguay and Argentina, has also raised objections to this MFN requirement at the WTO, stating that it contradicts the WTO "Enabling Clause," designed to increase developing country participation in global trade. This clause, adopted under GATT in 1979, was designed to increase trade between developing countries on a preferential basis by allowing developed members to give differential and more favourable treatment to developing countries while not doing so to wealthy ones.

The MFN clause would most likely inhibit South-South trade and encourage rather North-South agreements, locking ACP developing countries pre-emptively into an uncontested relationship with the EU and even other developed countries if the practice spread beyond the EU. Given that the EU's products are not automatically the cheapest or most competitive globally, it would also have the effect of increasing trade diversion, in cases where products or services from more efficient suppliers were displaced by less efficient EU suppliers.<sup>66</sup> The EU apparently agreed to drop this clause for South Africa, but insisted on retaining it for the BNLS, a condition that would have undermined SACU's ability to negotiate future trade deals as a unit (IGD Roundtable, April 2008).

### **Export taxes**

Another potentially problematic clause would be a provision that prohibits the introduction of export taxes. Within SACU Namibia has expressed concerns about the constraints this provision puts on their ability to use export taxes to promote domestic processing, notably of hides, but more broadly to use export taxes as a policy instrument for development purposes. The TDCA allows export taxes, but restricted South Africa from introducing new export taxes.

### **AU Commission EPA Co-ordination Mechanism**

It is possible that the African Union (AU) Commission may play a role in resolving some of these issues, through its EPA Co-ordination Mechanism, which is meant to monitor, coordinate and harmonize the EPA negotiations. The mechanism includes the gathering and exchange of information on EPA negotiations among African regional economic communities and also identification of areas of common interest across EPA groupings (AU Ministerial Declaration, June 2005). The AU Commission, in early April 2008, proposed the establishment of a panel of trade, legal and development experts to work on the harmonization of the EPA texts in accordance with the Nairobi Trade Ministers Declaration of 2006 on EPA Negotiations (AU Press Release, No.56/2008), although it is not certain how this process will interact with the EPA groupings without slowing down the overall processes, given the time constraints in meeting the next EPA deadline. The EPA Co-ordination Mechanism may also be more useful as a political forum for limiting EU pressure on African and ACP nations and groupings that are unwilling or unable to meet the deadlines for the conclusion of comprehensive EPA negotiations.

<sup>66</sup> Ironically, SADC states built a MFN clause into the SADC Trade Protocol. Presumably South Africa did not oppose such a clause even though it planned a liberalized trading regime, because it did not feel threatened by the other SADC states' offensive trading capacities. Likewise, none of the members presumably planned to easily grant better access to any major global trading states, which would then force the SADC state to allow South Africa the same access. It will be interesting to compare the concessions granted under the ESA and SADC-EPAs by SADC member states with the preferences granted under the upcoming SADC Free Trade Area to see if South Africa has by default gained increased access to some SADC member state markets in various sectors via the concessions granted to the EU under the EPAS.

## 6.3 Potential Outcomes of Planned Agreements

### 6.3.1 SADC Customs Union

A necessary prerequisite of a Customs Union is that the parties agree to sacrifice sovereignty in their use of fiscal and monetary policy instruments, to achieve successful integration. This would mean possibly curtailing their ability to use such policy levers to promote various developmental projects or initiatives. Researchers looking at SADC have at the same time noted that most of the economic gains from lower tariffs and improved trade facilitation do not depend on the creation of a customs union and could be gained from a thorough implementation of the current Trade Protocol and upcoming Free Trade Area.<sup>67</sup> There are substantial implementation challenges to be considered and addressed in moving from a Free Trade Area to a functional Customs Union. A Customs Union can assist with the development of the region, but for it have positive, substantial effects it would have to be preceded by the full implementation of the incoming SADC FTA. A fully functioning FTA would in itself provide the conditions for easier Customs Union negotiations.

One of the most important impacts of launching a SADC Customs Union on sustainable development would be in the area of government revenue. It is expected that government revenues would decrease as a result to varying degrees across SADC. A decrease in government revenue would obviously impact on government's provision of services to its citizens and its ability to increase spending to meet the MDGs, for example. Any impact would also be determined by what the lost revenue was actually spent on, as some government spending (e.g., education, health services) has more implications for sustainable development than other (e.g., military expenditures). Other sustainable development impacts have not been quantified, but might include a drain on the capacity of government due to the requirements of implementing a Customs Union, and a reduction in membership and therefore membership revenue as a result of the rationalization of potentially conflicting Customs Union memberships in the broader region.

The net fiscal effect on governments depends not only on the impact of any change in customs duties on each government's revenue, but the importance of government revenue (and expenditure) in the country's total GDP and on state's ability to raise other taxes (or reduce unnecessary government expenditures) to offset declines in tariff revenues (SADC, 2007, p. 9). The complex interaction with SACU's existing revenue-sharing formula will have to be discussed, and transitional measures agreed to support those economies where government revenue could drop the most. Once again, a process with more than one track (i.e., a variable accession process or variable implementation schedule) could lessen the impact of the adjustments. The SADC Secretariat study on an appropriate model for a SADC CU notes that the general CET should not be set below 25 per cent as this would lead to significant revenue losses. The same study noted that the SACU states, excluding South Africa, would experience difficulty moving from the SACU CET to a SADC-wide CET due to the relatively high proportion of their revenue that comes from taxes on international trade, and the relatively high proportion of GDP that is ascribed to government revenue and spending (2007, p. 63). In other words, the launch of a SADC CU would require the SACU Revenue Sharing Component to be altered, and would have negative fiscal impacts on the BNLS.

<sup>67</sup> A view apparently quietly supported by South Africa. Botswanan respondents were not optimistic that South Africa fully supports the launch of a SADC CU, and without South African support they do not see the CU going ahead for now (Interview data, November 2007).



At the same time, it must be acknowledged that there is a debate amongst some stakeholders over what the path of regional integration should be for southern Africa. The 2003 Regional Indicative Strategic Plan (RISDP) noted earlier set out an ambitious plan for SADC's integration (an FTA by 2008 and a customs union by 2010), yet although the Trade Protocol is a legally binding instrument ratified by two-thirds of SADC member states, the RISDP is a political and policy document, and as such is not legally binding—its targets can be revised if political will exists. Some commentators are calling for such a revision, stating that the RISDP targets are unrealistic and even perhaps inappropriate for the region. The findings of the Trade Protocol audit noted earlier seem to bear this out. The audit essentially reported insufficient and inconsistent progress in the implementation of the Trade Protocol, although the SADC Executive Secretary took a positive interpretation and stated that the findings proved that SADC could proceed with the FTA (SADC, 2007).

The argument against proceeding regardless with the RISDP timeline for regional integration is that the accepted paradigm of regional integration may not address the developmental challenges of the region, and may not even be necessary in order to address them effectively. The accepted or “textbook” paradigm referred to here is that of moving from a preferential trade arrangement to a Free Trade Area, to a customs union and then onto economic and monetary union. In essence, the debate may need to be about sustainable development (national and regional), enhancing the competitiveness of the region and how to address specific constraints in this regard. This means that the agenda should be broader than just ensuring that a Customs Union is launched, but should perhaps focus on making real progress with regard to trade facilitation measures, infrastructure development and cooperation, services provision (including intra-regional trade in services), and policy and regulatory reform. Addressing the nuts and bolts of trade flows and creating an enabling environment for growth may prove more effective than trying to implement and control the industrial and trade policy compromises necessary to agree on a Common External Tariff. In the same way, a simple transposing of the SACU model onto SADC or the SADC model onto SACU to achieve a viable Customs Union may cause more problems. The implementation problems of SADC can perhaps only be solved by consolidating and strengthening SADC first.

In a sense, the divisive conclusion to the first phase of EPA negotiations in the region has already complicated and undermined efforts to run a SADC Customs Union, and has reduced the efficiency and trade facilitation gains that such a Customs Union could bring. In this regard an argument against even proceeding with a SADC Customs Union may arise once COMESA manages to establish its own Customs Union on schedule (it is planned for 2008). There are currently eight SADC members who are also COMESA members,<sup>68</sup> and the successful launch of a COMESA Customs Union may force these states to start deciding which single regional body they wish to belong to, as a state cannot belong to more than one Customs Union unless the Unions are completely harmonized in terms of their Common External Tariffs (CET) and Rules of Origin at least (and ideally their tariff liberalization schedules with major trade partners such as the EU are harmonized), and this is unlikely to easily occur between COMESA and SADC. SADC, and even COMESA, may find that their membership start to shrink the closer SADC comes to launching a Customs Union, as countries are forced to choose. The key factor that may swing memberships is delivery—whichever group delivers the most practical, observable political and economic benefits in the next two years may be in a better position to persuade members to stay on board. This scenario of competing Customs Unions would no doubt however

<sup>68</sup> DRC, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe are SADC as well as COMESA members. Angola suspended its COMESA membership citing duplication with its membership of SADC.



detract from a sustainable development agenda for the region, and would certainly stretch institutional capacities in the region even further, leading to two potentially weak Customs Unions (SADC and COMESA).

### 6.3.2 Scenarios for Rationalization of COMESA, SADC, SACU and the EAC

Various scenarios are therefore possible for the rationalization of the regional overlap dilemmas, and are outlined below. It is useful to pull the information given above together and explain it would mean in terms of actual membership rationalization, given how intertwined the memberships of SACU, SADC, COMESA and the EAC are. Two assumptions must be made though: first that it is not possible, as noted above, to belong to more than one Customs Union unless they are completely harmonized, and even then the WTO must be notified of this and persuaded to accept this arrangement; and second that for regional integration to be viable, the EPAs must also be rationalized. This is because of their breadth, spanning the whole of Africa, and because of their weight in trade flows; the EU is often the largest trade partner of African states.

Four scenarios seem to present themselves as possible solutions:

- **Scenario One – SADC and COMESA CUs launched:** The status quo remains in terms of establishing new Customs Unions (i.e., SADC and COMESA proceed with their plan to launch separate Customs Unions). This would entail, first, that EAC and COMESA decide if their Customs Unions are to be completely harmonized. It appears as if the two blocs are aiming to achieve this already, as the new COMESA CET has been based on the EAC CET.<sup>69</sup> If this harmonization is successful, then the EAC members who belong to COMESA (all the EAC states except Tanzania) can remain members of COMESA when its Customs Union is launched. If negotiations on this harmonization are not successful, then the EAC members concerned must withdraw from COMESA and the EAC must negotiate a separate free trade deal with the then-reduced COMESA.

Once the COMESA CU is launched, SADC will be only two years away from the launch of its own CU. Prior to this, the nine states that hold dual SADC-COMESA membership will have to decide which CU to belong to. A process of rationalization will need to occur within this two-year period, although it would be disruptive and a waste of resources for a state to participate in the launch of the COMESA CU and then withdraw shortly thereafter, so ideally those states who favour remaining in SADC and joining a SADC CU should withdraw from COMESA in 2008 before the launch of the COMESA CU.

However, if these states have any doubts about the capacity of SADC to successfully launch a CU, then they may still choose to play a waiting game, and participate in the launch of a COMESA CU, so as to cover their options. Of course it is also possible that some states that now solidly favour a COMESA CU may switch unexpectedly to the SADC CU as well. The last piece of the rationalization wave will be that Tanzania would have to decide between membership of the SADC CU and membership of the EAC CU, unless their respective CUs are harmonized, which may be difficult, as the EAC CU is closer to the COMESA CU. If Tanzania pulled out of the EAC CU, it would of course severely damage the EAC.

<sup>69</sup> The outgoing COMESA secretary general, Mr Erastus Mwencha, stated in mid-May 2008 that the creation of the COMESA CU would be completed on time, as it would be modelled along the East African Customs Union system (tralac, May 21, 2008).

Finally, another set of rationalizations will need to occur throughout this process, in terms of SACU member states as well. Swaziland will need to decide whether to remain in the SACU CU or surrender its SACU membership and join the COMESA CU, as it is a member of both groups. Given the importance of SACU revenue to Swaziland and the fact that there is no clarity on future relationships between the SACU CU and the SADC or COMESA CUs, it is most likely that Swaziland will choose to rather withdraw from COMESA prior to the launch of the COMESA CU.

The overall question will be what occurs between SACU as a whole and SADC. If the two bodies cannot agree on the harmonization of their respective CUs, then the other SACU members will have to withdraw from SADC prior to the launch of the SADC CU. This would be very problematic, as South Africa is an important market for the non-BNLS SADC members, and vice versa. Separate CUs would mean separate CETs, and Rules of Origin, and therefore instant trade barriers between these two markets. The problem is that, for SACU and SADC to harmonize their CUs, SACU would need to completely overhaul and even dismantle its current Revenue Sharing Agreement, as South Africa will not accept (and probably cannot afford) its extension to the rest of SADC. This would have a severe economic impact on the BNLS, as they derive up to half of their core budget revenue from this arrangement. Therefore they will no doubt be fiercely opposed to any such changes, and therefore potentially opposed to the merging of SACU and SADC, unless some plan can be made for the retention of the Revenue Sharing Framework in its current form. However, retaining this would undermine and contradict the SADC CU, as a set of administrative barriers would need to be retained between the SACU and SADC CU members in order to collect and distribute the revenue as is done today. South Africa's interests are no doubt opposed to the BNLS in this regard, as it will be keen to further dismantle trade barriers between itself and its non-BNLS SADC markets (especially as the only countries that really pose some trade threat to it in the continent are not in SADC, i.e., Egypt and Kenya), and has already made it clear that it wants the Revenue Sharing Agreement to be extensively renegotiated (Braude, 2008).

- **Scenario Two – only a COMESA CU launched:** SADC abandons the route of a Customs Union and concentrates on its political and developmental role, and the growth of its members in terms merely of trade facilitation, infrastructure development and cooperation, services provision and policy and regulatory reform. COMESA becomes the only new Customs Union in the region, merged or harmonized perhaps with the East African Community, depending on the internal integration agendas and choices of the EAC member states. If the two stay separate, then the EAC members will withdraw from COMESA, and Tanzania will ideally withdraw from SADC and the SADC FTA as well, in order to strengthen and protect the EAC CU. This scenario would mean countries with dual membership of SADC and COMESA could retain this membership, but the existence of the SADC FTA would still complicate and undermine the implementation of the COMESA CU, unless the two initiatives were harmonized as far as possible. If the nine countries that currently hold dual COMESA-SADC membership were to withdraw from the SADC FTA to strengthen the COMESA CU, it would severely weaken SADC and its FTA. It is more likely that countries would retain both memberships, leading to a weaker COMESA CU and a weaker SADC FTA. In this scenario, SACU remains intact with possible reforms to its Common Revenue Pool, and only Swaziland is then left with making a choice between SACU and the COMESA CU.

- **Scenario Three – a Grand SADC/COMESA/SACU/EAC FTA, postponed SADC and COMESA CUs:** SADC and COMESA postpone their separate CU plans. SADC, SACU, COMESA and the EAC move immediately to create a “Grand Free Trade Area” along the lines of recent suggestions by the EAC, possibly with a view to allowing the overall plans for continental union to overtake the regional processes. The SACU and EAC Customs Unions remain as they are until such time as that continental union occurs, or until the SADC and COMESA CU plans are restarted.
- **Scenario Four – a Grand SADC/COMESA/SACU/EAC CU, cancelled SADC and COMESA CUs:** A “Grand SADC-SACU-COMESA-EAC FTA” is launched, with both the SADC and COMESA Customs Unions cancelled, as a precursor to moving directly to the launch of a similar “Grand Customs Union” incorporating the four regional blocs. Alternatively, the four RECs go straight into negotiations for the Grand CU. The SACU and EAC Customs Unions remain as they are until such time as that occurs. The pre-existence of the EAC and SACU would however require either that at they be dissolved and merged with the impending Grand CU, or that they be harmonized at least with a third hybrid COMESA-SADC CU comprising non-EAC and non-SACU states (i.e., eventually comprising a three-group Grand CU). The scenario of a Grand CU, even more than Scenario Three’s Grand FTA, would provide a major boost to continental plans for unification, would completely bypass the challenges involved in rationalizing the various RECs and CUs, and would create a giant African market of over 500 million people and with a GDP of close to US\$300 billion. As such, it might save an enormous amount of time, and energy and allow the broader region and the continent to pool its capacity to tackle internal barriers to trade and promote investment.

However, similar to Scenario Three, it would also place South Africa, Kenya and Egypt in the same REC for the first time, and therefore in direct competition. This could very well prove difficult for all three to accept, although the existing SADC Trade Protocol’s processes could be used to reach consensus (i.e., SADC members made “differentiated offers” to non-SACU SADC countries and Botswana, Lesotho, Swaziland and Namibia, and “general offers” to South Africa). Offers for tariff reduction to BLNS countries were largely front-loaded, while offers to South Africa were mid- to back-loaded. In return SACU members made offers to the other SADC members for immediate reductions to achieve zero tariffs after five years, except for sensitive products. In a similar fashion, the EAC adopted a mechanism to deal with the economic differences between Kenya and the other EAC member states, whereby an Asymmetry Arrangement provides for a phased reduction of import tariffs applied by Uganda and Tanzania to various Kenyan goods over a period of five years (2005–2009). Ugandan and Tanzanian goods were, however, allowed into Kenya with a zero import tariff from the outset of the Customs Union. This was agreed to by Kenya in an attempt to offset or compensate for the potential imbalance in competitiveness among the EAC states, and to allow Uganda and Tanzania an opportunity to increase the competitiveness of their industries (Braude, 2008b). So South Africa, Kenya and Egypt and the remaining states could be divided into these four respective parties for internal trade preference negotiations, leading to differentiated and asymmetrical internal tariff phase-downs to accommodate all sides.

Four important points can therefore be noted: if SADC goes ahead with its CU, then SADC, SACU and COMESA member states will face some very tough choices, and these will affect their membership size and trade flows. The second point is that these choices and a full rationalization of the membership overlaps in southern and eastern Africa will only occur if a SADC CU is launched in addition to the

COMESA CU. The launch of a COMESA CU alone will only legally force a partial rationalization, affecting the EAC member states and Swaziland, although it might trigger further moves between the two. Thus the trigger for a major reorganization of regional trade blocs will be serious moves towards the establishment of a SADC CU. Ironically then, a SADC CU will be good for a generating a proper trade bloc rationalization in the broader region, but will cause considerable disruption in the process. Third, whichever of the four scenarios occurred would need to be closely aligned with the African Union's Abuja map for continental integration and the establishment of an African Economic Community. The eastern and southern African region would then become the key "fast-tracked" building block for continental integration. This would however require extensive negotiations, compromise and consensus in order to address the problem of harmonizing the differing EPA offers made by the EAC, ESA and SADC mini groups to the EU, not to mention the negotiations required to integrate South Africa, Kenya, Egypt and the other smaller states into a single regional economic community. Fourth, the guiding principle in all the scenarios must be: what will bring the fastest and most tangible economic and general sustainable development benefits to the broader region, and what scenario will make best use of the existing (and perhaps limited) capacities and strengths of the broader region?

### 6.3.3 SACU-India PTA Potential Outcomes

According to Alves (2004), it is doubtful whether the PTA will bring any meaningful changes to the current volume and structure of trade between SACU and India. This may be because trade has already grown considerably in recent years, from about R200 million (US\$26 million) in 1995 to R18 billion in 2007. India has invested in the automotive, steel and mining sectors in South Africa, which in turn exports finished goods, transport and other equipment to India and invests in manufacturing there (bilaterals.org, February 21, 2008). However, Van Seventer and Mlangeni suggest that there could be potential for increased intra-industry trade in basic fabricated metals, precious stones and jewellery, and some non-metallic minerals.

From the SACU perspective, free trade with India will enable SACU member states to have access to affordable medicines, competitive prices for motor vehicles and equipment for heavy industry. Furthermore, free trade with India could create new export markets for iron and steel, chemicals, aluminium and furniture.

South African exports of gold have benefited considerably from the Indian market over the past years. Indian imports of gold from South Africa increased by 129 per cent annually from US\$2.2 million to US\$1.7 billion over the period 1994–2004. However, excluding imports of gold, India-South Africa trade will account for an insignificant proportion of each country's total trade (Alves, 2004). Trade between SACU (in particular South Africa) and India has been low mainly due to persistence of high tariffs and non-tariff barriers, which hinder trade and investment between the two countries. Therefore, bilateral trade between SACU and India will enable South African exports to penetrate the Indian market. However, South Africa and other SACU members should expect losses in their domestic production of textiles, clothing, leather, and electrical machinery,<sup>70</sup> as these goods will feature in the imports from India that will be liberalized. This may lead to a loss of jobs for the workforce, and tax revenue for government.

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<sup>70</sup> SACU imports from India include textiles and clothing, food products and live animals, machinery and transport equipment, vehicle parts, and pharmaceuticals, amongst others.

### 6.3.4 SACU-China PTA Potential Outcomes

Beijing had investment protection agreements with 26 of Africa's 53 countries and bilateral agreements with 47 by 2006. Sino-African trade grew from US\$10 billion in 2000 to more than US\$37 billion by the end of 2005. Its exports to Africa rose from US\$6 billion in 2001 to almost US\$19 billion in 2005, and imports from US\$4.9 billion to US\$36 billion. Beijing is committed to increasing its trade with Africa to \$100 billion in the next decade. Some goods from the poorest African countries have since last year been given zero-tariff treatment by China in an effort to underpin trade.

As SACU is possibly going to negotiate a PTA and then perhaps a FTA, it will need to take into account the nature of Chinese competition. Chinese firms are providing vigorous competition for the continent's own established and emerging firms. The Chinese model is based on preferential lending rates from state banks and cheap and efficient labour. Market analysts and economic researchers question how local firms in Southern Africa can compete against contractors that are still state-owned enterprises, and thus not directly affected by the cost of capital and labour. They note that manufacturing could be undermined and local trade displaced, just when many African states are starting to diversify their economic activities. China's entry could thus potentially push them back into dependence on commodity-driven exports, and one product or sector although South Africa is better placed to compete than many other African countries because it has a more sophisticated skills base and infrastructure. They note that the adjustment must be made on the African side, in terms of an appropriate regulatory framework, to control Chinese entry into sectors that could have a negative effect on development.

SA in general welcomes China's interest in Africa, saying that it represents a major commitment to Africa's development and the realization of NEPAD goals. As a developing country, it says, China understands the challenges faced by the African continent, and notes that China's economic dynamism has generated tremendous business opportunities for Africa and more specifically South Africa (bilaterals.org, March 8, 2007).

Sandrey (2006) cautioned that the potential gains from a SACU-China FTA need to be carefully analyzed and fully understood by all parties, and a FTA should be pursued only when the net welfare gains outweigh the losses. It would be counter-productive to launch free trade negotiations in the absence of research that clarifies the specific economic, social and environmental impacts on the economic welfare of SACU's citizens. The research noted something that has become evident in many countries around the world, namely that a feature of Chinese imports is their domination in areas where they compete. It should be noted that the parties have agreed to pursue a PTA for now, rather than a FTA. Engaging in a PTA or FTA with China would offer gains to the SACU region in terms of better access to the Chinese market. However, with China being the world's benchmark supplier of lower cost manufacturing merchandise, there could be costs to the region's production capacity and subsequent losses of employment and tariff revenues. The textile, clothing and footwear industries in the SACU region stand to suffer a lot from these negotiations should the MFN duty on Chinese made imports be reduced. Furthermore, as noted below in the section dealing with SA-TDCA outcomes, an FTA with China and the U.S. could result in revenue loss of over US\$3.5 billion (roughly 11 per cent) for the SACU revenue pool.

The South African Clothing and Textile Workers' Union (SACTWU) suggests the effect could be worse than that suggested by the Sandrey study noted above, as the results for the clothing and textiles sectors seem out of line with their empirical data. SACTWU notes that even without the removal of tariffs, imports from China jumped 110 per cent in 2003, about 107 per cent in 2004 and around 40 per cent



in 2005. The union claims that Chinese imports also had a severe effect in other sectors, “wiping out” most local production of electronics (bilaterals.org, June 23, 2007).

The problem with liberalizing trade with China is that it is such a large market that adjustment costs for South African industrial sectors, such as automotive and clothing sectors, are on par with global liberalization, but without the widespread compensatory gains that global liberalization under the WTO could bring to other South African sectors in other markets.

### **SA-China trade flows**

A review of South African trade data shows that there has been a trade deficit recorded in respect to the country’s trading with China for a number of years. The trade deficit increased from US\$-2,571 million to US\$-3,551 million and further to US\$-4,783 million in 2004, 2005 and 2006 respectively (Jensen & Sandrey, 2007). Manufacturing exports to China increased by only US\$455 million, compared to a US\$1,578 million increase in manufactured imports from China, indicating a rapidly growing bilateral trade deficit for South Africa

South Africa’s exports to China are lower and are currently highly concentrated, with primary commodities such as iron ores, precious metals and stones forming the majority thereof. These products are currently facing low (an average tariff of 3.45 per cent) or even zero tariffs upon entry into China. This implies that the signing of the agreement will have little impact on the competitiveness of these products in the Chinese market.

The South African motor vehicle and aircraft industry could benefit from this agreement since they currently face duties of 15 and five per cent respectively. However, Mandigora (2006) argues that the benefits are far from certain. With prospects of China, Brazil, Russia and India becoming the world’s leading manufacturers of vehicles, the South African motor industry stands to lose in future from this.

The textiles, clothing and footwear sector stands to lose from this agreement should the MFN duty on imports of such products into South Africa be reduced. Studies reveal that China has displaced South African domestic production of clothing with its dramatically increasing exports over the last few years. As indicated earlier, the sector experienced job losses, estimated at 61,000 jobs in the past few years, mainly due to the increased flow of imports of textiles from China since the abolishment of the Multi-Fibre Agreement. This resulted in imposition of quotas on imports of such products to protect the domestic market.

Although projected figures looking at prospective trade deals usually derive from modelling exercises, and thus need to be corroborated by further research, they still bear witness to the fact that South Africa is an economy far smaller than China’s, and must be careful to put in place measures and programs to mitigate any expected disruption to economic sectors as a result of such a trade deal. Although overall welfare effects may be positive when modelled, the real danger is often in the fact that increased competition by lower cost producers is not planned for and sequenced correctly. Welfare effects must be disaggregated and the specific characteristics of the economy must be analyzed to ensure that the trade agreement objectives and outcomes are aligned with national development plans and that sufficient capacity exists within the state and private sector to reskill affected workers and make up for revenue losses.

The key would seem to consist in sequencing a reduction in protectionism whilst increasing the competitiveness of local producers. Increased foreign competition is often a means to force an increase



in local competitiveness, but three pre-conditions would appear necessary to extract the maximum benefit for sustainable development from trade. The first would be that efforts are made to increase the productivity of the private sector independent of planned trade deals, and second that efforts are made to ascertain via thorough research involving all stakeholders what the likely outcomes of a trade agreement could be and adjust negotiating positions or even postpone negotiations based on this. Lastly, trade liberalization should be implemented in conjunction with efforts to increase the capacity by the state and private sector to monitor and manage the trade relationship and respond to any adverse impacts.

Any welfare gains to the BNLS countries may be modest. These minimal gains would come about due to the reduced SACU tariffs, which would enable increased flow of cheaper China goods into the region. Employment and real GDP gains may also be modest.

## 6.4 Outcomes of Trade Agreements by Individual SACU Member States

Although the 2002 SACU Agreement allowed member states to continue their pre-existing bilateral preferential agreements, normal customs duties apply to products traded under such preferential bilateral agreements once exported to other members of SACU that are not party to those preferential trade agreements, under Article 31(4) of the 2002 Agreement. The continued operation of multiple agreements within the Common Customs Area therefore means that each member state has to commit additional human and technical resources to tracking and imposing tariffs on goods imported under such agreements, so as to remain compliant with the provisions of the Customs Union. This burden is heavier for those member states that already face capacity constraints related to customs operations. Even if such measures were applied strictly, their application would undermine the free movement of goods within the Customs Union, thus negating one of the major arguments in favour of a Customs Union. In fact measures to collect duties on such goods would probably outweigh the overall benefits, and so such measures are not consistently applied.

Ideally, therefore, these agreements need to be brought into harmony with the current agreement in order to improve efficiency and to reduce transaction costs. They could be streamlined, rationalized, or a transitional mechanism could be established that provides for phasing out individually-concluded preferential agreements in favour of agreements concluded by all SACU members collectively (Elago & Jefferis, 2006, p. 13). The SADC Trade Protocol deals with this by allowing such agreements between SADC members at least to continue until such time as the market access conditions under the Trade Protocol become more favourable than the bilateral trade agreements, at which point the bilaterals must be phased out. However the SACU Agreement does not contain specific provisions to guide the process of phasing out such agreements (Elago & Jefferis, 2006, p. 14), although in SADC's case it will be easier as SACU already acts as a unit in the SADC FTA process.

### 6.4.1 Deeper India, Brazil and South Africa (IBSA) Relationship, Potential Outcomes

The possibility exists that India, Brazil and South Africa will take the trading aspect of their trilateral political, social and economic cooperation relationship further by entering into some form of trade negotiations. As noted above, the declared goal is in the form of a free trade agreement between the respective trade blocs, as both SACU and Mercosur are Customs Unions and it would not make sense for South Africa and Brazil to bypass these structures (Jensen & Sandrey, 2007, p. 4). Available trade data shows that there has been substantial trade amongst the IBSA countries. In 2005, South Africa's main exports to India included gold (valued at US\$1,846 million), coal/oil/gas (US\$171 million) and

pentaoxide chemicals (US\$149 million) while Indian imports into South Africa comprised of motor vehicles, fuels, cereals, organic chemicals and pharmaceuticals and these accounted for about 47 per cent of total imports (Jensen & Sandrey, 2007). South Africa's major exports to Brazil included coal/oil/gas (US\$29.1 million), ferroalloys (US\$50.6 million) and insecticides (US\$7.9 million) while South African imports from Brazil included motor vehicles (US\$353.6 million), poultry meat (US\$111 million) and soybean oil (US\$67.7 million). The three countries have declared their intention to double intra-IBSA trade to US\$15 billion by 2010 (bilaterals.org, October 21, 2007).

Any gains to South African private sector (and indirectly, government through increased tax revenue and gains for workers in terms of expanded export production) could be due to increased access to the previously highly protected Indian market. There would be gains in ferrous metals if South African gold gained duty free access into India through any IBSA FTA (duty on gold will fall from 15 per cent to zero). Agricultural products, specifically vegetable oils and fats and wool could benefit from better access to the Indian market. However, as South Africa and Brazil have similar trade profiles, the potential for significant trade flows between these two may be limited. Trade between India and South Africa, however, looks promising, and trade between India and Brazil is growing rapidly. India and Brazil aim to boost trade from the present US\$2.4 billion to US\$10 billion by 2010. Brazil is now India's largest trading partner in Latin America (bilaterals.org, October 21, 2007).

Indian and Brazilian sectors that might benefit from access to the South African market include textiles from India (restrictions were imposed on Chinese imports into South Africa in early 2007), and motor vehicle components from both countries, but mainly Brazil.

There is currently little trade between the BNLS countries and India and Brazil, compared to with South Africa and India and Brazil. Indian imports from South Africa's SACU partner countries are very minor, with gold from Botswana being the major import product (valued at US\$12.1 million in 2005). Indian exports to the BNLS comprise mainly medicines and vehicles. Trade between the BLNS and Brazil is minute, with major exports to the BLNS comprising of furniture and cement (Jensen & Sandrey, 2007, p. 5).

In terms of the other aspects of the IBSA relationship, it appears to hold enormous promise for sustainable development in the three countries if the social, political and developmental goals are realized. By pushing as a group for reform to multi-lateral institutions such as the UN, WTO, World Bank and IMF, the three countries may be able to increase the voice and influence of developing countries, and especially emerging powers, in global forums which impact on their development. The more specific accords signed as a result of the IBSA relationship appear to rival those between the three states and their developed country trading partners, with an important difference, as peer countries facing similar political, economic and developmental challenges (or at least more similar than those faced by their major developed country trading partners) they may be better placed to address practically the challenges they face, even if less resourced than their traditional donor partners in the North. The seven accords signed in October 2007 all have direct impact on sustainable development. Accords were signed in the areas of public administration and governance, tax administration, arts and culture cooperation, higher education, wind resources, health and medicines and social development (bilaterals.org, October 17, 2007).

Other areas of cooperation directly address some of the broader constraints underpinning sustainable growth, in research and development projects in manufacturing, pharmaceuticals, ICT and energy technology to achieve energy security. The specific call by India for a common social development

strategy, targeting rapid and inclusive economic growth, human resource development, building equitable infrastructure and grassroots institutions, promoting environment-friendly strategies, preventing short-term distress mitigation and their integration into the world economy, would seem to place this agreement and relationship in the top few trade relationships of SACU that could directly make a positive impact on sustainable development and could serve as a model for other South-South (and even North-South) agreements between SACU and prospective trade partners (bilaterals.org, October 17, 2007). The closest North-SACU agreements to this in terms of overall impact on development may prove to be the SACU-EFTA and SACU-TDCA agreements, although in the case of the SACU-TDCA agreement, the mercantilist or trade impacts might reduce the overall positive impact of the agreement, as noted in the section below.

#### **6.4.2 The EU-South Africa Trade, Development and Cooperation Agreement (TDCA) Potential Outcomes**

Trade data suggests that though the EU still remains South Africa's major trading partner, there is no substantial evidence that the TDCA has had a positive impact on South Africa. A study in 2006 by BusinessMap Foundation did not find conclusive evidence that the free-trade deal had led to an increase in fixed investment either, although SA had expected such investment to occur (bilaterals.org, February 16, 2006). The agreement has had its share of difficulties, with Smalberger (2005) noting that after six months of ratification of the TDCA, exporters and importers in South Africa were still not able to enjoy the benefits of the EU market. Jensen & Sandrey (2007) state that the reductions in the EU tariffs have not been of significant benefit to South African exporters as of 2006. For example, it is still not certain at what stage the tariff reductions by the EU under the TDCA passed those relevant to South Africa under the GSP system (Sandrey, 2006b, p. 25). This position has been supported by an ANC member of the South African Parliament's portfolio committee on trade and industry. He stated in April 2007 that the TDCA had not benefited South Africa, but rather the EU had been the beneficiary (tralac, April 26, 2007). When the TDCA comes up for review, it will be useful to compare South Africa's access to that of Chile, which appears to have negotiated a better deal into the EU (Sandrey, 2006b: 25).

Furthermore, there were concerns that most of the TDCA's provisions for economic cooperation have to date not been implemented or given full attention by the two parties. Emphasis on these provisions, it is argued, could help South Africa address or tackle its major social and economic challenges, including the high poverty level in the country. Although the EU has called for the TDCA to be expanded, via the TDCA Review, to include trade in services, as well as investment and procurement, analysts have pointed out that SA should be cautious in the concessions it was willing to make relating to services, investment and procurement because other countries might want SA to match them (bilaterals.org, February 16, 2006).

- **Implication of the TDCA for the BLNS**

The TDCA has important implications for the BLNS countries. Because of the SACU Agreement, the BLNS<sup>71</sup> countries are de facto implementers of the agreement. Thus, firms in the BLNS probably face competition from indirect EU imports entering from South Africa. As noted above, it is difficult to track and tax goods from bilateral trade agreements within a Customs Union (in most cases the costs involved would cancel out the tariff revenue benefits) and in the case of the TDCA this is exacerbated by the fact

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<sup>71</sup> Due to the fact that the TDCA preceded the 2002 SACU Agreement, the BLNS were not obliged to give concurrence to reductions in their own tariffs on imports from the EU at the rate agreed by South Africa.

that South Africa is capable of producing similar products in many cases due to its high level of industrialization, making it hard to differentiate between EU goods and legitimate South African goods.<sup>72</sup> As a result, the BNLS have not attempted to collect tariffs on EU goods exported to South Africa under the TDCA and then re-exported to the BNLS, thus enabling them to enter at lower and therefore more competitive prices (Elago & Jefferis, 2006, p. 13). At the same time, the lack of data due to the lack of tracking has made it difficult to assess the broader impact of the TDCA on the BNLS. However, it is believed that the TDCA has been the only agreement signed in SACU that has had a real impact on the BNLS so far (Interview data, November 2007). Products of interest to BNLS that are most likely to be affected by the TDCA are, *inter alia*, preserved fish, grapes, textiles and clothing.<sup>73</sup> This may have a significant impact on firms, as it could lead to restructuring and in some cases closure, resulting in unemployment and increased numbers of people below the poverty datum line in these countries.<sup>74</sup> More specifically, cheaper imports from the EU will increase competition in the SACU market, thus pushing down market prices and production for local producers in some sectors (Jensen & Sandrey, 2007). Reduced production in some sectors may result in job losses.

### **Tariff revenue loss for the BNLS**

Furthermore, this agreement may entail tariff revenue loss for the SACU countries, as the size of the Common Revenue Pool will shrink with the ongoing reduction in South African tariffs. Based upon an assessment of 2005 imports into South Africa against the 2006 SACU tariff rates at the mid-point of the TDCA, and with SADC Trade Protocol preferences now fully operationalized, research conducted estimates that these two sets of preferences reduce the SACU tariff revenues by just under R2 billion (around US\$266.6 using mid-2007 exchange rates), and by the end of the TDCA preferences reduction timetable in 2012, another R1.5 billion reduction in revenue will have occurred. This is equivalent to some 11 per cent of the pre-TDCA/SADC Trade Protocol potential tariff revenues, and its impact on Lesotho, for example, will be an 11 per cent decline in revenue available from the total SACU Customs Pool. This is in the absence of further trade agreements with, for example, the U.S. and China. If both the U.S. and China were granted preferences by SACU at TDCA level, the revenue loss would be another R3.5 billion, another 11 per cent drop just from these two deals alone. This amounts to a 22 per cent drop in the available revenue pool (Maleka *et al.*, 2006). This is similar to another study that estimated a drop of US\$384 million for Botswana annually as a result of the TDCA, which is equivalent to ten per cent of Botswana's total national income (Francois *et al.*, 2005, cited in Sandrey, 2006b, p. 7). The figures may be higher at a member state level, as another study by Flatters and Stern in 2006 estimated an eight per cent average drop in member state revenue per R2 billion reduction in SACU revenues, but an average of 15 per cent drop for the BNLS.

It should be noted again that the BLS have been de facto implementing the TDCA by levying TDCA rates on EU goods entering SACU through their territories, instead of levying the full SACU CET rate on these goods, thus reducing the relevant amounts flowing into the Customs Revenue Pool from tariffs levied on EU goods. Namibia has, however, been levying the full SACU CET rate. At the same time, the TDCA may have provided a curious boost to the value of the apportioned Customs Revenue received

<sup>72</sup> Corroborated by interview data, November 2007.

<sup>73</sup> UK Institute of Development Studies and Botswana Institute for Development Policy Analysis (1998).

<sup>74</sup> The fact that the TDCA excluded liberalization of maize, sugar, beef and wheat meant that the impact on the BNLS agricultural economies in these important areas was very limited. Dairy was not excluded however and so the Namibian dairy sector has been negatively affected. Namibia for example uses the South African (and SACU) market for small stock farmer beef exports that do not pass the EU's SPS standards, which are higher than South Africa's. South Africa in turn has used the SACU market for some of its dairy products for the same reasons (Interview data, November 2007).



by the BNLS under the Revenue Sharing Formula, where revenue is divided according to imports within SACU. Because the 2002 SACU Agreement does not explicitly deal with re-exports between member states (for example where goods are imported into South Africa from outside of the region and then re-exported to the BNLS), these goods are then counted under intra-SACU imports, thereby inflating the volumes and value of such intra-SACU imports. Given the size of the EU as a trading partner of South Africa, the ongoing unilateral trade liberalization of the last decade, and the fact that many goods destined for SACU are probably shipped to South Africa first, these foreign goods probably inflate the BNLS customs pool share (McCarthy, 2006, p. 16) as they are re-exported from South Africa to the BNLS. So although the total tariff revenue of SACU would have dropped, and will drop further due to trade liberalization, it is possible that the impact on the BNLS will have been, and will be, offset due to the structure of the Revenue Sharing Framework.

### ***Capturing benefits from TDCA liberalization***

As South Africa reduces duties and tariffs on EU goods, consumers and companies in South Africa and the BLNS countries will benefit from access to lower-cost products and inputs (i.e., a welfare gain). As a result, sustained trade liberalization should lead to substantial welfare gains. This is a valid analysis, but still problematic, as welfare gains are unpredictable in reality and modelling of welfare gains cannot often take into account all the detail of trade flows due to the relative inadequacy of trade models,<sup>75</sup> and “negative variables” (e.g., profit capture by suppliers and manufacturers who may not pass the welfare gains on to consumers). Thus the actual welfare gain may be higher or lower than expected, and may not directly or immediately offset government revenue loss. There is also a greater likelihood of revenue loss occurring, as the tariff reductions are legally binding, and the negotiations are based on existing revenue flows. Thus the reality of actual revenue loss is more immediate and direct than potential welfare gains. If the impact of liberalization also leads to job losses in liberalized sectors then the potential welfare gains are rendered moot—products that are cheaper as a result of liberalization will obviously still remain unaffordable to someone recently unemployed. Similar to recovering revenue loss, it is also more likely that developed, higher income countries will be able to “recover employment” (i.e., absorb workers who are laid off as a result of trade restructuring) than poorer, developing countries.

However, as noted earlier in the paper, revenue loss is not automatically the outcome of trade liberalization. Tariff reductions may not inevitably lead to revenue loss. For instance the SACU revenue pool has increased hugely in the last couple of years notwithstanding tariff phase-downs, and countries such as India and Costa Rica have also seen revenues rise. Tariff elimination will certainly lead to revenue loss but reductions may not if import volumes increase as a result of the liberalization. However it would obviously depend on the affluence of the country and its ability to absorb imports.

The benefits and dangers of continued or expanded liberalization in the region have to therefore be balanced by South Africa and the BNLS and biased towards a developmental outcome. It may be better, after a point, to safeguard existing tax revenues until such time as successful efforts can be made to boost revenues in order to offset such losses. As can be seen earlier in the paper, additional free trade deals are envisaged or currently being negotiated by South Africa and SACU. The danger therefore exists that South Africa’s trade liberalization program will become a constraint on regional development. Ongoing monitoring and research will be necessary to track the impact of such trade deals prior to and after the negotiations.

<sup>75</sup> The aggregate nature of most trade models makes it difficult for them to produce more than just indicative results, yet detailed results based as closely as possible on “real world” variables are important in order to accurately assess the opportunities and risks for trade parties (Sandrey, 2006b, p. 4–5). This is not to say that sophisticated models cannot be accurate, but the results should ideally be corroborated by multiple avenues of research, in order to cover as many factors as possible, and allow for reliable forecasts to be made. In most cases this is not done.

## 6.5 Summary of Outcomes

From the points above, it appears that not all the trade agreements concluded by SACU or SACU member states have set clear developmental goals and it is further unclear what positive effect the overall trade liberalization has had on the region beyond boosting exports. It is observable that SACU countries have succeeded in terms of having improved access to foreign markets. However, this had both positive and negative implications for these countries.

Obtaining improved market access has had trade offs. For SACU countries to have better access to these foreign markets, they also have had to open up their markets. This entailed reduction or elimination of tariffs on goods of interest to the trading partners. Elimination of tariffs, as indicated in the discussion, could result in revenue loss for the SACU countries. This in turn has negative implications on SACU countries, which depend greatly on tariff revenue in financing their government expenditure.

In addition, elimination of tariffs opens up markets to more competitive suppliers from many other producers. Increased competition from imports due to liberalization can result in reduced production and eventually to job losses if sufficient adjustments are not made in time. Although the labour-intensive textiles industry has benefited a lot from trade liberalization, the sector has also been hard hit by liberalization, as would be expected, with factory closures and retrenchments. The motor industry in South Africa would also be vulnerable to increased competition if all its support measures were to be phased out. At the same time however, it should be noted that cheaper inputs can benefit domestic manufacturers and even allows them to become more competitive, and increased foreign competition can reduce overpricing by companies that may have a significant share of the market.

SACU countries engage in trade agreements hopeful that the agreements will help them eradicate or alleviate the high poverty incidence in their countries. However, SACU countries are still faced with high poverty levels in their countries and the link between increased trade and decreased poverty does not appear to be a direct one. Another related challenge is persistently high unemployment rates, especially in South Africa. Employment opportunities so far created by trade liberalization have been insufficient to help address or overcome this problem. This reinforces the argument that market access is a necessary, but not sufficient, condition for the potential benefits of trade to be realized by countries.

The environmental impacts of trade liberalization across the SACU region remain unclear as no research had been undertaken on this issue at the time of writing. In terms of environmental lawsuits against foreign importers, exporters and manufacturers operating in South Africa, it appears that no court cases have been brought in this regard, or equally by BNLS countries against South African companies operating in the SACU region.<sup>76</sup> However, within the BNLS, Namibian trade unions brought a case against a Malaysian textile investor as an illustration of the abuses that can occur when investors take advantage of a country's desire for trade and investment above sustainable development (see Box 4).

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<sup>76</sup> Interview data, October 2007.



**Box 4: The case of Ramatex: Unsustainable development**

Ramatex was established with substantial Namibian government assistance in 2002 to take advantage of AGOA preferences. The Namibian government built the company a R200 million tailor-made textile plant, granted it tax-exempt status and subsidized the plant's water and electricity and rental. Ramatex is a multinational that produces apparel for Nike, Puma, Adidas and other brands, and is owned by the Malaysian-Chinese Ma family. In return for Namibia's incentives the company promised to create 10,000 new jobs and boost industrialization. Trade unions, environmental NGOs and ratepayers in Namibia complained at the time that the textile plant was not in Namibia's interests, but government ignored their protests. Complaints that Ramatex was contaminating Windhoek's scarce groundwater with poorly maintained waste ponds at its dyeing plant were also ignored. The International Textile, Garment and Leather Workers' Federation assisted their Namibian colleagues in bringing a case for polluting water sources and poor labour practices to court. The Workers Federation called the company "a drain on the country's economy, a danger to its environment and a menace to its exploited workforce."

After the company complained of low productivity amongst the Namibian workers, the government allowed Ramatex to import thousands of Chinese workers (who were actually paid higher wages than the Namibians) and hundreds of Filipinos and Bangladeshis as well. However in 2004 many of the Bangladeshi workers were found to have been kept in conditions similar to human trafficking, in overcrowded, unhygienic rooms and the female Chinese workers were denied access to their passports. With the expiry of the Multi-Fibre Agreement in 2004, the company started closing down parts of the production line and shipping out its equipment to its new factory in Cambodia, while denying that it was doing so. It also retrenched a third of its Namibian workforce. In late 2007 the company promised that it would give at least 12 months' notice if it planned to shut down the factory, but in early March 2008 the plant was closed permanently. Ramatex cited labour and imported raw material costs as the reasons, even though AGOA figures reveal labour costs were only 16 per cent of total costs. The Namibian government was forced to admit in Parliament that it did not have a binding agreement with the Malaysian company and so could take no action against it.

The case study shows that foreign investment to utilize trade preferences does not necessarily lead to sustainable development unless carefully monitored and structured within binding agreements that take issues of sustainable development into account. It also shows the limits of "attracting investment at all costs" and the negative consequences of ignoring labour and environmental standards.

## 7. Recommendations and Further Research

### 7.1 Recommendations

As indicated in the previous discussions, the pursuit of sustainable development requires a careful balancing among progress in each of its pillars: improving social conditions, economic development and conservation of the environment. Furthermore, it is argued that trade-induced growth can have environmental and associated social impacts that, unmitigated, inevitably affect the poorest, thereby increasing the unsustainability of such economic growth and associated trade.

In light of the issues noted in this report, the following recommendations are made:

- Trade policies and agreements should be crafted in such a way that they adequately support sustainable development. In addition, sustainable development should be a priority in national and international policies. SACU and its member states thus need to link the achievement of

Agenda 21 and the JPOI targets to current and future trade negotiations, and integrate development and the environment in national and regional trade policies.

- This point above will require capacity, both in personnel and institutional structure, at a national and Secretariat level, to integrate sustainable development into national and regional trade policy.
- In general terms, research should be undertaken by regional institutions into the linkages between trade and sustainable development in the region, set within the context of current literature and international experiences.
- A set of national and region-wide sustainable development guidelines for trade negotiators should be drawn up based on regional consensus, in order to inform free trade negotiations and align them to national and regional priorities. To this end, a set of overarching regional sustainable development priorities should be drawn up to complement the various NSDSs, and the SACU member states that have not yet completed NSDSs should be encouraged to do so. However, these are only of use if they are consciously incorporated into trade and other national policy.
- SACU countries need to conduct trade sustainability impact assessment studies. These studies are crucial, as they enable countries to have sufficient detailed and relevant information on the economic, social and environmental implications of any trade agreement before negotiations are finalized, ideally before they enter any substantive stage. In other words, trade policy-making requires the analytical capacity to negotiate agreements. There needs to be analytical capacity within the government department involved, in academia, the private sector and civil society, capacity within other relevant government departments (e.g., agriculture), in regulatory authorities, in Parliament, and in customs authorities
- Detailed analysis should be conducted of post-FTA or PTA trade flows to determine whether existing areas of trade deepened or whether new areas of trade commenced (i.e., whether trade widened). This could assist in determining the competitiveness of exporters, their willingness to export and their responsiveness to export opportunities created by the agreements. This could guide future trade negotiations and government trade facilitation interventions.
- Likewise, the development of expertise at a national level capable of identifying institutional and policy development is necessary, specifically changes made necessary by trade reform commitments made at the international level—given the trade liberalization implied in the WTO's current round of negotiations, what type of intellectual property rights systems, competition law regimes and regulatory structures will promote sustainable development in each particular national context (Cosbey, 2004, p. 60)?
- Increased coordination is necessary among government departments in each SACU state in preparing country positions prior to negotiations. This would entail a national-level Environmental Affairs department, Social Development department, and Trade department discussing and integrating their priorities. This process would then have to be replicated at SACU level to harmonize and consolidate the respective national positions prior to (and during) trade negotiations.

- The need for inclusiveness and transparency in trade negotiations agreements is increasingly vital, given the need to correctly align them with national development goals and a broader set of development beneficiaries. Two reforms would be necessary to address this. First, governments (and within governments, trade departments) are often not able to compile comprehensive trade offers that incorporate the many economic and developmental goals of the country due to the number of state and non-state actors involved, interests affected and challenges facing any given state. A comprehensive trade strategy needs to be designed in conjunction with representatives from business, labour, civil society and other government departments. The interests of transparency and inclusiveness need to be balanced so as to safeguard negotiating positions, but the negotiations need to be inclusive in order to be accurate, and to build legitimacy. The opposition to the EPAs is precisely because the agreements are seen as poorly targeted to developmental needs, and unethical in their lack of inclusiveness and transparency. This can lead to enormous opposition to their implementation and potential economic and political liabilities for the governments involved. At stake seems to be the need to protect the sovereignty of national development choices against policy-limiting, but legally binding, agreements.

The second element of this would be that trade agreements must still fall under the oversight of national parliaments, and such parliaments must not be relegated to merely rubber-stamping such agreements, but must be able to interrogate the trade-offs made. Trade agreements must not be even provisionally implemented until such approval is given. This would mean that ratification by parliaments must be mandatory and such ratification must contain the ability to veto aspects of the agreement, that is, power to approve agreements must vest in the legislature, not the executive. The battle in the U.S. over the President's Fast-Track authority is a case in point. Although such a process of parliamentary oversight and final approval would be slower and might entail further rounds of negotiations, the experience of the EU-EPAs and the US-FTAs that have been negotiated over the last five years reveals the dangers for equitable, sustainable development if trade agreement authority is not democratized. This is especially valid given the expansion of trade agreement agendas to non-goods areas such as the “new-generation” or Singapore issues (public procurement, trade in services, investment, food safety regulation, intellectual property, competition policy etc.).

- It would be useful to establish sectoral bodies at the regional level to represent the interests of various economic sectors across the region, and allow them to effectively represent their interests to governments in the region and SACU itself before and after negotiations in regard to the impact of trade agreements on their respective sectors (Mandigora, 2007, p. 29). The same process should be applied to civil society and its structures and bodies.
- There is a need to establish regional protocols or even institutions that specifically promote sustainable development in order to provide clarity to trade negotiators on region-wide issues, for example a regional standard for Environmental Impact Assessments would be useful and a comprehensive regional environmental policy that is broader than just protected areas.
- Arising from South Africa's ambitious trade liberalization agenda and their potential multi-faceted impact on SACU, it would be good for SACU to develop the capacity to utilize the WTO's Dispute Settlement System, especially given the recent rulings by this body as noted in the introduction to this report (i.e., multiple trade deals raise the potential for abuses of the text of the agreements by businesses both from SACU and the trade partners). Because trade

agreements are legally binding, they would need to be accompanied by a system that can process queries from business in the region regarding potential trade dispute cases. Further, official national contact points in each member state for regional WTO coordination, and dispute settlement efforts should ideally be established where necessary (Mandigora, 2007, p. 25). What the preceding chapter on the outcomes of trade agreements shows is that even well-negotiated trade agreements can be hard to police if the countries concerned do not have effective regulatory and institutional processes in place. Yet policing them is important if exemptions and vulnerable sector provisions are to be upheld. At the same time, even in sectors where offensive offers have been made by SACU or South Africa, the trade agreement partners are often significantly bigger or more sophisticated economies (e.g., the EU, the U.S., EFTA, India and China), and so such measures would provide a secure environment in which to trade, as well as facilitate other measures such as safeguard declarations if needed. It would also appear very useful for SACU to study the recent decisions of the WTO DSB in this regard.

- Binding adjustment support measures should be automatically included in trade agreement negotiations and the final agreements, and should include a monitoring and evaluation component for assessing their implementation. A point of departure for linking trade and sustainable development could therefore be to include collaborative institution building in developing countries as part of the WTO program of special and differential treatment (Cosbey, 2004c, p. 10), and align it with other recent multi-stakeholder initiatives on Trade Related Technical Assistance.<sup>77</sup> Sufficient resources for the effective implementation of such should form part of the agreements. SACU member states should be familiar with the sustainable development outcomes that trade partners may be required by their mandates from their law making bodies (Congress, Parliaments, etc.) to achieve (e.g., in the case of the U.S., the EU and EFTA).

## 7.2 Further Research

Linked to the recommendations above, and due to the limited size of this study, which precluded these topics being addressed, some recommended areas for further research could be highlighted:

- Research into a template or list of national and region-wide sustainable development guidelines to assist negotiators during trade negotiations;
- Research focused on institutional development issues linked to the efforts of the WTO program of special and differential treatment in regard to collaborative institution building in developing countries (Cosbey, 2004c, p. 10), and incorporating analysis of other recent multi-stakeholder initiatives on Trade Related Technical Assistance. This should be accompanied by research focused on a template for binding adjustment support-related annexes to be attached to trade agreements;
- An examination of the type and amount of research conducted by government, business and the wider civil society prior to, or during, recent trade negotiations by SACU or SACU member states, in order to establish the level of analysis conducted in preparation for negotiations;

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<sup>77</sup> See the examples given in the relevant footnote under Section Two, dealing with the linkages between trade and sustainable development.

- An examination of the type and amount of intra-government, government-business and government-civil society discussions held prior to, or during, recent trade negotiations by SACU or SACU member states, in order to establish the level of analysis conducted in preparation for negotiations;
- Research into the relationship between the executive and the legislature in the approval and possible renegotiation of trade agreements. Linked to this, research that maps the inclusiveness of the actual negotiations process and the feedback mechanisms between negotiators and representatives from business, labour, civil society and other government departments;
- Analysis into the establishment of region-wide sectoral bodies, standardized SACU Environmental Impact Assessment processes and a SACU-wide Environmental Policy;
- Research focused on the development of SACU's capacity to utilize the WTO's Dispute Settlement System, especially given the recent rulings by this body as noted in the introduction to this report;
- A comparison of the negotiating mandates of SACU's trade partners (especially the U.S., EU and EFTA) with commitments made or undertakings given by these partners during the respective negotiations (i.e., a comparison of what they were required to deliver, from a sustainable development perspective, and what they agreed to, or undertook to agree to);
- Where undertakings or commitments have been made by EFTA, the EU or the U.S. during negotiations, in terms of broader sustainable development issues, a comparative examination of the processes to be followed in the implementation and monitoring of these undertakings would be useful.

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## Annex 1: CSD Indicators of Sustainable Development

### Third Edition, released 2007

The table of indicators below was prepared for the United Nations Commission on Sustainable Development under the auspices of the United Nations Division for Sustainable Development. They were released in August 2007. Further information on the indicators may be obtained online at: <http://www.un.org/esa/sustdev/natlinfo/indicators/isd.htm>

Theme	Sub-theme	Core Indicator	Other indicator	
Poverty	Income poverty	Proportion of population living below national poverty line	Proportion of population below \$1 a day	
	Income inequality	Ration of share in national income of highest to lowest quintile		
	Sanitation	Proportion of population using improved sanitation facilities		
	Drinking water	Proportion of population using an improved water source		
	Access to energy	Share of households without electricity or other modern energy services	Percentage of population using solid fuels for cooking	
	Living conditions	Proportion of urban population living in slums		
Governance	Corruption	Percentage of population having paid bribes		
	Crime	Number of intentional homicides per 100,000 population		
Health	Mortality	Under-five mortality rate		
		Life expectancy at birth	Healthy life expectancy at birth	
	Health care delivery	Per cent of population with access to primary health care facilities	Contraceptive prevalence rate	
		Immunization against infectious childhood diseases		
	Nutritional status	Nutritional status of children		
	Health status and risks	Morbidity of major disease such as HIV/AIDS, malaria, tuberculosis		Prevalence of tobacco use
				Suicide rate
Education	Education level	Gross intake ratio to last grade of primary education	Life long learning	
		Net enrolment rate in primary education		
		Adult secondary (tertiary) schooling attainment level		
	Literacy	Adult literacy rate		
Demographics	Population	Population growth rate	Total fertility rate	
		Dependency ratio		
	Tourism		Ratio of local residents to tourists in major tourist regions and destinations	
Natural hazards	Vulnerability to natural hazards	Percentage of population living in hazard prone areas		
	Disaster preparedness and response		Human and economic loss due to natural disasters	

Theme	Sub-theme	Core Indicator	Other indicator	
Atmosphere	Climate change	Carbon dioxide emissions	Emissions of green house gases	
	Ozone layer depletion	Consumption of ozone depleting substances		
	Air quality	Ambient concentration of air pollutants in urban areas		
Land	Land use and status		Land use change	
			Land degradation	
	Desertification		Land affected by desertification	
	Agriculture	Arable and permanent cropland area		Fertilizer use efficiency
				Use of agricultural pesticides
				Area under organic farming
	Forests	Proportion of land area covered by forests		Per cent of forest trees damaged by defoliation
			Area of forest under sustainable forest management	
Oceans, seas and coasts	Coastal zone	Percentage of total population living in coastal areas	Bathing water quality	
	Fisheries	Proportion of fish stocks within safe biological limits		
	Marine environment	Proportion of marine area protected		Marine trophic index
			Area of coral reef ecosystems and percentage live cover	
Fresh water	Water quantity	Proportion of total water resources used		
		Water use intensity by economic activity		
	Water quality	Presence of fecal coliforms in freshwater		Biochemical oxygen demand in water bodies
				Wastewater treatment
Biodiversity	Ecosystems	Proportion of terrestrial area protected, total and by ecological region	Management effectiveness of protected areas	
			Area of selected key ecosystems	
			Fragmentation of habitats	
	Species	Change in threat status of species	Abundance of selected key species	
			Abundance of invasive alien species	
Economic development	Macroeconomic performance	Gross domestic product (GDP) per capita	Gross saving	
		Investment share in GDP	Adjusting net savings as per cent of gross national income (GNI)	
			Inflation rate	
	Sustainable public finance	Debt to GNI ratio		
	Employment	Employment-population ratio	Vulnerable employment	
		Labour productivity and unit labour costs		
		Share of women in wage employment in the non-agricultural sector		
	Information and communication technologies	Internet users per 100 population		Fixed telephone lines per 100 population
			Mobile cellular telephone subscribers per 100 population	

Theme	Sub-theme	Core Indicator	Other indicator
	Research and development		Gross domestic expenditure on R&D as a per cent of GDP
	Tourism	Tourism contribution to GDP	
Global economic partnership	Trade	Current account deficit as percentage of GDP	Share of imports from developing countries and from LDCs
			Average tariff barriers imposed on exports from developing countries and LDCs
	External financing	Net Official Development Assistance (ODA) given or received as a percentage of GNI	Foreign direct investment (FDI) net inflows and net outflows as percentage of GDP
			Remittances as percentage of GNI
Consumption and production patterns	Material consumption	Material intensity of the economy	Domestic material consumption
	Energy use	Annual energy consumption, total and by main user category	Share of renewable energy source in total energy use
		Intensity of energy use, total and by economic activity	
	Waste generation and management	Generation of hazardous water	Generation of waste
		Waste treatment and disposal	Management of radioactive waste
	Transportation	Modal split of passenger transportation	Modal split of freight transport
			Energy intensity of transport

