



## TRADING FOR DEVELOPMENT?

Debates about development in the regional context invariably contain specific or implicit references to increased trade. Within the context of Nepad, the argument is also for more trade, rather than aid.

So what have the countries of Southern Africa been doing to increase intra-regional and international trade?

The SADC Trade Protocol, signed in 1996 and amended in 2000, provides the basis for regional trade liberalisation. Eleven SADC member states have committed themselves to the progressive (and phased) reduction of tariff barriers to lead to a SADC-wide free trade area by 2008 and a customs union by 2012. Angola acceded to the Trade Protocol on 10 March 2003, but her implementation schedule for removing tariffs must still be agreed by all SADC member states. The DRC and Seychelles have not yet indicated when they intend to accede to the protocol.

Despite progress in terms of the liberalisation of regional trade, a number of issues remain unresolved. Member states still need to identify and eliminate core non-tariff barriers to trade and agree on negotiating modalities for the liberalisation of trade in services.

The creation of a dispute settlement mechanism, as provided for in the amended Trade Protocol, is another challenge facing SADC states. Related to this are issues of duplication and overlap and of capacity building at the regional level

to ensure that Southern African countries can derive more benefit from existing trade regimes and agreements, including the WTO Doha round of multilateral negotiations, the EU-ACP Cotonou Agreement and the US's African Growth and Opportunity Act.

As trade and economic integration speeds up, the need for the rationalisation of regional integration arrangements becomes increasingly obvious. In Southern and Eastern Africa, confusion and bureaucratic strain result from simultaneous membership of different regional economic communities and the lack of coordination between the bodies. The situation impedes trade and may act as a disincentive to potential investors and a hurdle to development.

Ultimately, the question is whether the trade liberalisation, as pursued by SADC has true developmental potential with positive effects that trickle down to ordinary citizens. Without a developmental perspective on trade, countries will, as they do, tend to forget to complement tariff reduction strategies with regional industrial policy aimed at job creation, the diversification of their economic base, and the integration of the region into the global economy. When the focus turns to profit rather than prosperity, a further danger is that policy is made in the absence of some important stakeholders and that the distribution of benefits is increasingly skewed, rather than balanced. (N)

The implementation of the SADC Trade Protocol began on 1 September 2000. Mauritius and South Africa were the first to start implementing the Trade Protocol, and Mozambique was the last to do so. By May 2003, all signatories to the Protocol, except Zimbabwe, had gazetted legal instruments implementing tariff reduction schedules. The ministers of trade and industry also revised the SADC rules of origin with effect from 5 August 2002, but no evidence has been submitted to the Secretariat by any member state indicating the implementation of the revised rules.

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## Poverty in Paradise *by Gail Wannenburg*

While progress is being made on the formal liberalisation of trade in Southern Africa, it appears that the benefits are taking time to trickle down to ordinary citizens.

Known to divers as a paradise of coral reefs and pristine white shores, the Southern Mozambique resort camps of Ponto Do 'Ouro and Ponto Malongane are home to about 3,000 people eking out an existence in a drought-stricken environment. The 100 people lucky enough to be employed at the resorts (frequented mainly by white South African tourists) earn ZAR15 per day, whilst piece workers employed to skin fish may earn more, depending on the generosity of tourists. Locals employed at the lodge claim that

the resort can make ZAR100,000 over a busy weekend.

This community has no tarred roads, electricity or water. All of these were promised to them when South African and Mozambican businessmen re-established these resort camps after the war in exchange for the use of what is regarded as communal land. They also have no retail shops, so they are obliged to travel to the South African town of Mangusi (at ZAR50 a trip) to buy basic necessities. On their return through Mozambican customs, they are taxed 45% of the amount spent, including purchases of food. This compels them to buy less or attempt to cross the border illegally. Even then, they are not allowed to bring sugar, cooking

oil or gas through the border, as Mozambique is attempting to protect its local industries. However, locals suggest that the sugar confiscated at the South African border is sold on the black market — still undermining the struggling Mozambican sugar industry.

For these border communities, trade liberalisation and the removal of tariff barriers would allow them to put more food on the table, to buy materials to replace their reed homes with brick houses and to run and expand their small businesses, such as spaza shops and taverns, more cheaply. They want border residents to be registered and allowed daily passes across the border into South Africa, at least until the promised shopping centres and other facilities materialise. 

## The SADC Trade Protocol and Women's Empowerment


*by Saeanna Chingamuka*

The informal sector, in which women are the main actors, is a potential goldmine for national and regional transformation. It is thus essential that the SADC Trade Protocol integrates the informal sector with the formal economy to create a better trading environment for women.

The overall goal of the Trade Protocol is to attain a free trade area as a first step towards a customs union and subsequently a common market. However, trade documents and cumbersome visa procedures continue to hamper trade across borders. The costs associated with these requirements are often prohibitive. As one woman said, 'At one embassy we are required to produce a letter of invitation...and an account balance of Z\$102, 000. We cannot spare all that money to the bank because we need to buy the goods for selling.'

Insufficient knowledge of the national and regional laws creates another stumbling block. There is thus a need to better publicise the Trade Protocol. A gender activist recommends 'a deliberate policy that targets and educates women who may not be able to attend workshops and forums where such issues as trade are discussed'.

For women to benefit fully from the SADC Trade Protocol, member states should allocate resources for women's empowerment to redress the social, political and economic inequalities. SADC governments should establish micro-finance schemes which enable women to borrow money to start businesses and explore the regional market. Women must be encouraged to participate more fully in investment forums and trade fairs, so that they can move from the traditionally informal, female-dominated sectors of trade such as tie and dye, batik and tailoring to the male-dominated sectors. Trade fairs also provide opportunities to access markets and improve product quality as they inform the trader of demand in the continually changing marketplace. A SADC Trade Fair for women informal traders would also allow them to form joint venture partnerships with other women of the region. The Trade Protocol should also be complemented by regional infrastructure that encourages production linkages in different parts of the region. Such integration calls for equity and balance in regional relations. Customs procedures should be harmonised, and customs officials sufficiently informed about the Trade Protocol to tell traders who pass through the borders about the benefits of a regional FTA. Unbalanced trade liberalisation affects women in female-dominated sectors, as substantial numbers are left with no income. Support for industrial restructuring as well as for workers who lose their jobs should be provided, to ameliorate any adverse effects of the protocol.

Regional integration in Southern Africa should bring about sustainable and equitable development and a lessening of existing regional inequalities. Integration cannot be successful unless gender equality is made a priority in the implementation of the Trade Protocol. 



## Too Many Free Trade Areas?

Regional integration in Southern Africa is characterised by a multiplicity of institutions with overlapping memberships. It is a confused and complicated picture. Geographically the region has three major groupings: the Common Market for Eastern and Southern Africa (Comesa), the Southern African Customs Union (SACU) and the Southern African Development Community (SADC). All five SACU states belong to SADC, whilst nine of the 14 SADC states also belong to Comesa. This raises the question: What is the rationale behind this pattern of regional integration?

What these regional institutions have, or intend to have, in common is free trade amongst their member states. The creation and maintenance of a free trade area (FTA) is seen as a critical level of integration, needed to exploit the economic advantages of regional integration (especially in terms of foreign direct investment).

SACU has an effectively functioning FTA built upon the free movement of goods, capital and services (not labour). Significantly, SACU has a common external tariff (CET) with the rest of the world, ensuring that all member states apply identical tariff barriers (hence its classification as a customs union). Historically, the most formidable obstacle facing attempts to promote regional free trade has been the issue of inequality, both in terms of absolute levels of inequality between states and the perception that the benefits of free trade are being distributed unevenly. Both the 1969 and 2002 SACU agreements contain an important redistributive element, recognising and compensating the disadvantages smaller states may experience in an FTA dominated by a much larger economy (like South Africa's). SACU therefore represents a fairly sophisticated form of regional integration, built on free trade.

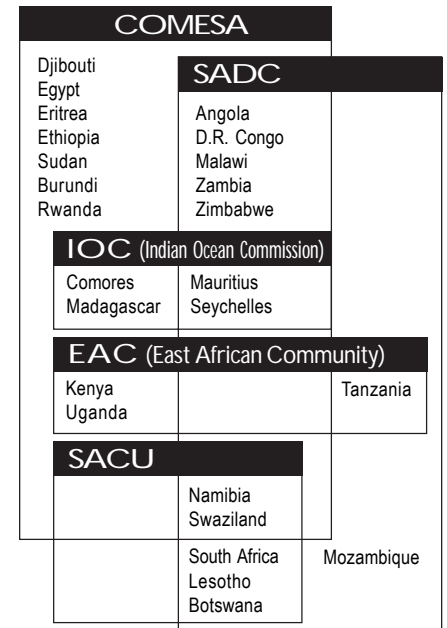
Comesa was established in 1994 to replace the Preferential Trade Area (PTA) for Eastern and Southern Africa. The

Comesa Treaty envisions a fully integrated, internationally competitive regional economic community with, at its core, an FTA. The Comesa FTA was launched on 31 October 2000. To date, nine out of the 20 Comesa countries are participating in the FTA: Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe. The remaining 12 Comesa states are, in effect, still party to a PTA, applying substantially below-MFN (most-favoured-nation) tariffs to intra-Comesa trade. Notwithstanding its name, Comesa is not a common market. It has no CET, no common rules of competition and no free movement of labour. Unlike SACU, it lacks a redistributive policy, and the level of intra-regional trade amongst member states is relatively low, under 7%. Nonetheless, the Comesa FTA has created an economic space for 180 million people, and has a combined GNP of approximately US\$125 billion.

Comesa has reached an agreement to implement a CET in 2004. As this currently stands, it will be set at 0%, 5%, 15% and 30% on capital goods, raw materials, intermediate goods and final goods respectively. Herein lies a problem for the overlapping membership between SACU and Comesa. It is not possible for a country to apply more than one CET (and hence belong to more than one customs union), as is the case with FTAs. Namibia and Swaziland cannot simultaneously apply SACU and Comesa CETs.

The SADC FTA, signed in 1996 and ratified in 2000, aims to abolish all internal tariffs by 2008. It adopts an asymmetrical approach, with SACU providing wider market access for products originating from other SADC states. One of the objectives of the SADC FTA, similar to Comesa's, is 'to promote the eventual establishment of a common market', and hence a CET.

Faced with the multiplicity, dynamism and duplication of FTAs, customs unions and common markets, policymakers have



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given widespread support to the idea of integration taking place at different speeds within diverse geographical configurations. The policy of promoting a variable-geometry or multi-speed approach to integration has many attractions, particularly if it helps to adapt the political infrastructure of regional integration to the economic and political diversity of the region. However, adopting these flexible alternatives involves much more than just recognising that some countries will advance faster than others. Tough decisions have to be made. First, there is a need to develop a recognised, formal working relationship between the different regional groupings in order to develop a coherent strategy covering the whole of Eastern and Southern Africa. Second, in the event of three FTAs, each having its own CET, overlapping membership is no longer tenable. Some form of rationalisation, either in terms of membership or in the level of trade integration will be necessary. (For example, some may decide not to proceed to a Common Market or adopt a CET.) Southern Africa can no longer afford the luxury of competing trading blocs. The strategic rationalisation of the political infrastructure supporting the various regional groupings has been delayed for too long. 

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## Opinion

## Zambia and the SADC Trade Protocol

The extent to which Zambia is likely to benefit from the creation of a SADC Free Trade Area (FTA) will depend on its ability to adapt its internal market so as to identify and take advantage of the opportunities provided by the new trade regime. Zambia's existing trade relations, notably its membership of the Common Market of Eastern and Southern Africa (Comesa), will further condition the degree to which the country embraces the SADC FTA.

### Regional integration is not sufficient

It is noteworthy that Zambia recognises that the establishment of an FTA by either SADC or Comesa through trade liberalisation or facilitation measures alone is insufficient to enable the country (or the region, for that matter) to achieve the desired level of trade expansion. Improved regional-level market information, industrialisation and corporate-level restructuring are also required.

Economic actors in Zambia need information on regional trade opportunities. Import and export statistics, profiles of importers and exporters, information on tariffs, other trade control measures and existing payments systems are all elements of the strategic business intelligence required.

The scope of regional trade is restricted by the limited and undiversified production structures of states in Southern Africa. The major challenge facing Zambia, therefore, is to improve both its level of indus-

trialisation and its capacity to produce high-quality goods and services that are regionally competitive in both price and standard.

As the SADC FTA takes hold, Zambian firms who are accustomed to operating in a sheltered national market will be hard hit by the entry of regional suppliers. Increased competition could cost some domestic firms their public sector markets, and force survival-induced restructuring.

### Split loyalties

Notwithstanding the potential merits of the SADC FTA, Zambia is also a member of Comesa, which has a much more ambitious trade liberalisation agenda. In 2000, nine Comesa member states established an FTA as a prelude to the establishment by 2004 of a customs union with a common external tariff (CET). Although Comesa has a good track record of practical interventions in trade issues, the current negotiations are being slowed down both by delays in finalising the FTA and by difficulties in reaching agreement on the CET.

Within SADC, Zambia expects the greatest gains to result from increased exports to the regional giant, South Africa. The latter is not a member of Comesa, but forms the core of the Southern African Customs Union (SACU), to which Botswana, Namibia, Lesotho and Swaziland also belong.

Overlapping regional integration efforts in Southern and Eastern Africa have resulted in a highly complex (and incomprehensible) struc-

ture of access regimes, which hinder the smooth application of border procedures and rules of origin provisions. They also complicate trade interactions with the rest of the world.

However, perhaps because Zambia hosts the highly visible Comesa Secretariat, and taking into account the successes so far achieved by that regional group, the potential conflict between Comesa and SADC is being played down in Zambia. Expectations that more practical arrangements will be made for enhancing coordination between the two organisations have thus far been unfulfilled.

### Time to get off the fence?

Comesa is the clear front-runner in trade enhancement in the sub-region. So far Zambia has benefited more from its membership of Comesa than from its membership of SADC. Yet the Zambian government is under pressure from ordinary local producers who believe that they have suffered under the Comesa-induced trade liberalisation system. There is, however, no clear evidence to substantiate this claim. The fears that are currently associated with competition (and possible dumping) may actually increase under the SADC FTA regime.

In spite of the complexity of issues surrounding Zambia's membership of both regional groups, senior Zambian government officials still agree that it would be politically imprudent to reject either one in favour of the other. (S)

*Oliver Saasa, Professor of International Economic Relations, University of Zambia*

Through the reduction of tariff and non-tariff barriers to intra-regional trade, the SADC FTA is expected to increase intra-regional trade from the current level of 22% to about 35% by 2008 (when 85% of products should be traded at zero tariffs). Other benefits of a regional FTA include: the free movement of goods, services, capital and labour; the development of the productive sectors; increased international competitiveness; strengthened inter-sectoral and inter-country interaction; and further increases in cross-border trade and investment.





# Few Obvious Short-Term Benefits for Namibia

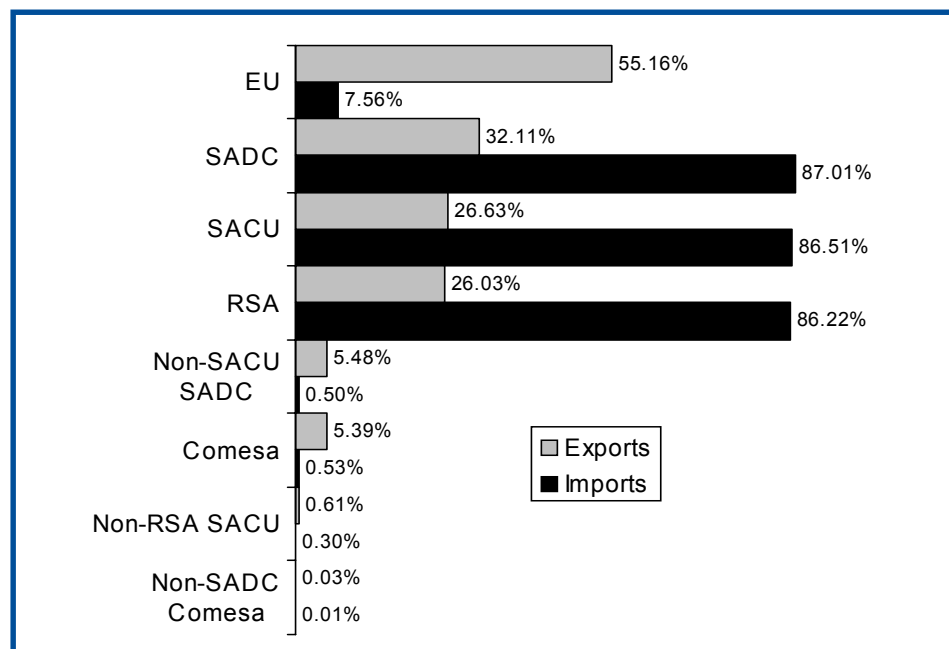
Existing trade forums such as the Southern African Customs Union (SACU) and a bilateral agreement with Zimbabwe (as its major non-SACU SADC trading partner) form the background to Namibia's regional trade engagement. Namibia recently confirmed its commitment to regional trade integration in SADC through giving the required year notice of its withdrawal from the Common Market for Eastern and Southern Africa (Comesa). However, the benefits that might accrue to Namibia within the SADC FTA remain limited in the short term.

## Problems arising out of dual membership

While the Namibian government views SADC's strategy to broaden regional trade integration as a vehicle that will assist Southern Africa's integration into the world economy, it recently stated (in the WTO Trade Policy Review of SACU) that the SACU agreement will be the core of its regional integration efforts. Within SACU, Namibia enjoys unlimited access to the markets of South Africa, Botswana, Lesotho and Swaziland. With the exception of Botswana, these countries also form a common monetary area. According to the renegotiated SACU agreement which was signed in 2002 and which will soon enter into force, SACU countries will henceforth rely on centralised institutions to determine tariff structures and negotiate agreements with third parties — such as the US, with which SACU is currently negotiating an FTA.

A number of policy and legal problems might arise as a result of Namibia's membership of both SADC and SACU. The secretariat report from the WTO Review of SACU found that the multiple membership of different trading agreements has rendered the trading regimes rather complex. These various arrangements do not always have uniform provisions, goals, geographical and prod-

**Figure 1: Namibia's regional imports and exports as a % of total traded in 2000 (Source: CBS Namibia)**

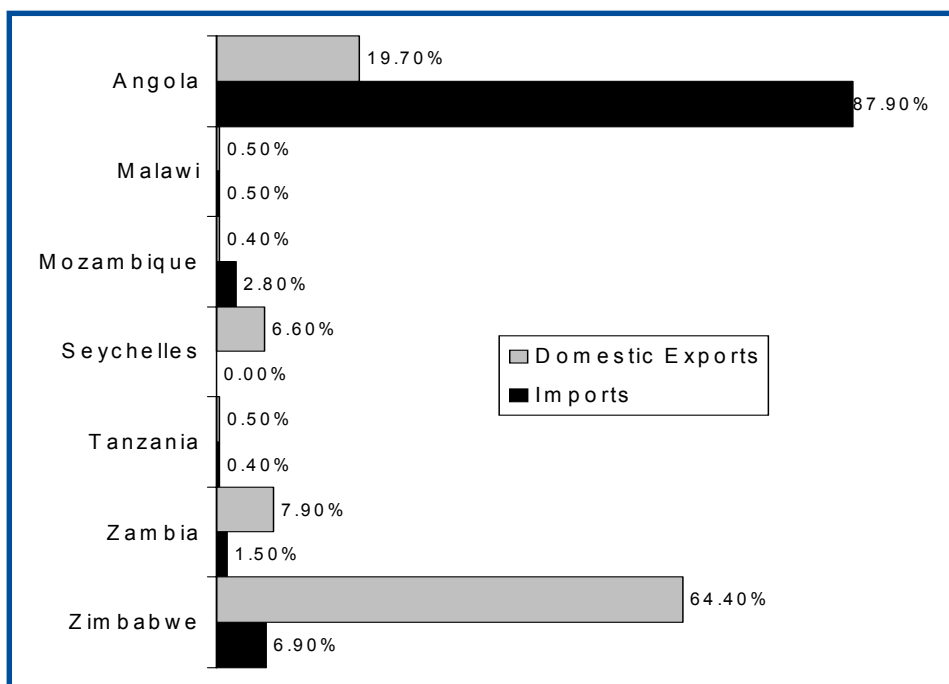


uct coverage — or even trade liberalisation agendas. The move to negotiate even more FTAs could further dilute already thinly-spread negotiating staff from multilateral to regional forums. Also, domestic legislators will have to ensure that when they develop policies and initiate trade

legislation as required by SACU and SADC policies, there is no conflict between the provisions.

A technical problem for instance could be the introduction of different rules of origin under the different trade agreements.

**Figure 2: Namibian imports from and exports to non-SACU SADC countries in terms of total non-SACU SADC country imports and exports, 1997-2001 (Source: CBS Namibia)**





## Strategic trade priorities for Namibia

Namibia's two main trading partners among non-SACU SADC countries are Zimbabwe and Angola (see Figure 1). Angola has not signed the SADC Trade Protocol, and is thus not part of the SADC FTA. Namibia's trade with Zimbabwe is already more or less free, due to a bilateral trade agreement which was signed in 1992. Namibia's trade with other SADC countries outside SACU is marginal (see Figure 2).

Namibia is particularly interested in increasing its trade with Angola. Between 1997–2001 Angola provided a market for 87.9% of Namibia's exports of beer and other non-alcoholic beverages (the main category of Namibia's regional exports) to non-SACU SADC countries. However, Namibia's trade with Angola recently experienced a severe setback caused by the enforcement of customs duties on the Angolan side, to boost government revenue. A phasing out of tariffs could revive cross-border trade again. However, it remains to be seen whether Angola will join the SADC FTA and concede this source of revenue.

Namibia would not only profit from exports to Angola but also from imports of Angolan agricultural products. Roughly 60% of Namibia's population lives in the area along the Angolan border. The favourable agricultural conditions in Angola could improve the supply and reduce the price of food in Namibia once Angola has returned to its pre-war level of economic activity.

## Pros and cons for Namibia of the SADC FTA

Theoretically, the major benefits of an FTA derive from the creation of a larger market. A SADC FTA might enable Namibia to increase its exports to non-SACU SADC countries, and diversify its imports from these countries. However, since several of these countries have overlapping trade arrangements that already grant free trade to some extent, benefits would be limited.

Increased trade between SADC coun-

Estimated duties to Namibia in US\$			
YEAR	Imports from non-SACU SADC countries in US\$	Domestic exports to non-SACU SADC countries in US\$	Re-exports to non-SACU SADC countries in US\$
2000	213,601	3,838,479	193,400
2001	157,723	2,295,423	112,136
2002	100,512	813,836	33,351
2003	66,743	500,694	17,594
2004	33,100	185,221	1,838
2005	19,926	107,924	1,109
2006	-	-	-
Author's own calculations			

tries will increase competition, improve efficiency and lower prices for consumers and producers. Yet the effects for Namibia are unlikely to be significant. It is already tightly connected to South Africa, which dominates intra-SADC trade. (In 1999 South Africa supplied around 77% of intra-SADC exports.) Namibian consumers or businesses might however profit from lower prices for certain agricultural products due to new competition from SADC countries outside SACU. Since 2001, for instance, SACU has agreed to a gradual increase of market access for sugar produced by SADC countries that are not members of the customs union.

Namibia might also benefit from better access to technology, higher investments and increases in total factor productivity. Yet, Namibia already has full access to the South African market, which is the major provider of technology within SADC. Additional FDI attracted to Namibia might serve the SADC market from Namibia. Whether the SADC FTA would enable Namibia to attract more foreign direct investment would depend on a whole range of policy measures and the attractiveness of other SADC countries for specific business purposes.


The tariff schedule proposed by SADC will have revenue implications for the Namibian economy. The calculations in the above table are based on average imports and exports from SADC countries outside SACU for the period 1997–2001 and the initial SADC tariff schedule. The second column shows that the contribution to the SACU revenue pool of Namibian imports from such SADC coun-

tries will reduce to zero by 2006.

The reduction of import duties will reduce government revenues, but it will also bring benefits. The Namibian economy will gain when prices decrease due to reduced import duties and increased competition on the Namibian market. Even more benefits might stem from imported products from other countries in SADC but not SACU which undercut the cost of Namibian products.

The third column shows the duties payable for Namibian exports to non-SACU SADC countries, based on the initial SADC tariff schedule. The benefits to Namibian exports stem from the reduction in duties. These would allow them to either offer their products at a lower price to increase market share, or to profit from rising prices.

## Conclusion

One conclusion that follows is that the direct impact of the SADC FTA on Namibia will be minor unless Angola becomes party to the FTA. SACU customs revenues will fall, and Namibia's share of the SACU revenue pool will consequently be smaller. Based on the estimates above, the Namibian private sector, and the Namibian economy as a whole, are likely to benefit from the SADC FTA. Currently it is difficult to assess whether additional tax income (from increased economic growth brought about by enhanced trade) will offset the government's loss in custom duties, and whether fiscal adjustment will be required. 

*Christoph Stork, Namibian Economic Policy Research Unit (NEPRU) and Tenu Avafia, Trade Law Centre for Southern Africa (tralac)*



# Doha and Challenges for SADC Countries

The May 2003 deadline for the conclusion of WTO negotiations on dispute settlement has come and gone without resulting in consensus and little progress has been recorded in other areas of the current Doha round of multilateral negotiations. Achieving more favourable terms of trade on crucial issues such as agriculture and implementation are of critical importance to the developing countries of Southern Africa.

Because of the so-called 'single undertaking' which means that 'nothing is agreed until everything is agreed', the negotiating agenda which is also loaded with other topics such as services, industrial tariffs, the environment and WTO rules — subsidies, antidumping, regional trade agreements — places a heavy burden on the capabilities of SADC states.

## Challenges and Strategies

SADC countries face an enormous task in dealing with the Doha work programme. In many of the areas in the Doha Declaration there is need for careful analytical work that identifies what the policy issues are and what SADC countries' interests are. Such analytical issues must be complemented by a solid empirical foundation that accurately reflects local policies and practices in the SADC countries. Countries should determine the costs and benefits of en-

tering into any agreement. Even if the requisite analysis is undertaken and is reflected in domestic policy debates and the formulation of national positions, a precondition for defending these interests is effective participation in Geneva. SADC countries cannot effectively participate in the WTO processes due to the limited human resource and research capacity both in Geneva and the respective capitals. The countries should therefore increase the number of negotiators in Geneva and also ensure that they have the right skills to defend national interests in the WTO. This should be complemented by an equally qualified staff at the capital with technical, legal and policy-making skills to provide support to the Geneva delegation.

One option for bolstering Geneva representation is for the SADC countries to share their limited human resources by having one SADC country delegate representing the rest on issues where they have a common position. This will ensure wider participation in committee meetings where most of the issues of interest to the SADC countries (special and differential treatment, subsidies, TRIPS, among others) are being discussed.

To be effective participants the SADC negotiators should have a clear understanding of their national and regional objectives and priorities and how they can use the WTO to achieve them.

An important issue for the SADC countries is the implementation of agreements. It is common knowledge that WTO rules are often based on those prevailing in developed countries. Implementing them in most SADC countries requires substantial investment through the strengthening of institutions. There is a need to ensure that WTO rules are useful to developing countries. It is important that implementation problems be considered in the context of a nation's overall development strategy. SADC countries should insist on linking implementation of resource-intensive agreements to the provision of development assistance.

Many of the developing countries' (and indeed SADC's) demands can be better addressed outside the WTO. A number of issues (supply-side constraints, debt, technology transfer, among others) that the developing countries are pushing at the WTO, do not belong in the WTO. Including them on the agenda only reduces the importance and urgency of core trade-related issues such as market access and development friendly trade rules, that **can** be addressed by the WTO. The non-trade issues being pushed by the developing countries can, and should, be addressed by the appropriate specialised multilateral institutions. The developing countries should call for a concerted multilateral effort to mobilise financial and technical assistance to deal with issues that are not related to market access and trading rules but that restrict trade. (S)

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## SADC Finances

*You might have wondered why the Seychelles and Democratic Republic of Congo (DRC) appear never to take part in SADC meetings.*

*It is because these countries are currently being sanctioned by SADC for not paying their membership contributions.*

*While it is useful that the Amended Treaty of the SADC (2001) makes expanded provision for dealing with non-paying member states, it does not yet go far enough. Both the Seychelles and DRC are currently being subjected to the most severe sanctions provided for by the treaty. They receive no documentation from the SADC Secretariat or SADC meetings. They are also not allowed to send delegates to any SADC meetings.*

*This means that they are not participating in the policymaking process of long-term planning currently underway in SADC, and at the same time are rapidly falling behind on a number of other targets and regional integration initiatives.*

*This points at serious future difficulties for the region unless member states accept the responsibility for truly embracing the principle of variable geometry and simultaneously muster the political will to make provision for getting rid of dead wood in the organisation.*





## South Africa's Strategic Position

South Africa's trade policy has been much in the news in recent months, with a bewildering array of negotiations either under way or on the cards. Apart from the Doha round of multilateral trade negotiations, the renegotiated Southern African Customs Union (SACU) agreement is being implemented; FTA negotiations with Mercosur are gathering pace; and new negotiations are being launched with the United States and the European Free Trade Area (EFTA). Negotiations with India, China and Nigeria might be in the pipeline. With such a busy agenda, the South African government's trade strategists might be asked where the Southern African region fits into their planning.

This article addresses two issues related to this question. Why does the South African government have such a full trade liberalisation agenda, and what processes drive its implementation? And, what are the implications of South Africa's trade agenda and processes for SADC?

Trade policy is a crucial element in mediating a country's engagement with the global economy. Globally the overwhelming trend is towards the managed liberalisation of trade. This covers almost the entire spectrum of economic activity and regulation, ranging from tariffs on industrial goods, to services, to competition policy, and so on. In this light, effective trade negotiations depend on clear strategic priorities arising from the domestic economic agenda.

### Strategic priorities

Five features of the thinking behind the DTI's trade strategy can be identified.

#### • *Tariff reform*

The programme of tariff reforms initiated in South Africa in 1994 has run its course. However, according to a recent WTO review, the SACU tariff regime remains cumbersome, complex, and in some

cases significantly protectionist. Whilst time-bound 'infant industry' protection has its place under qualified circumstances, high tariffs generally undermine long-term competitiveness and raise prices for producers and consumers. Therefore, the DTI is considering tariff reform not only within the context of the WTO negotiations, but on its own merits. It remains to be seen what direction reform will take. Furthermore, in light of the new SACU agreement, any decisions on tariffs will have to be taken collectively. As the economic interests of the SACU members are quite divergent, this could be a complicated process. Further reductions in SACU's multilateral tariffs will reduce the current levels of preferential access enjoyed by non-SACU SADC countries exporting to South Africa's market. By the same token, multilateral tariff liberalisation by non-SACU SADC states will reduce SACU's preferential access to their markets.

#### • *Full participation in multilateral trade negotiations*

The key objective is to negotiate outcomes favourable to economic development generally, and to South Africa in particular. As Trade Minister Alec Erwin remarked in a speech to WTO members in 1999, the route to economic development is through promoting 'structural adjustment' in the North, notably through reform of agricultural trade regimes and the elimination of protection for sunset industries. The only way to secure the necessary concessions is to participate in a broad round of negotiations in which the interests of the north (such as services, investment and competition policy) are declared. This could put South Africa in a position different to that of other SADC countries, given that their economic interests are not as diverse. It is to be hoped that they grasp the benefits offered by trade liberalisation, and find appropriate resources to implement current and

### Who makes trade policy in South Africa?

In South Africa the Department of Trade and Industry (DTI) is the lead department in the formulation and implementation of trade policy. It has a range of institutions at its disposal, notably the International Trade and Economic Development Division, which handles negotiations; the newly established International Trade Administration Commission (ITAC — formerly the Board of Tariffs and Trade), which administers trade policy; and Trade and Investment South Africa (TISA), which supervises the implementation of the recently-released integrated manufacturing strategy (IMS).

The Department of Foreign Affairs (DFA) currently plays a marginal role in trade policy formulation owing to a lack of expertise in this field. This has been a source of considerable tension between the DTI and DFA, although ultimately the latter generally respects the DTI's leadership on trade policy matters. An important contributor to trade policy formulation is the Department of Agriculture (NDA). This applies particularly in the regional context, because agriculture is a central concern to most SADC states. The National Treasury maintains pressure on the DTI and other specialised departments for continuing liberalisation, in line with the aims of the Growth, Employment and Redistribution (GEAR) Strategy. The presidency is increasingly involved in trying to co-ordinate activities between various departments through the 'cluster' system, but lacks sufficient capacity, particularly in the field of international trade policy, to take the lead.

The DTI does not directly control many of the levers of trade policy formulation. These are to be found in a range of other specialised government departments. This is an important factor in the DTI's ongoing restructuring. The department is building its capacity to engage with selected government departments over the country's domestic, and by extension international, economic policy agenda.





future WTO agreements. Of course those benefits will be forthcoming only if the Doha round reaches a successful conclusion.

- *Finding partners*

A third priority is to develop economic relations with selected partners around the world through bilateral free trade agreements. This is partly an insurance strategy against the possibility that the Doha round may not succeed. The overarching goal is to create economies of scale for South African firms in light of the limited size of their domestic market. The DTI has identified eleven 'strategic partner' countries (Brazil, the US, the UK, France, Germany, Sweden, Russia, China, Japan, Australia and India), although it is not seeking FTA negotiations with all of them at this stage. It is important to note that these negotiations will be undertaken after the conclusion of the SADC FTA. This indicates the priority the South African government attaches to the region. Nonetheless, tariff reductions through preferential arrangements with strategic partners will erode the value of SADC tariff preferences over time. The precise implications will depend on the nature and scope of agreements not yet concluded.

- *Reintegrating Africa into the global economy*

Overcoming the marginalisation of the African continent in the global economy is a further stated objective of South Africa's trade policy. The DTI is supporting promotion of market access for African goods in key developed country markets, which is also one of Nepad's aims. The DTI furthermore supports the Doha round and the extension of preferential arrangements, such as the US's African Growth and Opportunity Act and the EU's 'Everything but Arms' policy. Regarding South Africa's SADC neighbours, being ACP states, they stand to benefit from the country's FTA with the EU, providing their exporters meet the agreement's stringent origin rules pertaining to ACP cumu-

lation. Furthermore, the DTI assists African countries to diversify exports by promoting investment in infrastructure and industrial projects. Several South African parastatals such as the Industrial Development Corporation (IDC), Transnet, and the Development Bank of Southern Africa (DBSA) are involved in this process.

- *Regional development*

The DTI aims to develop the region through the SADC FTA. Notwithstanding potential problems arising from the agreement's rules of origin, it offers other SADC states improved, asymmetrical access to South Africa's market in terms of tariff reductions. The focus is now shifting to services negotiations (although progress has been slow to date) and the development of regional industrial strategies. It remains to be seen whether, and in what form, these initiatives will succeed.

Leaving aside the tariff and multilateral dimensions of the DTI's strategic framework, the regional dimension is what collectively informs South Africa's 'butterfly strategy'. The body of the butterfly is represented by Africa, with the wings extending into key markets in North and South America, and East Asia. SADC is an integral part of the body. It represents an enlargement of the South African market and, to the extent that the SADC FTA is able to drive development in the region, it offers the prospect of increasing political stability and economic growth over the long term.

### **No longer alone**

Closer to home, SACU provides an important basis for this global strategy. It was recently re-launched following the conclusion of the new SACU agreement. It has historic significance in that it effectively commits South Africa to ceding sovereignty over trade policy formulation and implementation to new supranational institutions (which have yet to be established). In essence, all decisions over tariffs and trade remedies will be taken at the SACU level by a council of minis-

ters, advised by a new SACU tariff body and a commission of senior officials. National institutions, in South Africa's case the International Trade Administration Commission (ITAC), will merely provide recommendations to these structures on the basis of investigations they have conducted. So SACU will be fully involved in all current and future negotiations.

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This raises interesting questions about decision-making and the location of the power to determine South Africa's trade policy. If faithfully implemented, SACU's decision-making processes will be democratised. This may have uncertain consequences for the course of South Africa's trade strategy in future. However, to allay the fears of doomsayers in South Africa concerned about its losing autonomy to its BLNS partners, it is worth recalling an anecdote culled from Mercosur. There they have a saying: 'Mercosur operates on the basis of consensus. But there cannot be consensus without Brazil!' Given South Africa's centrality to the new revenue-sharing formula through which the BLNS countries will continue to be subsidised and South Africa's economic dominance in SACU, it is unlikely that anything substantially different will obtain in the decision-making process. Therefore, unless there is some reorganisation of institutional capacity within South Africa, for example the much talked-about merger between the DFA and the trade divisions of the DTI, it is difficult to see the DTI's role diminishing when it comes to trade policy formulation. (S)

*Peter Draper, 'Development Through Trade'  
Research Fellow, SALLA*



## Special Feature

## SADC Dispute Settlement

**A**nnexe VI of the SADC Trade Protocol provides for a trade dispute settlement mechanism, thereby underscoring and enforcing the point that it is a rules-based regional trading system. A dispute settlement mechanism provides legal certainty and predictability in the area of regional trade which will facilitate deeper regional integration.

The SADC Council of Ministers of Trade recently considered certain amendment proposals initiated by the government of Mozambique. These relate to some provisions of Annexe VI as well as Article 20 of the Trade Protocol, which deals with the use of safeguard measures. The ministers decided that these proposals warrant further investigation, and subsequently requested the SADC Secretariat to provide it with background material and further proposals relating to the issues raised. The SADC Secretariat requested the assistance of the German Agency for Technical Co-operation (GTZ)

### Member states might be tempted to shop around for the best available forum.

and the Trade Law Centre for Southern Africa (*tralac*), which were commissioned to research the required background material, to host a roundtable conference and to conduct discussions of the proposals with representatives of the SADC member states.

Four topics for discussion were identified. These were the issues of multiple disputes and forum shopping; costs relating to dispute settlement; the possible establishment of a regional legal aid or advisory centre; and the possible introduction of provisional safeguard measures.

The first roundtable meeting, attended

by delegates from various SADC member states was convened in Stellenbosch from 19–23 March 2003. This article aims to capture some of the main points raised during that meeting.

### Multiple disputes and forum shopping

The participants addressed the question of what choices are and should be available when a forum is being selected to settle a trade dispute. They identified some ambiguities within the SADC legal framework. For example, whereas Article 32 of the SADC Treaty provides that any dispute shall be referred to the Tribunal, Article 32 of the SADC Protocol on Trade stipulates that member states have recourse to a panel of trade experts in the case of any trade-related dispute. The delegates took the view that the different roles of the panels and of the Tribunal should be more distinctly defined. Either the panel system should be retained to deal with all trade disputes, or it should be abolished and all litigation, trade-related or not, would be handled by the Tribunal. Some delegates expressed the view that the litigation system should be complemented by an appeal mechanism within the Tribunal.

The participants also noted during the course of the discussions that the forum selected need not be limited to SADC institutions. Nothing prevents SADC member states from taking a trade dispute arising between them to the WTO or any other competent international tribunal such as the International Court of Justice or the International Tribunal on the Law of the Sea, provided that the adjudicating body has jurisdiction over the matter. Some delegates expressed the concern that member states might be tempted to shop around for the best available forum ('best' being determined by factors such as the subject matter, the applicable law, the costs involved and, above

all, their chances of success). Some felt that incentives should be introduced to encourage member states to settle disputes through the SADC dispute settlement mechanism on the grounds that the SADC institutions would be more sensitive to the specific circumstances of the region.

### Costs relating to dispute settlement

The second topic was the cost implications of the SADC dispute settlement mechanism. There was general consensus that its structure would be a determinant of the cost involved. The participants considered the cost implications of having a permanent dispute settlement body as opposed to having an ad hoc panel system. Because of the lower fixed costs of the ad hoc panel system, there was general support for retaining it.

The current financing model as contained in Article 19 of Annexe VI of the Protocol on Trade provides for the sharing of all institutional costs. As a result, all costs associated with the panel proceedings are to be borne equally by the parties to the dispute. The roundtable considered alternative solutions, including the option that the party losing the dispute should cover all institutional costs, and the option in which the adjudicating body is responsible for allocating costs between the parties. Another topic discussed related to how the private sector affected could become involved in financial contributions to the panels. However, most participants favoured payment of institutional costs from a general budget within SADC, as is the case with the WTO.

The roundtable also discussed the allocation of litigation costs, that is, costs associated with the preparation, filing and arguing of a case before an adjudicating body incurred by a party to a dispute. In principle, most of the options considered with respect to the allocation of institutional costs would be applicable to



litigation costs as well. However, many delegates were reluctant to agree that such costs should be borne by the general budget. Instead, they favoured the provision of technical assistance to lower litigation costs for member states, especially least developed countries (LDCs).

The participants also recognised that the costs of implementing a ruling of an adjudicating body could place a tremendous financial and technical burden on the losing party. In such instances, assistance might also be required in the form of financial or technical support, or both.

### **A regional legal aid or advisory centre**

The third topic discussed during the roundtable conference concerned the establishment of a legal aid or advisory centre for SADC member states. Financial assistance could be provided to parties to a particular dispute from a trust fund or the SADC Secretariat, to help them to engage the services of trade law experts. The participants also considered the possibility of providing technical assistance to the parties to the dispute. The general view was that financial support had an advantage in that it would allow litigants some control over the choice of counsel, agents or experts. It would also permit them to decide how the funds would be used. On the other hand, providing technical assistance, not cash, could provide an incentive for member states to develop trade law capacity. However, if technical support was to be provided by the Secretariat, a conflict of interests could arise. The Secretariat cannot act on behalf of a particular member state against another, and would therefore have to limit its support to providing training and information.

Most participants favoured the establishment of an independent legal aid or advisory centre. However, this raised the concern that such an institution could


also be faced with a conflict of interest if two or more opposing parties approached it for legal aid in the same dispute. As a result, some delegates felt that the advisory function should be limited to services provided prior to formal litigation proceedings. These would include training, facilitating the mediation of disputes and giving legal opinions regarding the nature of possible outcomes. On the other hand, the participants realised that such limitation in scope would mean that another mechanism would have to be found to provide access to external legal counsel, especially for the LDCs.

### **Provisional safeguard measures**

The roundtable was also asked to explore options for a safeguards mechanism that would be appropriate to the human and financial capacity available in the administration of most member states, especially the LDCs. The participants felt that the number of procedural steps required to implement the current safeguards made the regime unattractive or simply impossible for most member states to use. Article 20 of the SADC Protocol on Trade requires proof that increased imports pose a serious threat (or potential threat) to domestic industry before a safeguard measure can be applied. Fulfilling the technical criteria to justify such an action could create unacceptable delays. The introduction of provisional safeguard measures with lower standards of proof could assist to bridge the capacity gap. However, the general consensus was that, after a fixed period, a definitive investigation would have to be conducted in accordance with the current Article 20, to prevent the creation of unjustified trade barriers. Participants agreed that this issue of provisional safeguards would require extensive further deliberation.

### **The way forward**

Following the roundtable discussions in March 2003, the SADC Secretariat, GTZ and *tralac* are engaging in a se-

ries of bilateral country-specific consultations with SADC member states to discuss the recommendations of the roundtable. The aim is to establish a country-specific position on each of the issues discussed. To this end, senior trade policy and legal advisers belonging to the various departments have been invited to participate in these bilateral discussions. The results will be consolidated in a follow-up report, which may be further modified during the second roundtable meeting. The project should be completed before May 2004. 

*Johan Weusmann, German Agency for Technical Cooperation (GTZ) and Lambert Botha, Trade Law Centre for Southern Africa (tralac)*

## **Protocol Update**

In June 2003, the South African Parliament's environmental affairs portfolio committee approved the SADC Protocol on Wildlife Conservation and Law Enforcement paving the way for the National Assembly to ratify the document.

In December 2002, Namibia ratified the Protocol on Politics, Defence and Security and the Protocol on Culture, Information and Sports.

Tanzania and South Africa ratified the Protocol on the Control of Firearms, Ammunition and Other Related Materials in SADC in December 2002 and January 2003 respectively.

Both Angola and Tanzania ratified the Protocol on Fisheries in March 2003.

An MOU on Investment is in the pipeline, and a draft Protocol on the Free Movement of People has been submitted to the Council of Ministers for approval.





# What Determines Investment into SADC?

What are the primary motivations for foreign direct investment (FDI) in Southern Africa, and does the form taken by new investment influence its effects on development?

## Trends in FDI in SADC

Between 1995 and 2001, the experience of SADC economies in attracting FDI was mixed. As shown in Table 1, the share of SADC in total net inflows to developing economies has generally ranged between 2–3%. South Africa recorded exceptionally high inward FDI in 2001, although this was largely attributable to a single transaction which has skewed recent trends.

For some SADC countries, net inflows as a proportion of GDP have significantly exceeded those of other developing countries. These comparatively high rates are often explained by a small number of large transactions in small economies. These include investment in natural resource exploitation, infrastructure development and privatisation transactions. In general, South Africa dominates foreign investment in SADC, averaging around 45% of FDI inflows in SADC between 1995–2001, although some volatility is evident. South Africa also hosts the greatest number of subsidiaries of large multinational companies. Angola too is a significant recipient of new FDI inflows in SADC, largely, but not exclusively, driven by oil investment.

## European Investors' Survey

Jenkins and Thomas (2002) describe the findings of a survey of European investors in SADC, which provides new information on the motivations for investment in Southern Africa, the characteristics of foreign-owned enterprises, and perceptions of risks. Amongst the main conclusions to emerge are:

- *Motivation for investment and implications for location*

As a motivation for investment, *market seeking* is more important than cost considerations. Most non-primary sector enterprises in the survey sample have a local market focus, and—with the important exception of several firms located in South Africa—are not seeking to develop global export capacity from a Southern African base. South Africa is more attractive than its neighbours for secondary and tertiary-sector enterprises, and acts as a base for production for the region. The main location-specific reasons are superior infrastructure, both physical and financial, and by far the highest national income in the region. South Africa is seen by many investors as pivotal to regional production and trade.

- *Enterprise growth, employment creation and skills transfer*

Half of the firms interviewed expanded their operations in recent years, and just over half are planning expansion in the

short to medium term. This finding indicates a positive outlook for investment in SADC. But enterprise growth is not always accompanied by employment growth. Rising capital intensity and improving productivity may limit the benefits of FDI in terms of ongoing job creation, but positive implications for development include skills transfer and joint ownership with local partners.

- *Perceptions of risk*

Regulatory uncertainty and foreign exchange instability are the most common risk factors identified by investors. Perceptions of risk tend to vary across countries in the region, indicating that *existing* investors are informed about differences in the economic and political climates in Southern Africa. In contrast some investors argue that the apparent perception of *potential* investors that instability is endemic in Africa acts as a barrier to attracting *new* firms. Moreover, economic reform in several countries in the region may still be too recent or fragile for it to have a marked effect on private investment behaviour. Other studies have found that private investors are slow to respond to policy reform.

## Some policy implications

Given the importance of market seeking as a motivation for investment, economic growth to increase the size of local markets may be a precursor to higher levels of FDI. In the meantime, a functioning and sustainable free trade area could offer the economies of scale required for investment to be profitable, and thus should encourage direct investment in the region. To mitigate the likelihood that new FDI will locate disproportionately in South Africa, regional integration initiatives should be designed to ensure that the benefits of new FDI are broadly spread across the region. For instance, other research by

FDI into SADC, net inflow of millions of US\$

COUNTRY	1995	1996	1997	1998	1999	2000	2001
SADC*	2,566	1,932	5,226	3,401	5,237	2,893	10,387
Angola	472	181	412	1,114	2,472	879	2,146
South Africa	1,248	816	3,811	550	1,503	969	7,162
Rest of SADC*	845	935	1,004	1,737	1,262	1,046	1,079
LMIC**	105,594	127,880	169,316	174,463	179,287	160,645	171,693
SADC as a % of LMIC	2.4%	1.5%	3.1%	1.9%	2.9%	1.8%	6.0%

\* These figures do not include FDI in Namibia

\*\* Low & middle income countries


Source: World Development Indicators Database, World Bank, 2003



the authors has indicated the potential role of sequenced liberalisation of exchange controls, particularly where they affect intra-regional FDI, and regional infrastructure development funds as compensatory mechanisms to support regional trade integration.

For the smaller SADC economies, the

domestic market is too limited to generate significant endogenous development. For this reason it is crucial to create a policy environment which encourages production for regional and global markets. Faster private capital accumulation will require public investment in education and infrastructure and

a reduction in the risks to private investment in physical and human capital. This policy agenda is common to all developing regions, irrespective of factor endowments. Where African economies face a particular challenge is in addressing the negative 'Africa perception' amongst potential investors. 

*Carolyn Jenkins, Research Associate, Centre for the Study of African Economies (CSAE), University of Oxford and Lynne Thomas, Research Officer at the Centre for Research into Economics and Finance in Southern Africa (CREFSA) at the London School of Economics are the authors of 'Foreign direct investment in Southern Africa: determinants, characteristics and implications for economic growth and poverty alleviation', available from [www.gapresearch.org](http://www.gapresearch.org)*

## The SADC Finance and Investment Protocol

**S**ADC is currently engaged in developing a Protocol on Finance and Investment, following a 'bottom-up' approach. This entails using consensus-building memoranda of understanding (MOU) to reach agreement amongst the diverse stakeholders in the sector. Work on the MOUs is being carried out by various subcommittees and committees, which report to the ministers responsible for finance and investment *either* through senior Treasury Officials *or* through the Committee of Central Bank Governors. These MOUs are aimed at establishing best practice at a regional level.

### Investment climate improvements

The SADC investment subcommittee has adopted an MOU which encapsulates best international practice in addressing policy issues of concern to investors. This MOU was completed in February 2003 after six months of intensive negotiations which effectively began in July 2002 following the return of a previous draft MOU by the ministers of finance in December 2001.

In terms of the MOU, member states agree to promote and establish mutual predictability, confidence, trust and integrity by adhering to and enforcing open and transparent policies, practices, regulations and procedures as they relate to investment. They have adopted

a most-favoured-nation (MFN) approach to the treatment of investments. The member states aim to pursue the harmonisation of policies and laws (including incentives) to help develop the region into an investment zone; and to conduct investment-related transactions in accordance with internationally established conventions and practices.


The MOU explicitly leaves the treatment of tax incentives to the *MOU on Co-operation in Taxation and Related Matters*. It provides for the repatriation of investments and returns, and protection against nationalisation or expropriation (or measures having an equivalent effect). Exceptions are cases where public purpose or interest requires such expropriation, which must be conducted under due process of law, on a non-discriminatory basis and is committed to prompt, adequate and effective compensation. In other words, the MOU adopts recognised international standards. While accepting the general principle of not imposing performance requirements, it allows member states (in view of their national development priorities) to encourage certain such requirements if they do not hinder direct investment inflows into the region. Member states also agree (subject to their national laws and regulations) to permit investors to engage top managerial personnel of their choice, regard-

less of nationality. The MOU allows for the adoption of measures that favour least developed countries, supports initiatives promoting SME development, and allows for international arbitration of investment disputes.

### Consultations are ongoing

Upon instruction of the ministers of finance, the subcommittee remains engaged in a process of consultation with stakeholders in both the public and private sectors to determine how to increase FDI flows into the region and how to refine the MOU so as to harmonise the region's investment policies. Consultation with the private sector aims to discover the attitude towards investment of private market and efficiency-seeking investors beyond the SADC's borders in the manufacturing sector and services sectors in particular.

A regional workshop is also being planned for consultations with all parties involved in the various SADC directorates, including Trade, Industry and Mining; Infrastructure; Services; Food, Agriculture and Natural Resources.

This activity should go some way towards supporting other relevant SADC policies and creating an attractive investment environment. 

*Rosalind H. Thomas, Senior Development Finance Officer, SADC Secretariat*



# Legislative Instruments to Combat Graft in SADC

Corruption is rife in Africa — and no less so in the SADC region. For example, through the much-lauded efforts of Levy Mwanawasa, it is becoming increasingly clear that ex-president Chiluba stood at the centre of a matrix of corruption in Zambia during the 1990s. In oil-rich Angola, it is estimated that in 2002 more than \$1 billion, mostly in oil revenue, failed to reach the state's coffers. This does not bode well for the urgent reconstruction of the country after decades of civil war.

Corruption is not restricted to individual countries, but crosses boundaries in both the private and public sectors. If SADC is to achieve its developmental goals, a concerted regional approach is needed that involves the development of effective legislative instruments against corruption.

Although a Protocol Against Corruption was signed by member states in 2001, it has yet to enter into force. Thus far, only Botswana, Malawi and Mauritius have deposited instruments of ratification. The purpose of the protocol is to promote and strengthen measures to prevent, detect, punish and eradicate corruption. It places a responsibility on member states to amend existing legislation or to enact new legislation to give effect to these requirements. For instance, Zambia's legislation needs to be amended to accommodate these measures. Countries such as Mauritius and Namibia are already in the process of enacting such legislation.

Another purpose of the protocol is to promote, facilitate and regulate co-operation between member states, including the important aspect of mutual legal assistance. This requires that SADC states harmonise legislation as well as policies relating to national anti-corruption strategies.

An emerging approach has been the establishment of operationally independent anti-corruption agencies, such as Botswana's Directorate on Corruption and

Economic Crime, or special anti-corruption units that are part of the state's criminal justice structures. The agencies investigate and prosecute acts of corruption, and inform the public of their role in countering corruption. Botswana's model is being copied by both Lesotho and Mauritius. However, these approaches can be successful only if the criminal justice system functions effectively in punishing those found guilty of corruption.

In line with international best practice, the protocol's provisions include private sector corruption and bribery under acts of corruption. It also allows for flexibility by acknowledging that corruption is ever-changing, and that the strategies needed to combat it require continual adjustment.

**Of the 102 countries ranked in Transparency International's 2002 Corruption Perceptions Index, Botswana came 24<sup>th</sup>, followed by Namibia (28), SA (36) and Mauritius (40). Malawi came in at 68<sup>th</sup>, with Tanzania and Zimbabwe sharing 71<sup>st</sup> place. At 98, Angola is one of the most corrupt countries in the world.**

Importantly, the protocol attempts to go beyond a 'crime and punishment' approach in that it focuses on preventative measures, essential in instilling an anti-corruption 'culture'. These measures include introducing standards of conduct for the public sector, monitoring certain governmental procedures, ensuring access to information, protecting whistleblowers and recognising and encouraging the role of civil society and the media in the fight against corruption. At the moment no SADC state can claim to have instilled all of these measures.

Unfortunately the protocol does not specify how the measures it prescribes should be implemented. This creates the

problem that the protocol produces no measurable indicators, which makes monitoring implementation difficult. This situation will almost certainly be exploited by corrupt regimes. Another associated weakness is that no provision is made for broadly inclusive non-partisan review mechanisms to assess implementation. In such mechanisms, the involvement of independent representatives of civil society, including NGOs and the media, is key to the success of an anti-corruption strategy.

To assist in implementing the protocol a committee will be established once three-quarters of SADC's members have ratified the protocol. This committee will act as a watchdog, and report to the SADC Council on the progress made in implementation. While the idea is that it will raise levels of accountability between member states, no sanctions for non-compliance have been suggested.

Initiatives to combat corruption, designed by democratically-elected parliaments and other institutions, are the only way to address the problem. However, these strategies can succeed only if there is sufficient political will within the society to implement them. This will require support from the political elite, business and civil society.

The protocol could provide an appropriate legislative framework for SADC member states to design uniform, implementable anti-corruption strategies. The challenge now lies with governments to behave in a more accountable manner, involve civil society and demonstrate their political will by ratifying the protocol and adjusting their domestic criminal justice systems accordingly. Once the protocol is effectively implemented, it should provide Southern Africans with the legislative tools required to deal corruption an effective blow. 

*Gysbert Engelbrecht, Institute for Security Studies, Cape Town*





# Fighting Conflict Diamonds

The Kimberley Process Diamond Certification Scheme (KPCS) has two main aims. The first is to halt the trade in 'conflict diamonds' (that is, diamonds mined and sold to fund internal wars). The second is to realise the potential of these precious gems to assist the development of their countries of origin. The KPCS also signals the emergence of a new form of international diplomacy in which the non-governmental sector is an active participant in the formulation and implementation of policy, making it more inclusive and, possibly, more effective. SADC countries (Angola and the DRC in particular) have been primary targets for international NGOs campaigning to halt the trade in conflict diamonds. Yet it is SADC countries themselves that have been at the forefront of the process that led to the implementation of the KPCS.


The importance of the diamond industry is hard to overstate for SADC countries such as Botswana. Diamonds account for 65% of the country's government revenues, 80% of its foreign exchange, and 40% of its GDP. More broadly, in the SADC region overall, the diamond industry accounts for earnings of \$5 billion annually and provides some 40,000 jobs.

This situation has served to galvanise SADC countries and the industry into action. For a region often dismissed for its inability to co-operate on issues of substance, the SADC countries' role in the KPCS was exemplary. This is an even more impressive achievement when conflict diamonds are viewed not just in economic terms, but as a sub-set of regional 'peace and security' issues (on which SADC to countries have had trouble agreeing in the past).

Whilst conflict diamonds fuel civil wars, these conflicts often take on a regional dimension by destabilising contiguous countries. It was therefore important that SADC countries adopt a

Diamond mining in Southern Africa			
Country	Carats (millions)	% of global production at peak	Est. market value (\$USm)
Angola	10.6	11	1,110
Botswana	24.9	28	1,125
DR Congo	16.5	5	585
Namibia	1.52	7	420
South Africa	4.0	11	740
Tanzania	0.37	—	46
Lesotho	0.02	—	5
<b>So. Africa</b>	<b>58</b>	<b>63</b>	<b>5,000</b>

concerted and multilateral approach to halting the trade in conflict diamonds. Although South Africa played a leading role in the Kimberley Process by acting as the KPCS Secretariat, it was able to achieve this only with the full support and co-operation of such SADC countries as Botswana and Namibia. More particularly, the meetings of the SADC mining ministers played a central role in ensuring a unified and collective response to the threat posed by conflict diamonds. Before the acceptance of the KPCS at Interlaken in Switzerland on 5 November 2002, the SADC mining ministers met to ensure that member states were in a position to fully comply with and implement the KPCS by 1 January 2003.

Despite this success, however, continued conflict within the DRC and the deepening crisis in Zimbabwe present twin threats to the KPCS in southern Africa. Both a co-ordinated SADC approach and constant vigilance on the part of KPCS members will be required to ensure the genie remains in the bottle. 

*Tim Hughes, Parliamentary Research Fellow, SAI/A*

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## SADC NGOs

At the launch of the SADC Council of NGOs (SADC-CNGO), SADC's executive secretary, Prega Ramsamy, said that:

'The SADC-CNGO (Council of NGOs) would enable NGOs in our region to collectively face the challenges of development such as poverty, hunger, ignorance and disease in partnership with other role players such as government and the private sector.'

'We fervently believe that the SADC-CNGO would be a forum through which the NGO community can develop common positions on areas of concern and advocate and constructively engage governments on regional development issues. The Council will also represent NGO interests at SADC meetings and at other bilateral arrangements with international co-operating partners...

'The Council would also assist in the collection and dissemination of information on the activities of NGOs throughout the region, in order to ensure people-centered development and/or popular participation in the process of regional development and integration...As a regional body, you will also be able to share experiences and best practices amongst civil society organizations in order to enhance your effectiveness.'

Despite such public commitment to the important role that NGOs could play in the region, the relationship between SADC and the CNGO has not yet been formalised with a Memorandum of Understanding (MOU), as required by the SADC Treaty.

In May 2000, the SADC-CNGO put a draft MOU on the table for consideration by SADC and the SADC Secretariat. In October 2001 SADC's executive secretary indicated that the consultations between SADC and the SADC-CNGO were being finalised and that the resultant legal instrument would be presented to the SADC Council of Ministers for consideration by the end of that year. Now — three years later — the MOU remains unsigned and the SADC-CNGO under-resourced and toothless.

The delay in the signing of the MOU has serious implications for the operations of SADC-CNGO. In the absence of an MOU, SADC cannot channel the necessary funding support to SADC-CNGO; SADC-CNGO is denied the opportunity to participate in regional debates and decision-making processes; and the SADC-CNGO has difficulties in participating fully in the initiatives of the AU and Nepad in the absence of legal recognition in its own region.



### Selected SADC meetings: July-September 2003

July		
SADC HIV/Aids Summit	4 July	Lesotho
Disaster Management Technical Committee	7 July	Botswana
Subcommittee on Customs Co-operation	July	Lesotho
Social and Human Development and Special Programmes	July	Tanzania
Workshop on the Hashim Mbita Project for building consensus, peacekeeping and democratisation in SADC	July	TBA
Energy Ministers' Meeting	July	Mauritius
SADC Friend	July	South Africa
Integrated Committee of Ministers	23-27 July	Botswana
August		
Ministerial Committee of the Organ	5-9 August	Mozambique
SADC Day	17 August	Member states
Inter-State Politics and Diplomacy Committee (ISPDC)	August	Mozambique
Macro-economic Subcommittee	August	Botswana
5th WTO Ministerial Conference Preparatory Meeting	August	South Africa
Council of Ministers Meeting	August	Tanzania
SADC Summit	August/September	Tanzania
September		
5th WTO Ministerial Conference	20-30 September	Mexico
Customs Co-operation & Trade Facilitation Workshop	September	TBA
Central Bank Governors' Meeting	September	TBA
Task Team on Nepad and Environment	September	Botswana
A number of other committee and subcommittee meetings will be taking place. Further details can be obtained from the SADC website: <a href="http://www.sadc.int">www.sadc.int</a>		

## Other publications on SADC

**Regional Integration in Southern Africa: Overview of Recent Developments** by Lolette Kritzinger-van Niekerk and Emmanuel Pinto Moreira. Published by the World Bank in December 2002.

**Southern African Scenarios 2015: Renaissance, Asymmetry or Decline and Decay? A guide for decision-makers in the SADC region.** ZAR 80.00. Published by the South African Institute of International Affairs (SAIIA). For copies, e-mail: [stanleye@saiia.wits.ac.za](mailto:stanleye@saiia.wits.ac.za)

**The 2003 Official SADC Trade, Industry and Investment Review.** ZAR 99.00. Published by the Southern African Marketing Co. in association with SADC. Available online: [www.sadcreview.com](http://www.sadcreview.com) or from the Southern African Marketing Co. in Gaborone, Tel/Fax: +267 397 4316.

**Compendium of Elections in Southern Africa** (Tom Lodge, Denis Kadima and David Pottie, eds). Published by the Electoral Institute of Southern Africa (EISA). Copies can be ordered from their web site: [www.eisa.org.za](http://www.eisa.org.za).