

Regional trade arrangements: Developments and implications for southern African states

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Why do nations trade?

Nations trade because it makes sense. No state can prosper in isolation. Economic theory explains the rewards of trade in terms of comparative cost advantages, increased competition and specialisation. International trade allows domestic economies to specialise and to produce goods in areas where they enjoy a relative cost advantage. This helps economies to employ their resources so as to ensure higher returns on their investment. Consumers benefit as a result of the availability of more effectively produced goods and there is an increase in the 'wealth of nations'. It means that protectionism and isolation should be avoided: they undermine the benefits flowing from the freeing up of markets and the liberalisation of trade.

Liberalised international trade directly contributed, through the promotion of economic development, to the reduction in global poverty that has occurred to date. The most dramatic recent example is provided by the People's Republic of China, where decades of isolation and orthodox communism have been followed by roaring growth and an export-led wealth boom. As a result, millions have been lifted out of poverty. China joined the World Trade Organisation (WTO) in 2000 and actively pursues the gains of international and global integration. Trade also promotes peace and security and has other advantages such as the transfer of technology and ideas.

In order to reap the benefits of more freedom in international trade, certain building blocks must be in place, in addition to the capacity to produce competitively priced tradeable goods and services. This involves inter-state arrangements, as well as laws, administrative measures, and governmental structures within states. Producers and traders need access to international markets as well as certainty and predictability for their commercial transactions. These aspects are provided through a vast network of international and regional trade agreements and organisations. However, these trade arrangements can only function properly if supported and extended by national laws and domestic structures operating in tandem with international and regional legal instruments and bodies.

The present article provides an overview of some contemporary developments and their implications for southern Africa. It emphasises the need for domestic and regional reforms in order to provide for better rules-based arrangements.

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The southern African states are at an important historical junction as the preferential trade arrangements which have benefited them for decades are being replaced by WTO-compatible agreements. Regional integration in Africa is also on the increase.

How do nations trade?

From a legal perspective, international trade has always – at least since the existence of the nation state – been about the movement of goods, services, investment and (sometimes) people across state borders. Thus, *trade liberalisation* is essentially about removing obstacles such as tariffs and quotas, imposed by governments at their borders, which hinder the movement of goods across jurisdictional boundaries.

Trade in services is not about the movement of tangible goods, but rather involves selling and providing services within other jurisdictions. The liberalisation of trade in services also requires international arrangements, permitting service providers to do business elsewhere, whether in banking, insurance, telephony or tourism, etc. The WTO regime now regulates the trade-related aspects of intellectual property rights – trademarks, copyright, patents, etc. – as well, and does so through the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).

This does not mean that international trade or ‘globalisation’ should go unchecked. In certain situations, governmental regulation may be very necessary. Examples can be found in areas such as the protection of the environment and essential national interests. International and regional trade arrangements recognise these as legitimate goals and provide for exceptions to accommodate such needs. Article XX of the General Agreement on Tariffs and Trade (GATT) is an example of “general exceptions” permitted by the WTO. The Article provides for the protection of public morals; the protection of human, animal or plant life; the conservation of exhaustible natural resources; etc. Article XIX of GATT allows for safeguards against imports when increased quantities of foreign goods cause serious injury to domestic producers. When invoking these clauses, however, governments need to simultaneously respect the rules as to, for example, the duration of protective measures, compensation, transparency, and justification. These exceptions are circumscribed by the applicable rules and may only be imposed when necessary and in order to protect legally recognised objectives; they cannot be imposed as a matter of unfettered discretion.

The endeavour to liberalise trade faces two traditional challenges: the sovereignty of states, and the fact that governments, as a rule, do not trade.¹ States exercise jurisdiction over their own territory and over commercial transactions concluded on their soil, but trade is not predominately an intergovernmental matter.

¹ There are qualifications in areas such as public procurement: governments are also major consumers of goods and services.

Regional trade arrangements

International trade involves private parties. States adopt the agreements for establishing international organisations, liberalising trade, and regulating the formalities. Within that legal framework, which includes national laws to implement international arrangements, private parties will conduct their cross-border commercial activities.

A state can impose restrictions such as tariffs on the movement of goods across its borders. The purpose behind international trade agreements is to make it easier for trade to take place and to dismantle the obstacles that prevent the free flow of goods.

International trade law consists of all those legal instruments (primarily international agreements) that regulate trade flows and deal with associated matters. These include all the multilateral legal instruments underpinning organisations such as the WTO. It also covers many bilateral regional and lateral trade agreements and, eventually, the domestic rules within states in terms of which governments comply with their international obligations and implement their own trade policies.

There is no world parliament, but there would be chaos if no international rules on inter-state conduct existed. There can be no development, prosperity or peace unless it is possible to deal with the realities and consequences of sovereignty. The interdependence of states and the effects of 'globalisation' demand joint responses to cope with international crime, the spread of disease, climate change, the sharing of common resources or the utilisation of the high seas. There must be rules on predictable behaviour and systems to ensure compliance. International law is the instrument which allows states to deal with these concerns – mostly through the conclusion of international agreements.² The same logic applies to international trade.

International agreements are negotiated when delegations (mandated to represent their governments) meet and discuss the content of a new agreement. Once the negotiating process is complete, the text of a new legal instrument is ready, but it is not yet binding. In order to become so it has to be ratified. *Ratification* is the process in terms of which a particular state party indicates that it is prepared to be bound by the treaty in question. Ratification also involves those provisions in national constitutions (or state laws) dealing with international law and the domestic status of international agreements. In most countries, important international agreements will require some form of parliamentary approval. The domestic procedures for ratifying and implementing agreements form part of this bigger legal picture.

Once the domestic approval process has been completed, the international ratification of the agreement will follow.

² The other sources of international law are customary international law and general principles of law – a subsidiary source.

This involves the depositing by governments of instruments of ratification with the organisation or foreign government chosen as the depositary. The agreement will enter into force once the required number of ratifications has been deposited. Because of the legal consequences of sovereignty, states are only bound by those international agreements to which they have become a party – either through ratification or subsequent accession. The opposite is also true: a state cannot escape its international legal obligations by invoking its national law or its own constitution. If that were possible, we would have no international law.

The WTO agreements now cover a vast area that includes trade in services (GATS) and trade-related aspects of intellectual property rights (TRIPS). Another important institutional aspect of the WTO is its dispute settlement system. It provides for panels to hear trade disputes between member states, and includes the Appellate Body. The dispute settlement system has been hailed as very successful. It is a unique international arrangement, and all WTO members are automatically under its jurisdiction. They cannot opt out when confronted by another member state's claims. Unfortunately, African states are mostly absent when it comes to the use of this important multilateral mechanism.³

The multilateral trade dispensation of the WTO is *rules-based* and constitutes a single undertaking.⁴ For traders, service providers and consumers, it means that they can plan their transactions and commercial activities within a framework of certainty and predictability. Should disputes ensue, their justiciability should be guaranteed: both within the national sphere and between states.

Regional trade arrangements form an important part of the fabric that regulates trade among nations. They, too, are increasingly founded on rules-based arrangements in order to provide for certainty and because regional trade arrangements are circumscribed exceptions to the GATT's non-discrimination (most-favoured nation, or MFN) rule. Free trade areas and custom unions are the typical examples of regional trade arrangements. They provide for duty free trade on "substantially all trade" between the states involved. Trade with other WTO members is conducted in terms of the applicable WTO schedules, and MFN rates will apply.

International trade agreements are, as a rule, not self-executing. Governments are required to play an active role when it comes to the implementation of such agreements.

³ The reasons have to do with lack of capacity, preferential arrangements based on waivers, and their marginalised position: if you do not trade you will not be involved in legal disputes.

⁴ The member states are bound by all the WTO agreements and by the dispute settlement mechanism; they cannot pick and choose their obligations.

They must adopt a range of domestic measures in order to give effect to their international obligations and to regulate the many facets of international trade. This includes the accommodation of foreign entities within their own jurisdictional sphere.

Transparency is one of the salient features of rules-based arrangements. For states to comply with their international trade obligations and to attract foreign investment, they have to provide for transparent domestic arrangements and for legal certainty, in addition to being attractive targets for investors. For their own citizens and companies to enjoy the benefits of trade remedies (such as measures against dumped or subsidised imports and for promoting fair competition), there have to be national rules and procedures for invoking the legal remedies allowed by trade agreements. Such domestic arrangements must be WTO-compatible.

Implications for African states

Where do African states stand with respect to these developments and the challenges that they entail? The general picture is not encouraging and the required domestic legal regimes are often lacking.⁵ These countries put forward their lack of expertise and the burden that the implementation of international trade agreements brings as justification for this state of affairs. The lack of resources and of technical capacity, coupled with the failure to undertake timely domestic reforms, have added additional burdens to existing developmental needs. The result is that the integration of their economies into the global economy is hampered, while their nationals forfeit many of the benefits associated with clear, rules-based trade arrangements. African regional arrangements frequently lack firm implementation mechanisms.⁶

It is true that least-developed countries in particular often face many technical constraints. Certain domestic programmes may be more urgent than the implementation of 'sophisticated' international agreements. However, the failure to deal with the challenges of global integration comes at a cost. More can and should be done to address these problems (as has happened in many Asian developing nations) and not all of the required remedial measures need to be duplicated in each and every state. There can be shared arrangements in regional organisations. That is precisely one of the beneficial consequences of regional integration.

In some instances we have very little choice but to implement domestic reforms. The changing technical environment in which developing countries operate and trade is an example. Trade with the European Union (EU), Africa's major trading

⁵ In the five SACU member states, only South Africa has legislation on trade remedies. Namibia and South Africa are the only two members with national competition regimes in place.

⁶ Most of the SADC protocols, for example, are not yet implemented.

partner, has always been based on preferential treatment and non-reciprocity. These arrangements have not been WTO-compatible, and have depended on waivers. One example is the WTO waiver granted for preferential trade in goods under the trade chapter of the Cotonou Agreement.⁷ It benefited some 77 developing nations from Africa, the Caribbean and Pacific, but expired at the end of 2007. That arrangement has to be replaced by new, WTO-compatible agreements with the EU. For this reason, all African states – as well as the Caribbean and Pacific nations – are presently negotiating Economic Partnership Agreements (EPAs) with the EU.⁸ All indications are that these EPAs will introduce new rules-based regimes, complete with dispute settlement provisions, detailed health and safety standards, regulation of services, customs cooperation, etc. Africa is not ready for many of the implications of these new agreements.

The increase in the number and scope of regional trade arrangements in Africa should also be noted. The African Union (AU) pursues the ideal of integration for the whole continent through the establishment of regional economic communities (RECs) to include all African states. This is the model for promoting South–South trade, a neglected area. Many of these plans are over-ambitious in terms of time frames, and the technical consequences will be beyond the domestic capacity of many. However, this is the official line of thinking. In southern Africa there are plans for transforming the Southern African Development Community (SADC) and its 15 members into a customs union by 2010. There are similar plans for the East African Community (EAC) and for the Common Market for Eastern and Southern Africa (COMESA). In July 2008, at a summit of the leaders of these three organisations, a decision was taken to merge all of them into a Free Trade Area. This could have many beneficial effects for trade liberalisation, but the technical implications should not be underestimated – particularly when it comes to the adoption of harmonised national trade measures and the same tariff regimes.

Will these arrangements be rules-based and will they provide for formal dispute resolution? All three organisations – SADC, COMESA and the EAC – already have regional tribunals. They have decided only a limited number of cases, and national legal fraternities still pay limited attention to these supranational courts. However, they are bound to play a bigger role in future. The SADC Tribunal, for example, recently delivered its first rulings, involving land redistribution issues in Zimbabwe. The applications were brought by private parties. More of these types of disputes will follow as regional integration moves ahead and the need for legal certainty and for formal remedies increases.

It will make little sense to accept dispute resolution obligations on the multilateral level and vis-à-vis the EU, but not for nationals or when trading with next-door neighbours. The new trade arrangements under EPAs will provide for legal remedies to foreign traders, investors and service providers alike. Failure to protect local traders will similarly result in unnecessary legal complications,

⁷ For the text, see WTO Doc WT/MIN(01)/15 of 14 November 2001.

⁸ Negotiations on the CARIFORUM EPA were concluded by the end of 2007.

uncertainty, and disadvantages. It may also result in domestic constitutional challenges.⁹ The acceptance of compulsory dispute settlement arrangements may not have been the traditional approach on the African continent, but this will have to change as new agreements are concluded and tribunals begin to render rulings on trade issues.

It will only be possible to implement these plans if they are guided by proper national and regional policies. This calls for innovative thinking and more serious effort. Too much emphasis on the 'sovereignty' of the state undermines the adoption of rules-based regimes, the implementation of domestic reforms and the development of common policies.

The picture in southern Africa: From SACU to the SADC EPA

The Southern African Customs Union (SACU) is a well-established regional organisation and is the world's oldest customs union. It was first established in 1910 between the then Union of South Africa and the High Commission Territories of Basutoland, Bechuanaland and Swaziland. Following the independence of these territories, SACU was relaunched in 1969. When Namibia became independent in 1990, it joined SACU in its own right.

The present SACU Agreement was signed in 2002 and entered into force in 2004. Its members are the governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa, and the Kingdom of Swaziland.¹⁰

From a technical point of view SACU, is a customs union. This means that it constitutes a single customs territory for all five of its member states, and it has a common external tariff (CET). The member states trade freely with each other, without the typical measures, such as customs duties, normally associated with border controls between states. These duties (tariffs) constitute a form of tax. Tariffs are not levied on goods traded between members of a customs union.¹¹ Trade with third parties is conducted on the basis of their CET; the same tariff will apply to goods originating from third parties, irrespective of their point of entry into SACU.¹²

Customs unions are WTO-compatible exceptions to the WTO's non-discrimination rule, provided such unions comply with the applicable rules.¹³ All the SACU states are WTO members.

⁹ Constitutional rights to equality, administrative justice and fair procedure may be implicated.

¹⁰ The Agreement allows for new members to join SACU.

¹¹ The same applies to trade in a Free Trade Area (FTA), which does not have a CET.

¹² This tariff on goods from third parties will be the most-favoured-nation (MFN) duty levied in terms of WTO commitments, or the special duties provided for in other preferential trade agreements such as the SADC Trade Protocol, or the Trade, Development and Cooperation Agreement between South Africa and the EU.

¹³ Article XXIV of GATT allows for FTAs and customs unions (CUs). Trade between the members of a CU must cover "substantially all trade", in addition to the requirements for a CET and a single customs territory. SACU complies with these requirements.

The 2002 SACU Agreement brings about several changes in the operations and 'philosophy' of the organisation. The 2002 Agreement also lays the foundation for further growth in SACU, while introducing new legal, institutional and policy features. For example, provision is now made for a permanent Secretariat, a Tariff Board, and a Tribunal.¹⁴ Common policies are to be adopted and disputes about the application and interpretation of the Agreement will fall under the jurisdiction of the new Tribunal.

The five SACU member states are also members of SADC. SADC is not a customs union: it is a Free Trade Area (FTA) – although it has plans to become a customs union by 2010. When these plans materialise, certain important adjustments will be required because no state can be a member of more than one customs union at the same time.

SACU displays some features which are not typical of other customs unions. The most important of these differences is the mechanism in terms of which customs revenue and excise duties are paid into a Common Revenue Pool and then shared between the members in terms of an agreed formula.

SACU wants to be a modern and dynamic regional organisation, but this will bring new challenges. Historically, it covered trade in goods only, with special emphasis on revenue-sharing among the members. Services and other trade-related matters such as intellectual property rights or competition are not addressed.¹⁵ This should change as the organisation consolidates itself and expands its coverage to include other disciplines and trade-related issues. Competitiveness in the global economy requires that trade in goods is supported by financial, transport, insurance, legal and other services.

South Africa still performs important functions on behalf of SACU, such as the administration of trade remedies¹⁶ and the management of the Common Revenue Pool. This will presumably also change as the new SACU institutions become operational.¹⁷

The 2002 SACU Agreement foresees further institutional, policy and legal developments within the organisation. This can happen via the adoption of additional annexes, which form an integral part of the Agreement. SACU's legal framework consists of the 2002 Agreement and all annexes adopted subsequently.¹⁸ The rulings of the Tribunal, which will be final, will add to SACU's legal fabric.

14 At the time of writing (December 2008), the Tariff Board and Tribunal had not yet been established, although preparations to do so were advanced.

15 However, the Agreement does deal with transport – an important services sector.

16 Trade remedies apply when unfair trade practices such as dumping or subsidised importation occur. The South African institution responsible for their administration within SACU at present is the International Trade Administration Commission (ITAC).

17 The new SACU Agreement was signed in 2002 already, but SACU's Tariff Board, Tribunal and Common Negotiating Mechanism are still to be established.

18 The first annexes have been concluded and several are under preparation.

A SADC Interim Economic Partnership Agreement (SADC IEPA) between the EU, on the one hand, and SACU members (excluding South Africa) and Mozambique, on the other, has been negotiated over the past two years. This IEPA was initialled at the end of 2007.¹⁹ Angola, who is part of this group, has not initialled the Agreement. The document covers trade in goods only. Further negotiations on trade in services and investment are still under way.

In the end, the initialling of the IEPA text proved to be quite a diplomatic challenge. This can partly be explained by the fact that the SADC IEPA is a complex arrangement: obligations in terms of existing structures have to be taken into account, and there are new legal and institutional challenges. South Africa had already concluded its own bilateral FTA (the Trade, Development and Cooperation Agreement) with the EU in 2000. The failure to finalise internal integration policies for SADC beforehand added to the complications.

The implications for SACU may be even more serious. The membership of this organisation is divided over further negotiations with the EU, and the implementation of the interim arrangements for trade in goods will pose considerable challenges. The five SACU states are all members of SADC, but they have not agreed on strategies for promoting regional integration, building rules-based dispensations, or ensuring that both SACU and SADC pursue the same game plan. Deeper regional integration has been on the agenda of African regional bodies and the AU for a long time. These plans are mostly unrealistic and often emphasise 'political integration' – whatever that may mean. The rules-based nature of regional institutions and a serious commitment to the domestic implementation of community obligations continuously stumble on the rocks of national sovereignty and a lack of technical capacity.

The principal challenge for the SADC EPA group is to complete negotiations towards a comprehensive EPA (for those who have decided to include services and investment). This process will not involve Namibia. South Africa seems to be out of the picture altogether, although diplomatic efforts to rescue a more inclusive deal are continuing.

The implementation of regional integration schemes is, by definition, about joint action. It requires an ongoing process among the parties to the arrangement. However, the manner in which the SADC EPA is now unfolding undermines joint action within SACU. It may also bring about new facts and realities detrimental to the promotion of deeper integration in southern Africa, at least for existing structures. The 15 SADC members are negotiating their EPAs with the EU in four different configurations.²⁰

The exclusion of South Africa from the SADC EPA, the fact that Mozambique (who is not a SACU member) is a party, SACU members' different policy decisions

¹⁹ Namibia initialled some months later.

²⁰ They are the SADC EPA, as well as the EPAs for the EAC, Eastern and Southern Africa, and for Central Africa.

regarding the second phase of negotiations, and the reservations expressed by Namibia before it initialled the SADC IEPA text are some of the problem areas still to be addressed. Angola will apparently only join the negotiation process when it is ready to do so, although subsequent accession to a final agreement is possible.²¹ South Africa and Namibia have already indicated that they would not participate in the second phase, when trade in services and investment are negotiated.

Article 31(3) of the SACU Agreement remains another obstacle. It requires the consent of all members before new trade agreements with third parties can be entered into. Before the SADC EPA can enter into force, this issue will have to be resolved; and South Africa holds the key, at least in terms of the letter of the law. There is no clear procedure as to how Article 31 consent should be demonstrated or shown to have been obtained. This is a problem that a Common Negotiating Mechanism (which Article 31 also calls for) could have solved. SACU has no formal Common Negotiating Mechanism as yet.

It's not only about trade

Regional integration involves more than trade liberalisation, and globalisation has consequences in many areas. For example, SADC has adopted more than 20 protocols and, in addition to trade matters, they deal with water, tourism, technical standards, transport, energy and many other areas of inter-state cooperation. This is testimony to the fact that states cannot survive and prosper in isolation, and that effective trade and development require a host of other conditions. In African states in particular, infrastructural needs are acute in areas such as transport. Inadequate road, rail and port facilities mean very high transportation costs when moving goods from local producers to overseas markets. To transport a container from the typical landlocked African state to the nearest port is generally more expensive than the total cost of a sea passage to the final destination.

Water is a neglected area of inter-state cooperation, and the grave consequences of this neglect may come to haunt us. In June 2008, the Intergovernmental Panel on Climate Change (IPCC) produced a report of which one of the main findings (made with "high confidence") was that many semi-arid and arid areas such as the Mediterranean Basin, the western United States, southern Africa, and north-eastern Brazil are particularly exposed to the impacts of climate change. They are projected to suffer from decreased water resources.²²

One of the SADC protocols deals with the transboundary management of regional water courses. Regional bodies such as the Orange–Senqu River Commission (ORASECOM) have been established to facilitate interstate cooperation. These structures should be used more extensively and, if they are not sufficiently equipped for the tasks of joint management of regional water resources, they should be strengthened.

21 Articles 110 and 111, SADC IEPA.

22 Bates et al, (2008:3).

Countries such as Namibia, which has no perennial internal rivers, need to take stock of their water needs and plan for the future. Namibia faces certain unique challenges, such as the fact that the border on the Orange River is not a settled matter, with constitutional ramifications. Article 1(4) of the Namibian Constitution defines the national territory of Namibia as –

... the whole of the territory recognised by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia, and its southern boundary shall extend to the middle of the Orange River.

Following Namibia's independence, the South African government adopted legislation to provide for the transfer to Namibia of Walvis Bay and the off-shore islands. However, the Orange River boundary remains an unfinished constitutional mandate for Namibia. A joint commission between Namibia and South Africa was set up after the 1994 South African elections. This body has not produced any results to date and all indications are that this has become a dormant matter.

The colonial boundary between South Africa and Namibia goes back to an Anglo–German agreement of 1890. It established the boundary alignment in terms of –²³

... a line commencing at the mouth of the Orange River, and ascending the north bank of that river to the point of its intersection by the 20th *degree of east longitude*.

The present position is that the water in this river has an international status and does not belong to South Africa. However, the continued uncertainty about this border, which has never been demarcated, will make utilisation of the water a complicated issue. With growing water needs, this matter may become a bone of contention between the two nations. Additional problems may ensue with the extension of this border from the mouth of the Orange River when maritime boundaries have to be determined and the exploitation of resources on the continental shelf has to be regulated.²⁴

Concluding remarks

Trade arrangements are not an end in themselves. They do not guarantee that trade will take place, but provide for an enabling framework and for opportunities; they should, if properly utilised, add to wealth creation and economic development.

In these matters, governments play a very important regulatory and facilitating role. They adopt the laws and administrative measures and establish the structures necessary for reaping potential benefits and complying with

²³ Brownlie (1979:1276).

²⁴ For a discussion of some of the issues, see Erasmus & Hamman (1987:49ff).

international obligations. They must develop appropriate policies, and provide for transparency and governance. This daunting task is unavoidable. As regional integration is pursued more actively, new opportunities arise for joint efforts and regional strategies.

This article has provided an overview of some contemporary trade developments and challenges facing southern Africa. Governments are not fully in control of the unfolding events, and there may be new challenges in the form of changing policies about how the southern African region will develop. There are, for example, indications in South Africa of concerns about the revenue-sharing formula in the SACU Agreement.²⁵ If changes to this Agreement are contemplated and implemented under present conditions, they will come about in the absence of a proper development policy for the southern African region. What consequences will that bring? Who will take the initiative for developing such a policy and when will this happen? What elements and concerns should be included?

Examples of regional integration plans and the need for cooperation with neighbouring states have been cited to emphasise a rather obvious point: the governments in southern Africa have their work cut out for them. The law is an inevitable and necessary tool – and the foundation – for tackling these challenges. However, domestic reforms and regional plans need to be prepared well. They should be inspired by comprehensive studies of the problems to be resolved and all implications that that entails. Legal academics, officials and practitioners should join hands in these efforts. The debate should continue and should involve interdisciplinary research and joint efforts.

The world of international trade law is vast and often complicated. It poses very specific challenges to governments and civil society. We need effective and realistic policies and arrangements within nations in order for them to be active participants in the globalised economy. This includes 'at-the-border' arrangements (such as customs control), but also many 'beyond-the-border' measures (e.g. to regulate trade in services). It also involves adherence to national constitutional requirements about the relationship between international law and municipal law, the incorporation of treaties, and how to provide for legal remedies to affected parties.

These challenges cannot be avoided. There may be competing priorities and technical constraints, but the adoption of legal instruments are not beyond the means of most states in the region. The task can also be made easier by adopting common policies and by establishing common institutions in critical areas.

A number of specific responses are required. They include the following:

- The adoption of realistic national and regional integration policies

²⁵ See Erasmus (2008).

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- The implementation of well-targeted domestic reforms
- The development of technical capacity, and
- The establishment of new institutions.

These are the tasks of government planners (while engaging the private sector) and involve macroeconomic policy reforms. There is also a need for specific technical skills and expertise to deal with the demands of rules-based trade. That is why lawyers and legal disciplines stand to play an important role in these developments.

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