Editors: Trudi Hartzenberg & Gerhard Erasmus

Monitoring Regional Integration

Yearbook 2015/2016

Edited by
Trudi Hartzenberg and Gerhard Erasmus

Published by the Trade Law Centre (tralac)
P.O. Box 224, Stellenbosch
South Africa 7599

First published 2017

Language editing by Alta Schoeman

Cover design by Natalia Le Roux

Back cover text by Trudi Hartzenberg

ISBN: 9780994686107

Printed by RSA Litho

© 2017 Trade Law Centre and the Konrad-Adenauer-Stiftung
All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission. No paragraph of the publication may be reproduced, copied or transmitted save with written permission. Any person who does any unauthorised act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

Publication of this book was made possible by the support of the Trade Law Centre (tralac) and the Konrad Adenauer Foundation. The views expressed by the authors are not necessarily the view of any of these institutions.

Trade Law Centre (tralac)
P.O. Box 224, Stellenbosch
South Africa
Tel. +27-21-880 2010
Fax +27-21-880 2083
info@tralac.org
http://www.tralac.org

Konrad
Adenauer
Stiftung

Konrad-Adenauer-Stiftung
P.O. Box 1145, Windhoek
Namibia
Tel. +264-61-22 55 68
Fax +264-61-22 56 78
info@kas-namibia.org
http://www.kas.de/namibia

Contents

About the authors iii

Preface vii

Introduction
Trudi Hartzenberg 1

Chapter 1
What future for SADC – EU relations
Stefan Brocza and Andreas Brocza 5

Chapter 2
China-Africa Relations: A new type of strategic partnership?
Kizito Sikuka 33

Chapter 3
Chinese imports from Africa: the impact of the recent commodity price declines
Ron Sandrey, Emmanuel Igbinoba, Rodney Hoaeb and Tebogo Mojafi 54

Chapter 4
Imports into the BRICs from Africa: 2015 over 2014
Ron Sandrey 85

Chapter 5
The Southern African Development Community and Its 'New' Tribunal: Some Remarks
Elisa Tino 103

Chapter 6
Cape Town as a Gateway City: Interlinking the Sub-Saharan Oil and Gas Sector Globally
Sören Scholvin 128

Chapter 7
An analysis of Lesotho's clothing exports to the United States
Ron Sandrey 182

Chapter 8
An Evaluation of the Effectiveness of Trade Protocol on Non-Tariff Barriers to Trade in the SADC Free Trade Area
Master Mushonga and Sylvanus Ikhide 202

Chapter 9
What has SACU been designed for, what has it delivered, and where is it heading?
Gerhard Erasmus 241

About the authors

Elisa Tino – Tino, Elisa is currently a Postdoctoral Researcher in International Law at the University of Salerno (Italy). In 2013 she had a two-year post-doctoral fellowship in EU Law at the University LUISS "Guido Carli" in Rome and was a lecturer on the same subject at the University of Sannio. In 2012 she received her PhD in European Union Law from the University of Ferrara; then she attended some courses of specialization and was a visiting researcher in some international centres (Max Planck Institute, Hague Academy of International Law, iCourts). She is the author of several articles on topics on International Law and EU Law.

Gerhard Erasmus – Erasmus, Gerhard is currently a tralac Associate, a founder of tralac and Professor Emeritus (Law Faculty), University of Stellenbosch. He holds degrees from the University of the Free State, Bloemfontein (B.Iuris, LL.B), Leiden in the Netherlands (LLD) and a Master's from the Fletcher School of Law and Diplomacy. He has consulted for governments, the private sector and regional organisations in southern Africa. He has also been involved in the drafting of the South African and Namibian constitutions. He grew up in Namibia.

Rodney Hoaeb – Hoaeb, Rodney is currently working at the Namibia Trade Forum, overseeing Research, Trade in Services Negotiations under SADC, Market Intelligence and Trade Policy Analysis. Previously he has worked for the US Consulate and the Namibia Motor Vehicle Accident Fund.

Kizito Sikuka – Sikuka, Kizito is an experienced journalist, writer and researcher who has written and researched widely on a wide range of issues including Africa-China relations, international cooperation, trade, politics and regional integration. Currently he is a Senior Researcher/Writer with the Southern African Research and Documentation Centre (SARDC). He holds a Bachelor of Arts Degree in English and Communication and is studying towards a Master's degree in Public Policy and Governance.

Andreas Brocza – Brocza, Andreas studied political science with a focus on regional integration at the University of Vienna. His previous publications are on EU politics and international relations and regimes; various articles (together with Stefan Brocza) on the the theoretical implications of the International Seabed Authority (ISA) regime, especially under the aspects of enclosure, accumulation by dispossession and financialisation of nature (2014 and 2015). Currently, he works as Lecturer at the Universities of Vienna.

Stefan Brocza – Brocza, Stefan studied law, political science, communication science and international studies in Vienna, St. Gallen and Harward. He has worked in national, international and EU Institutions, especially within the General Secretariat of the Council of Ministers of the EU for more than two decades. His publications are mainly in the field of EU politics, for example 'The EU External Action Instruments on Climate Change and Green Growth for the period 2014-2020' (2013), 'EU mobility partnerships: a smart instrument for the externalization of migration control' (2015), and also on the the theoretical implications of the International Seabed Authority (ISA) regime, especially under the aspects of enclosure, accumulation by dispossession and financialisation of nature (2014 and 2015). He currently works as a Lecturer at the Universities of Vienna and Salzburg.

Emmanuel Igbinoba – Dr Igbinoba, Emmanuel is a research fellow at the Centre for Chinese Studies, Stellenbosch University, South Africa. He obtained his PhD in International Economics from the University of Rome in Italy and his MSc in Economics (International finance) from the Shanghai University of Finance and Economics in China. His current research focuses on China's economic relations and its impact on the structural transformation of Sub-Saharan Africa in a sector specific context. Prior to joining CCS, Emmanuel worked at Kwararafa University Nigeria as a lecturer in the department of Economics and Statistics. His research interests are in International Finance, Development Economics and Chinese economic studies.

Tebogo Mojafi – Mojafi, Tebogo is currently a Specialist (Project Manager): Maritime Research, Innovation and Industry Engagement at the South African Maritime Safety Authority. His experience spans over 15 years in the transport and freight industry, holding various positions in the field of Warehousing, Revenue, Skills Development and Project Management. As a Manager-SAP

Support, he provided system and information management support at Transnet (TNPA) on matters of environment, health and safety.

His qualifications include MSc Maritime Affairs (Ports Management) from the World Maritime University (Malmo, Sweden), Postgraduate Diploma Business Management & MBA (UKZN), BCom HR Honours (Mancosa) and HR Diploma (UNISA). Other qualifications include OD & Performance Management and Monitoring & Evaluation (M&E) from Regenesys School of Public Management.

Ron Sandrey – Sandrey, Ron is a tralac Associate, Professor Extraordinaire, Department of Agricultural Economics, University of Stellenbosch and an Adjunct Associate Professor at the Agribusiness & Economics Research Unit**,** Lincoln University, New Zealand. He came to South Africa in 2005 following a career as an economist with New Zealand's Ministry of Foreign Affairs and Trade and Ministry of Agriculture and Fisheries, and has since worked extensively on trade-related issues in southern Africa. He holds a PhD in Economics from Oregon State University and currently resides in Christchurch, New Zealand.

Sören Scholvin – Scholvin, Sören is a research fellow at the Institute of Economic and Cultural Geography at the University of Hanover (Germany). His research interests are regional powers in South America and Sub-Saharan Africa, with a particular focus on energy policy, transport infrastructure and regional integration. He has published 'A New Scramble for Africa?: The Rush for Energy Resources in Sub-Saharan Africa' (2015) and 'The Geopolitics of Regional Power: Geography, Economics and Politics in Southern Africa' (2014), both with Ashgate.

Master Mushonga – Mushonga, Master is a PhD candidate in Development Finance at the University of Stellenbosch Business School in Cape Town, South Africa where he also completed his Master of Philosophy (MPhil) in Development Finance. His present area of work involves research on regional integration in Southern Africa, developments of inclusive financial systems in Africa as well as advising on designing of appropriate agriculture financing models that work better of smallholder farmers to improve food security and incomes. Mushonga has worked for an agro-processor and financial services

group in Zimbabwe in the areas of agriculture finance, microfinance, SMEs banking, structured trade finance as well as in economic research.

Sylvanus Ihenyen Ikhide – Ikhide, Sylvanus is a Professor of Development Finance and Head of the Doctoral programme in Development Finance at the University of Stellenbosch Business School, Cape Town, South Africa.

Preface

Regional Integration in Southern Africa can be thought of as a train journey; post independence African countries enthusiastically embarked on this journey with the aim of achieving many milestones on the way to the final destination of continental integration. However this journey has proved to be complex and difficult for many African countries and for many of the regional economic communities. Many deadlines have not been met; for example the member states of the Southern African Development Community (SADC) agreed to establish a customs union by 2010. This was not achieved and these member states are still consolidating the SADC Free Trade Area. This testifies to the challenges of integrating unequal partners on Africa's integration journey.

The journey however continues, and more recently African countries have embarked on more ambitious integration agenda's. Twenty-six member states from east and southern Africa embarked together on a journey to establish a Tripartite Free Trade Area; and although the agreement has been launched, negotiations in key areas are still ongoing.

Most recently the member states of the African Union have all got on board the most ambitious, continental integration journey, aiming to establish a Continental Free Trade Area (CFTA) by 2017.

At the same time of course, African countries are also engaged in integrating into the global economy. In October 2016 the group of countries that constitute the SADC Economic Partnership Agreement (SADC EPA) group, became the first group to start implementing an Economic Partnership Agreement with the European Union.

To assist the examination of the complex issues that are encountered on the integration journey by Southern African countries, the Konrad-Adenauer Stiftung is keenly interested and pleased to support the work of the authors in this volume. They are examining a wide range of issues that reflect the integration journey of these countries, ranging from the role of cities, the

impact of non-tariff barriers as well as legal and institutional issues associated with regional integration. We thank all the authors who have contributed to this book as well as tralac who has mainly coordinated this publication.

Thomas W. Keller
Representative of the Konrad-Adenauer Stiftung Namibia/Angola

Introduction

Trudi Hartzenberg

Regional integration continues to enjoy strong political support in Africa. But the winds of change blowing in the global economy are being felt on the continent too. It is clear that the policy focus is shifting from bold trade liberalization focusing primarily on tariff reduction, to more emphasis on industrial development and diversification, and associated distributional and broader development concerns such as job creation, inequality and poverty reduction. Many of these development challenges require cross-border initiatives and cooperation among member states for effective and sustainable solutions.

While the appetite for global governance solutions remains weak, the conclusion of the Trade Facilitation Agreement (TFA) of the World Trade Organisation, at the Ministerial Conference in Bali, Indonesia, in December 2013, is an important development. Trade facilitation is a priority for African integration too, given the high costs of intra-regional trade and the proliferation of non-tariff barriers, many of which are associated with customs and border management and standards. On 22 February 2017 the TFA entered into force when the requisite two-thirds of the membership had ratified the agreement. This can also provide impetus for, and find synergy with the trade facilitation agendas of Africa's regional economic communities.

The increasing reluctance to cede trade policy space in the context of international trade agreements has grown in recent years in African trade and integration arrangements. This increasingly also features in global economic governance trends, and underscores both the United Kingdom (UK) referendum vote to leave the European Union – Brexit – as well as the United States (US) November 2016 election result, with President Donald Trump taking office in January 2017. Both of these developments have important implications for Africa.

Focusing first on Brexit, the UK is an important trading partner for Africa and specifically for a number of Southern African countries. Brexit matters specifically in view of the fact provisional implementation of the EU – Southern African Development Community (SADC) Economic Partnership Agreement (EPA) which started on 10 October 2016. Until the UK leaves the EU, the SADC EPA remains the agreement in terms of which trade is conducted between the UK, and the SADC EPA member states (South Africa, Botswana, Lesotho, Namibia and Swaziland – all members of the Southern African Customs Union (SACU) and Mozambique). To date, the SAC EPA is the only African EPA that has been concluded and is being implemented.

South Africa accounts for about 97% of the exports[1] of the SADC EPA countries to the UK, followed by Mozambique, Namibia and others. Key exports from South Africa include motor vehicles for the transport of goods as well as motor cars, wine, citrus and other agricultural products; aluminium and other metals are also important exports. Besides South Africa, the other SADC EPA member states export meat products (mostly beef), table grapes, citrus products, jams and fruit juices to the UK.

Exports from these SADC EPA and other SADC member states will be seriously affected, if preferential trade agreements are not concluded with the UK and in place when Brexit happens. It is advisable that a formal request be made to the UK for the negotiation of preferential trade agreements to replace the current arrangements. For Southern Africa, this means that the SACU member states need to approach the UK, since they will enter in to a SACU-UK agreement, while the other member states will have to negotiate their own agreements with the UK.

The Africa Growth and Opportunity Act (AGOA) was renewed in September 2015 for 10 years. All SADC member states except Swaziland and Zimbabwe currently enjoy preferential access to the US under AGOA. Following President Trump's early pronouncements on trade policy and his cancellation of the US participation in the Trans Pacific Partnership (TPP) Agreement, it may well be that there is likely to be increased focus on the benefits of AGOA for the US. South Africa, Lesotho and Angola continue to be important beneficiaries of AGOA; while Lesotho and Angola's exports are concentrated

[1] ITC Trademap (www.intracen.org)

in clothing and textiles, and oil, respectively, South Africa exports a diverse range of products to the US, including automobiles and components, clothing and textiles as well as agricultural products.

While the EU and US remain important trading partners for the Southern African countries, there has been growing emphasis on the promotion of intra-Africa trade in recent years. In January 2012, member states of the African Union adopted a programme to Boost Intra-African Trade (BIAT) and also a decision to establish a Continental Free Trade Area (CFTA). The decision to establish the CFTA came while the negotiations to conclude the Tripartite Free Trade Area (TFTA) continue. The TFTA is being negotiated by the 26 member states of SADC, the East African Community (EAC) and the Common Market for East and Southern Africa (COMESA). In June 2015, the TFTA was launched, despite the fact that the negotiations on tariff liberalisation, rules of origin and trade remedies have not been concluded; these negotiations are still continuing. Also in June 2015, the CFTA negotiations were formally launched. Preparatory work, including the preparation of a draft agreement followed and the negotiations are expected to begin in early 2017, with the aim of concluding the negotiations and launching the agreement in December 2017. This is a very ambitious agenda, covering trade in goods and trade in services in a first phase, to be followed by a second phase of negotiations covering investment, competition and intellectual property matters.

The SADC agenda has seen a notable shift towards industrial development. The SADC free trade area is still being consolidated, and the decision to establish a customs union has all but been shelved. Industrial development and diversification require investment, in particular foreign direct investment to expand and diversify the productive capacity of member states. The market integration agenda, and specifically the elimination of tariff and non-tariff barriers is essential to support this industrial development ambition. While much has been achieved in terms of tariff liberalisation in SADC, non–tariff barriers remain significant challenges to achieve increased intra-regional trade as well as, for example, to support the regional value chains that have been become an important focus of the regional industrial development agenda.

The Southern African Customs Union (SACU) remains in a legal and institutional limbo; with no recent progress being made to implement the 2002 Agreement. A Ministerial Retreat was held in June 2016, at which the future

development of SACU was discussed, but no detail of a plan for the way forward has been finalised yet. South Africa remains concerned about the revenue sharing arrangement as well as the legal and institutional development of the customs union, specifically as regards the establishment of the SACU Tariff Board and the Tribunal. It is clear that the dominant member of SACU is not prepared to cede decision making on the import tariff to a supranational institution, the SACU Tariff Board. The import tariff is a key instrument of South Africa's trade and industrial policy; an instrument that is used selectively and strategically to protect and support domestic industry.

The collection of chapters in the 2015/2016 Monitoring Regional Integration Yearbook, covers diverse aspects of the Southern African regional integration agenda, including trade matters, non-tariff barriers, the role of cities in regional development and many more. These themes also reflect the broader shifts in the global development agenda. Specific markers of development such as youth, gender, migration, climate change and the environment are increasingly featuring as important policy priorities. These priorities are clearly articulated in the 17 Sustainable Development Goals adopted by the members of the United Nations in September 2015. They also feature in the regional integration of Southern Africa.

Chapter 1

What future for EU-SADC relations?

Stefan Brocza and Andreas Brocza

1. Introduction

This chapter continues the stocktaking exercise of EU-SADC relations from the tralac Yearbook 2011 (Brocza, Brocza 2012). It seems that the interregional institutional development between Southern African Development Community (SADC) and the European Union (EU) is eroding over time. Both sides have continuously lost general interest in meeting – for the moment it seems that SADC's regional development is less than of medium concern for the EU. However, it is important to mention that interregional dialogue between SADC and the EU is not restricted to institutionalised fora. The same group of politicians and officials also meets on a bilateral level and at conferences of other international organisations and groupings, especially within the EU-ACP framework. But, the interregional contact between SADC and the EU is no longer close and of a special privileged nature. The chapter gives an overview of the reduced interregional institutional framework for EU-SADC relations and analyses the political reasons for the lasting changes in their interregional relations. However, the currently agreed joint Regional Indicative Programme (RIP) under the new 11th European Development Fund (11th EDF) amounts to a total of more than € 1.3 billion. Therefore, it determines the EU's support to regional integration pursued by the five Regional Organizations Common Market for Eastern and Southern Africa(COMESA), East African Community (EAC), Intergovernmental Authority on Development (IGAD), Indian Ocean Commission (IOC) and SADC, representing 29 African countries. The coming up programmes in key sectors of regional cooperation such as peace and security, economic integration and the management of natural resources could be understood as a new (bigger) kind of interregionalism.

2. Interregionalism – theoretical approaches

A convincing theory of interregionalism is still outstanding. The general discussion is focused by a divergence of neorealist and (neoliberal) institutionalist arguments. This divergence reflects the growing insight that international relations are neither driven entirely by power or exclusively by cooperative motivations (Brocza/Brocza 2012: 147-148).

Roloff (2006), for example, approaches the subject from a systemic perspective by combining the structural or neorealist approach to international relations (Waltz, 1979) with interdependence theory (Keohane/Nye, 1989). Some other authors invoke a more constructivist logic in order to explain the phenomenon of interregionalism. Gilson (2002: 12) in this context argues that interregional relations are not so much driven by balancing games but rather by the interaction of regions per se which transcends them into 'reflexive agents that both constitute and are constituted by their interregional interaction and their ongoing "externalisation'" within this form'. Some theoretical reflections are also devoted to the function of inter- and transregional relationships. Five such functions are proposed by Rüland (1999):

1. balancing
2. institution-building
3. rationalising the decision making in global multilateral fora
4. agenda setting
5. collective identity building.

Interregionalism is further linked to the proliferating globalisation literature which has developed several models of global governance. These kinds of relations are discussed here as part of a multilayered system of global governance which is vertically differentiated into global multilateral fora, inter- and transregional fora, regional cooperation agreements, subregional transborder structures and bilateral national interactions. Horizontally it is differentiated by a number of sectoral international regimes covering specific policy fields (Rüland, 1996).

A political economy approach is pursued to interregionalism by Robles (2004). He sees EU development cooperation far from altruistic: it is more of an asymmetric, interest-driven policy strengthening EU economic interests (Hänggi et al., 2006: 9-12).

In the most general sense, interregionalism signifies the condition or process whereby two regions interact as regions. Two aspects of this very general definition should be specially taken into account: (i) the actors of inter-regionalism, and (ii) the delimitation and understanding of 'region' (Söderbaum/Van Langenhove 2005: 257-258):

First, with regard to the actors, it should be noted that, in the general debate, interregionalism is often defined as cooperation between two specified regions composed of *states* within an interregional framework or a formal relationship. As a result interregionalism is often considered to be mainly a states–led or intergovernmental process. In Söderbaum/Van Langenhove (2005: 258) view, states are certainly important and often also crucial actors of interregionalism, but interregionalism is not intergovernmental by definition. On the contrary, various types of non–state actors from the private sector and civil society (i.e.,transnational actors) are often, one way or the other, involved in the process. Their engagement is sometimes referred to as 'transregionalism' (Aggarwal/Fogarty 2004: 5). Söderbaum/Van Langenhove (2005: 258) consider these non–state processes to be part of interregionalism in the general sense.

The second aspect, how to delimit and analyse regions, is even more complex. Aggarwal and Fogarty (2004) use the label 'pure interregionalism' to signify when the EU has relations only with one distinct and formally organised counterpart region, for instance a free trade area or customs union. There are many instances when 'regions' are less 'coherent' and dispersed, but when the concept of interregionalism still makes sense. Under such circumstances it is fruitful to think in terms of types or degrees of interregionalism.

Referring specifically to commercial relations, Aggarwal and Fogarty (2004) take the Lomé Convention as an example in which the EU has trade relations with a set of countries from other regions that are not grouped in their own customs union or free trade agreement. They refer to this as 'hybrid inter-regionalism'. In its relationships with the ACP countries within the Cotonou Agreement the EU is trying to establish the much talked about Economic Partnership Agreements (EPAs) with geographically more focused sub-regional organisations of Africa, such as SADC. To the extent that the EPAs are being implemented, they represent a deepening from hybrid to pure interregionalism (Söderbaum/Van Langenhove 2005: 258).

Hänggi (2000: 7) has a different understanding of hybrid relationships, which 'may come close to interregional relations in those cases where the single power has a dominant position in its own region (e.g., the United States in North America; India in South Asia). Furthermore, relations between regional groupings and single powers may constitute an important component of bioregional or transregional arrangements, e.g., EU-China/EU-Japan and Asia–Europe Meeting (ASEM). The EU and Association of Southeast Asian Nations (ASEAN) are the only regional groupings, which have a tradition of external relations with single powers.' (Söderbaum/Van Langenhove 2005: 261-262)

Bilateralism can also be a means for regions (especially the EU) to be seen as particularly strong, and hence as an actor. If the EU is perceived as a partner in a bilateral relationship, it is, by definition, seen as an 'actor'. In this sense there is an overlap between bilateralism and interregionalism, since a bilateral relationship between two regions (as actors) leads to interregionalism. But it is still fruitful to problematise and focus on bilateralism as such (Söderbaum/Van Langenhove 2005: 258-259).

In this context, it is particularly important to acknowledge that the EU can act as one collective regional actor in a bilateral relationship or, perhaps even more importantly, be seen as 'one' by outsiders, for instance, when signing a cooperation agreement or when disbursing aid. Therefore, the EU is the half of the 'bilateral' relationship with another actor (which may be a state or a region or multilateral institution). Obviously, there are many issues to explore regarding actorness, for instance how unified the policy-making process is within the EU, but this does not necessarily detract from the 'actorness' of the EU (Söderbaum/Van Langenhove 2005: 259). There can be similar dis-agreements within states about policy processes, but even if states are not unified we do not dismiss them as actors.

Being a regional organisation or a 'region' does not equate to being an actor: some actor qualities must be evident. Actorness can be defined as the capacity of regions and regional organisations 'to develop presence, to become identifiable, aggregate interests, formulate goals and policies, make and implement decisions' (Rüland 2002: 6; also Bretherton/Vogler 1999).

There is a final aspect to the way regions are considered and analysed, which impacts on how interregionalism is understood and defined. Frequently,

especially in realist and liberal thinking, regions are taken as pre-given, defined in advance of research, and often seen as particular inter-state or policy-driven frameworks. Integral to this reasoning is the idea that regions are believed to exist 'out there', identifiable through material structures, regional organisations and regional actors (most often 'states'). This is a pragmatic analytical strategy, which makes the study of interregionalism rather easy. However, at least in the authors' opinion, it is equally relevant to see regions as social constructions. From this point of view, the puzzle is to explain the development through which regions are in the process of 'becoming' and are constructed/ reconstructed by reflective actors, whereas the conventional emphasis is on a particular set of activities and flows within a pre-given regional framework. The constructivist approach necessarily results in a more open-ended interpretation of interregionalism. It implies, for instance, that, even if there is no formal regional organisation or grouping to relate to, it can still be fruitful to refer to a 'region' and, in consequence, one can also speak of interregionalism in this way (Söderbaum/Van Langenhove 2005: 259).

For the purpose of this chapter, regionalism is understood as a cooperative arrangement between states or state-like actors, with or without institutions. Interregionalism refers to an arrangement between two regions, either contractual or de facto (Reiterer, 2005: 1). Katzenstein's (2005: 118-119) pragmatic definition of regions as 'not simply physical constants or ideological constructs, but … express[ing] changing human practices' captures the reality of globalisation. Thus, put simply, '[i]nterregionalism represents the interaction of one region with another' (Gilson, 2005: 309).

3. Special EU interest in interregional dialogue with SADC

The EU's focus on promoting regional economic integration is justified by its own experience in 'designing and implementing programmes which assist the deepening and strengthening of regional integration' (European Commission/ SADC 2008: 41). This promotion of regional economic integration includes technical and managerial support. In addition, this also involves interventions in economic policy. The EU will, for example, 'support the development and implementation of instruments and legislation related to trade liberalisation and tariff reform' (European Commission/SADC 2008: 39). Buzdugan (2013: 20) consequently argues that this structure of cooperation 'goes beyond the promotion of neoliberal reforms through aid conditionality […] and involves

direct policy intervention in the SADC and its member states to influence the process of regionalism in manner which is consistent with the EU's interpretation and experience of it'.

In 2003 a Joint SADC-ICP Task Force (JTF) leading to further institutionalisation of development cooperation between SADC, the EU and other donors was established. The objective was to streamline the organisation and to centralise decision-making processes which were hitherto governed by the member states. Interaction between SADC and the donor community now takes place with the donors 'discussing, monitoring and, to some degree, co-ordinating funding' (Buzdugan 2013: 16). Foreign actors have thus become even further embedded in and interwoven with the SADC-organization and 'have become not only integral to the process but also intrinsic to the institution' (Buzdugan 2013: 16).

The JTF is divided into thematic groupings in which different donors are present. They offer SADC the opportunity to estimate donor support. Through the JTF the SADC directorates can furthermore present their demands (or 'shopping list') to donors. Approval of the projects is then subject to 'alignment of interests, the degree to which these projects would be truly "regional" as opposed to transnational in nature, the legal and accounting procedures in donor countries and several additional conditions on the part of some donors' (Buzdugan 2013: 17) including democratic accountability. Through the TJF, donors increasingly take part in budget programming and joint project-planning missions with the SADC and other donors. As a consequence, 'international actors have become embedded within the regional organisation and have had direct input on policy and strategy' (Buzdugan 2013: 17).

One can conclude that the European Union disposes of a variety of channels to exert influence on SADC. On the one hand, the European Union is the main trading partner of the majority of the member states, as shown below. On the other hand, SADC is dependent on the continuation of financial support in order to fund their projects and institutions. Saurombe (2009: 104) goes as far as to say that 'if the EU will withdraw its funding, the whole SADC Secretariat based in Botswana will lose their jobs'. Lastly, the EU has increasingly been embedded in important regional institutions where it gets insight into crucial political processes which it can influence. In this regard, funding external

consultants which work inside political and administrative structures is an important component.

It is striking that at the beginning SADC rejected the EU model of market integration and pursued a strategy based on development integration. However, policy makers in SADC 'are increasingly adopting EU-style formal institutions in more recent periods' (Lenz 2012: 155). Lenz (2012: 156) argues that institutions based on the EU role model are most likely to be introduced when there is a strong functional demand for institutional change. This occurs when existing institutions are discredited as a result of an economic or political crisis. When there is a simultaneous change of the external structural conditions institutional negotiations take place. This process can then lead to a change in state preferences and power configurations that have thus far supported the existing institutional structures. Consequently, this functional pressure can provide a 'window of opportunity' for the diffusion of EU models (Lenz 2012: 157). However, EU-style institutions are not emulated trough a natural process. Instead, they need to be promoted by different actors. The EU provides assistance to advocacy groups and epistemic communities that promote institutional change resembling the European Union (Jetschke/Murray 2012). A key factor for them is the existence of the European Union and its widely perceived success. This provides them with legitimacy for demanding institutional change in the form of EU-institution and improves their position vis-à-vis those often powerful actors that want to resist such a change. Moreover, the emulation of EU-style institutions is spurred by financial and technical assistance to those regional arrangements that have strong similarities with the European Union. The more dependent the region on donor funding, and thus the more painful a loss of financial support would be, the more influence donors have on the process of regional integration (Lenz 2012: 158).

3.1 EU and SADC – general framework

The partnership between EU and SADC aims at poverty eradication through various support instruments including cooperation to achieve the Millennium Development Goals (MDGs) targets. The Cotonou Agreement sets up the framework of the partnership between the EU and SADC and is based on three pillars (European External Action Service (EEAS) 2016):

- Political dialogue (known as the 'Berlin Initiative' with SADC)

- Trade for Development
- Development Cooperation

In recognition of SADC's political mandate as adopted by SADC's Summit in Windhoek in 1992 and the accession of South Africa to SADC in 1994, the EU and SADC launched a political dialogue with a first Ministerial Meeting in 1994 in Berlin – now known as the *Berlin Initiative*. The Initiative created a structure for enhanced and comprehensive political dialogue between the two parties with a view to contribute to peace, democracy and sustainable development in the SADC region. The format for the dialogue foresees regular meetings of Senior Officials leading up to a Ministerial Conference every second year taking place – alternately – in Europe and in the SADC region. This dialogue also extends to regular meetings between EU and SADC ambassadors residing in Botswana as well as meetings between EU and SADC ambassadors accredited to the EU in Brussels (Brocza/Brocza 2012: 152-155; EEAS 2016).

The EU is the most important trading partner for the SADC region. The EU absorbs around 40 percent of SADC exports and is the source of a similar percentage of SADC imports. The EU provided preferential access to its market for decades through the Lomé Conventions. However, under the Cotonou Agreement, a new type of regional trading arrangement, known as the *Economic Partnership Agreements (EPAs)* was launched. EPAs are comprehensive development agreements and their objectives are to reduce poverty, diversify economies and create employment through enhanced intra-regional integration and through a carefully managed opening towards the world economy (EEAS 2016). For further details see under *EU-SADC Trade Relations* below.

The Development Cooperation is planned and organised in the relevant Regional Indicative Programme (RIP). For the period 2008-13 a total amount of 116 million Euro from the 10th European Development Fund (EDF) aimed at (EEAS 2016):

- contributing to poverty eradication in the region
- developing and sustaining peace and stability
- attaining the MDGs by promoting regional economic and political integration.

The objectives should be achieved through two focal sectors:

- Regional Economic Integration (80 percent of the envelope)
- Regional Political Cooperation (15 percent)
- the 5 percent left of the envelope are for non-focal sectors.

Some projects financed under the 9th EDF (years 2002-07) are still running, especially the *Capacity Building for Regional Integration Programme*. The total amount under that funds sums up to161 million Euro with the main objectives being to increase economic growth and reduce poverty through higher levels of regional economic integration and to improve trade negotiating capacities at regional and multi-lateral levels.

Since early 2002, the EU Delegation in Botswana has been entrusted by the International Cooperating Partners to coordinate with SADC the overall relations and especially on Trade, Investment, Finance and Industry issues. The framework for the relations between SADC and its International Partners is provided by the *Windhoek Declaration on a New Partnership*, 2006, inspired from the *Paris Declaration on Aid Effectiveness*, 2005.

Under the new 11th EDF (period 2014-20) the planning of development cooperation changed. There is no SADC Regional Indicative Programme any longer. From now on, there is only one general Regional Indicative Programme for the cooperation with Southern, Eastern Africa and the Indian Ocean. It amounts to a total of more than 1.3 billion Euro. A detailed discussion of this new framework follows under *Cooperation under the European Development Funds*.

3.2 Political dialogue

Political dialogue between the European Union and SADC was institutionalized through the Berlin Initiative, which followed a ministerial meeting in 1994 in Berlin. On 6 September 1994 both sides signed a ‘Declaration’. The overall objective of the so-called ‘Berlin Initiative’ was to contribute to peace, democracy and sustainable development in southern Africa. The purpose of the declaration was to further the development of relations between the two regions and to establish a comprehensive dialogue (see in detail Brocza/Brocza 2012).

Over the decades this kind of dialogue at Ministerial level changed. An indication gives the naming of the Communiqués of these meetings. In the beginning the biannual meetings were ‘Ministerial Meetings’, with the participation of Ministers from each member state from the EU and SADC region. These kind of ‘palaver’ over two days – also expression of the privileged position of SADC in doing ‘political dialogue’ with the EU – changed over the years. First the format was reduced to so called ‘Troika meetings’. Then the naming of the meetings changed, too. The last two meetings took place as *‘SADC-EU Ministerial Political Dialogue’* (Maputo 20 March 2013) and *‘EU-SADC Political Dialogue Meeting at Ministerial Level’* (Luxembourg 27 October 2015).

Participants at the Maputo Ministerial Meeting: The Minister of Foreign Affairs and Cooperation of Mozambique as the Chairperson of the SADC Council of Ministers and the Minister of Foreign Affairs and International Cooperation of the United Republic of Tanzania as the Chairperson of the SADC Ministerial Committee of the Organ on Politics, Defence and Security Cooperation; both accompanied by Senior Officials of the SADC Double Troika member states (Angola, Malawi, Mozambique, Namibia, South Africa, the United Republic of Tanzania) and the SADC Secretariat. The EU delegation consisted of the Minister of Trade and Development of Ireland representing the EU Presidency and Senior Officials from the European Union External Action Service (EEAS), the European Commission (EC) and the European Investment Bank (EIB).Compared to former meetings (for example the Vienna Ministerial Meeting with over 30 Ministers) a quite ‘reduced format’. A more technical, bureaucratic political dialogue then a wide-range discussions of all issues of mutual concern and interest between political leaders (Ministers).

The same picture was given at the 2015 Ministerial Meeting in Luxembourg. The only political figures in this political dialogue were the Minister of Foreign Affairs of Luxembourg (on behalf of the EU High Representative for Foreign Affairs and Security Policy), the Botswana Minister of Finance and Development Planning (as Chair of the SADC Council), the Mozambique Deputy Minister for Foreign Affairs and Cooperation (as Chairperson of the Ministerial committee of the SADC Organ on Politics Defence and Security) and the Executive Secretary of SADC.

Both meetings – Maputo and Luxembourg – took place in a technical, bureaucratic atmosphere; routine meetings for some hours, discussing a traditional, well-known agenda. And at the end of the Communiqués, as outcome of political routine, the agreed meeting calendar for the next two years. In the Luxembourg Communiqué this reads as follows (Communiqué 2015: 5):

Ministerial and SOM next Meetings:
The parties agreed that the next Ministerial meeting will take place in the SADC region, possibly in the second half of 2017.
In the course of the first half of 2016, the parties will convene thematic meeting points on mutually agreed areas such as EPS Implementation Plans, industrialisation, infrastructure, jobs and wealth creation, economic governance, migration, food security, and stability, peace and security.
The next Senior official meeting will take place in Europa in the Autumn of 2016, inter alia, to take stock of the progress made with the sectorial meetings and direct further collaboration towards the 2017 Ministerial Meeting.

The same procedure as at the last meeting, the same procedure as at all ministerial meetings before. Nevertheless, the interregional contact between SADC and the EU is still closer than the outcome of ministerial meetings suggests. There is a dialogue going on. But as it seems not at the highest political level. The permanent contacts take place at lower, not always visible level. Beside the above mentioned sectorial meetings the attention is also drawn to a quite technical, but also quite regular meeting forum: the quarterly meeting between the SADC Secretariat and the EU Delegation in Botswana. At their last quarterly meeting on 17 February 2016 they reviewed the ongoing EU-SADC development cooperation. The summary reads quite technical, but it gives an accurate picture of how current SADC-EU dialogue is organised (EEAS 2016a):
Several ambitious programmes financed by the 10th EDF are on-going and these are:

- *The M€ 20Regional Economic Integration Support programme aiming at enhancing the movement of goods and services within SADC, facilitating investments and supporting the negotiations and implementation of the SADC-EU Partnership Agreement.*

- *The M€ 32 Trade Related Facility assisting the SADC member states to achieve their commitments in terms of the SADC trade protocol and the SADC-EU Partnership Agreement.*
- *The M€ 18 Regional Political Cooperation programme providing assistance to the development of democratic institutions, mediation capacities, regional capacities in respect of disaster risk reduction and address cross border crime related to trafficking in persons.*
- *The SADC Project Preparation and Development Facility amounting for M€12 aims at developing viable regional infrastructure projects that could readily obtain financing for their construction.*

A M€12 capacity building programme is also implemented to ensure that the SADC Secretariat remains an internationally compliant governance structure.
The two parties took stock of the results reached under the current programmes and had some fruitful discussions regarding the remaining challenges.
Based on this fruitful cooperation, SADC and EU agreed to frontload a number of new programmes in 2016 under the 11th EDF in the areas of Regional Agricultural Policy; Capacity Development; Regional Economic Integration; Regional Political Cooperation and Regional Natural Resource Management.

3.3 EU-SADC trade relations

The EU concluded negotiations on an *Economic Partnership Agreement* (EPA) on 15 July 2014 with the SADC EPA Group comprising Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland. Angola has an option to join the agreement in future. The other six members of the Southern African Development Community region – the Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Zambia and Zimbabwe – are negotiating Economic Partnership Agreements with the EU as part of other regional groups, namely Central Africa or Eastern and Southern Africa. The EU is the Southern African Development Community EPA Group's largest trading partner, with South Africa accounting for the largest part of EU imports to and EU exports from the region.

EU-SADC 'trade in goods' statistics, 2012-14, Euro billions (European Commission 2016):

Year	EU imports	EU exports	Balance
2012	33,6	34,4	0,9
2013	31,0	33,3	2,3
2014	32,5	31,9	–0,6

The SADC EPA countries are strong in the exports of diamonds and in South Africa, Botswana, Lesotho and Namibia these constitute a large to dominant share of their exports to the EU. Other products from the region include agricultural products (beef from Botswana, fish from Namibia or sugar from Swaziland), oil from Angola or aluminium from Mozambique. South Africa's exports to the EU are much diversified and range from fruit to platinum and from manufactured goods to wine.

The EU exports a wide range of goods to the SADC EPA countries, including vehicles, machinery, electrical equipment, pharmaceuticals and processed food. The countries in the SADC EPA Group are members of the WTO. However, they constitute a very diverse group. Lesotho and Mozambique are least developed countries (LDCs), but countries like Namibia and Botswana hold upper middle income status. Botswana, Lesotho, Namibia, South Africa and Swaziland form the Southern Africa Customs Union (SACU).

Trade between the EU and South Africa is currently governed by the *Trade, Development and Cooperation Agreement* between the EU and South Africa. Most of the Southern African Customs Union members have aligned their import regime to this trade agreement. As the main point of entry into SACU, duties are mainly collected by South Africa, which then redistributes to the other members according to an agreed formula.

3.4 Cooperation under the European Development Funds

Trade and regional integration are the main areas of EU support to the SADC region along with regional political cooperation and capacity building for the Secretariat of SADC. Strong capacity development support from the EU to the SADC Secretariat – SADC's administrative body – enabled reform of the management of funds. SADC, therefore, is now in a position to administer

funds from donors with its own procedures. Six EU projects for SADC for a total sum of 56 million Euro – supporting regional integration and continued capacity development – were approved in 2012, and one more project for 32 million Euro (Trade Related Facility) has been approved in 2013 leading to a full commitment of the 116 million Euro earmarked for the region under the 10th EDF, the European Development Fund – the funding instrument for African, Caribbean and Pacific (ACP) countries and Overseas Countries and Territories (OCTs), for the period of 2008-13. The programme has been implemented by SADC in cooperation with the EU Delegation to Botswana and SADC.

However, the 2011 Mid-Term Review of the SADC Regional Indicative Programme under the 10th EDF concluded that the region's efforts achieving the common agenda of deeper integration have been undermined by a number of constraining factors, such as (European Commission 2015, 14):

- multiple and overlapping memberships, which can be perceived as a duplication of the responsibilities of different institutions serving the same constituents
- limited incorporation of regional law into national law and adherence to integration requirements, and the persistence of barriers to the free flow of goods, services and people across borders
- the principle of subsidiarity between the regional and national levels being overlooked or misunderstood
- the absence of effective mechanisms for organising, implementing, directing, monitoring and revising the integration process, both at national and regional levels.

Under the 10th EDF there were two Regional Strategy Papers/Regional Indicative Programmes: one for COMESA, EAC, IGAD and IOC (so called EAS-IO) with a 645 million euro allocation; and a second one for SADC with a 116 million Euro allocation. The 2011 mid-term review highlighted the limits of the 10th EDF approach European Commission 2015: 13-14):

- Regional Indicative Programmes focal areas were too broad and actions and priorities were not clearly identified.
- The assistance targeted mainly regional organisations' secretariats, which proved to having limited project management capacity and did not reach

eligibility for EU direct funding through Contribution Agreements in the foreseen time schedule, with the exception of COMESA.

- Regional programmes did not reduce the gap between regional and national level, since they did not make as much progress as intended to promote the domestication of regional commitments at national levels.
- The complex implementation modalities of the ESA-IO Regional Indicative Programme, even with continued support to a coordination system, proved unsatisfactory and added burden to the preparation and implementation of regional programmes.
- SADC member states could not participate in some regional programmes financed by the ESA-IO Regional Indicative Programme, even if relevant, because of the separation between the Regional Indicative Programmes.

On the basis of these findings, under the 11th EDF (the financing period 2014-20) only one general Regional Indicative Programme for the cooperation with Southern, Eastern Africa and the Indian Ocean has been established. It amounts to a total of more than 1.3 billion Euro. Co-signatories were the Secretaries General and Executive Secretaries of five regional organisations (COMESA, EAC, IGAD, IOC and SADC) representing 29 African countries. The signing ceremony took place on 4 June 2015 in Brussels. Key elements of this single Regional Indicative Programme are (European Commission 2015: 15):

- Concrete actions, preferred implementation modalities and implementing partners have been identified in the Regional Indicative Programme wherever possible.
- The overall Regional Indicative Programme envelope is be divided into separate indicative allocations:
    - One allocation per each ‘sub-region’ (COMESA, EAC, IGAD, IOC, SADC and their member states), including support to each secretariat of the five regional organisations and to other regional or international actors.
    - One allocation for infrastructure financing to be delivered mainly through blending instruments.
    - One allocation for seven cross regional priorities which do not correspond to the geographical coverage or the core mandate of any one of the five regional organisations.

- Support to the five regional organisations is based on their own strategies and action plans as well as on capacity and real added value in terms of promoting regional objectives. All actions financed by the single Regional Indicative Programme will be identified in full complementarity with the Joint Africa-EU Strategy and support provided under the Pan African or Intra-ACP programmes, through National Indicative Programmes of the countries of the region and/or any EU instruments.
- In order to strengthen linkages and empower stakeholders best placed to ensue the realisation of the five regional organisations policy objectives and intended programming results, the EU and the five regional organisations will assess when objectives can be better reached through projects implemented by other stakeholders, through the principles of 'subsidiarity' and 'direct access'. Part of the support to the regions will be delivered to national governments' committees to undertake the necessary reforms to achieve progress in regional integration.
- EU-funded actions supporting regional economic integration will be identified with due consideration for countries' multiple memberships to the five regional organisations and taking into account the outcome of their own internal coordination of these five organisations.

  The regional funding to Southern, Eastern Africa and the Indian Ocean will target three priority areas in the region:
- First, it will foster peace, security and regional stability, helping to prevent and manage conflict, and address security threats in a region of key strategic importance for Europe. This complements EU efforts to enhance resilience and tackle the root causes of migration.
- Secondly, it will promote regional economic integration and trade facilitation, by integrating markets, promoting investment and improving production capacities, including the development of infrastructures.
- Finally, the funding will support sustainable natural resource management at regional level, improving resilience and biodiversity conservation.

Concerning SADC the Regional Indicative Programme for the period of 2014-20 is based on the indicative allocation amounting to 90 million Euro. All actions to be implemented under this envelope will be identified and formulated with due consideration to inclusivity and gender mainstreaming and as such will contribute to achieving the targets highlighted in the SADC

Protocol on Gender and Development (2008). The indicative allocation will be distributed as follows (European Commission 2015: 63-70):

- Priority Area 1: Peace, Security and Regional Stability: An indicative 15 million Euro shall be reserved for this area. The overall objective is to support the SADC Secretariat in fostering peace, regional stability, democratic governance and accountability across the region as essential elements underpinning regional integration and socio-economic development.
  5 million euro will be reserved to *strengthen the infrastructure for peace, security and regional stability* (specific objective 1), the other 10 million to *promote regional stability through increased respect for rule of law and enhanced public security across the SADC region* (specific objective 2).
- Priority Area 2: Regional Economic Integration: 47 million Euro shall be reserved for this area. The overall objective of this priority area is to deepen regional integration, increase economic growth and reduce poverty through enhancement of trade and financial liberalisation and integration, promotion of competitive and diversified industrial development and increased investments, enhancement of market and economic integration, strengthening the capacity of social partners (employers' and workers' organisations), and support to labour market institutions. The actions to be implemented under this priority area will be designed so as to ensure the equal access, benefit and opportunities of women and men in trade and entrepreneurship, taking into account the contribution of women in the formal and informal sectors. Equally, actions under this priority area will support the SADC region to optimise the full potential of the recently adopted SADC-EU Economic Partnership Agreement (EPA).
  The following three specific objectives shall be pursued: (1) *Support for the Consolidation of the SADC Free Trade Area (FTA) and Implementation of the SADC-EU Economic Partnership Agreement (EPA)*– 15 million Euro; (2) Support *towards industrialisation and the productive sectors* – 18 million Euro; (3) *Support to intra-SADC investment and foreign direct investment through improving the business and investment environment* – 14 million Euro.
- Priority Area 3: Regional Natural Resource Management: 9 million Euro shall be reserved for this specific objective. The overall objective is to

support SADC efforts in the management of natural resources with a particular emphasis on sustainable agriculture, food security and gender equality.

The following specific objective shall be pursued: *Operationalise SADC's Regional Agriculture Policy to contribute to achieving sustainable food and nutrition security in order to achieve sustainable access to safe, adequate and affordable food.*

- Cross-Cutting: Institutional Capacity Building: An indicative 19 million euro shall be reserved for this area. The following specific objective shall be pursued: *Strengthen the capacity of the SADC Secretariat to harmonise policies and strategies of member states, coordinate, monitor and evaluate the implementation of the Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation (SIPO).*

3.5 Some points of irritation: sanctions/restrictive measures, security and defence missions and operations and the consultation procedure under Article 96 of the Cotonou Agreement

Over the years to dialogue with SADC has also been irritated by (i) EU sanctions/measures against certain SADC member states, (ii) EU missions and operations in the field of security and defence policy and (iii) consultation procedure under Article 96 of the Cotonou Agreement.

Sanctions – also referred to as restrictive measures – against third countries, individuals or entities, are an essential EU foreign policy tool that it uses to pursue objectives in accordance with the principles of the EU Common Foreign and Security Policy. Certain EU measures are imposed by Resolutions adopted by the UN Security Council under Chapter VII of the UN Charter. The EU may however decide to apply autonomous measures in addition to the UN's measures or adopt restrictive measures autonomously. In general terms, the EU imposes its restrictive measures to bring about a change in policy or activity by the target country, part of a country, government, entities or individuals. They are a preventive, non-punitive, instrument which should allow the EU to respond swiftly to political challenges and developments. Sanctions should be used as part of an integrated and comprehensive policy approach, in the

framework of the European Union's overall foreign policy strategies, involving political dialogue, complementary efforts and other instruments. The measures should target the policies or actions that have prompted the EU's decision to impose sanctions and the means to conduct them, and those identified as responsible for these policies or actions. Such targeted measures should minimise adverse consequences for those not responsible for such policies and actions, in particular the local civilian population, and for those carrying out legitimate activities in or with the country concerned. The political objectives and criteria of the restrictive measures should be clearly defined in the legal acts. Restrictive measures must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts. The uniform and consistent interpretation and effective implementation of the restrictive measures is essential to ensuring their effectiveness in achieving the desired political objective. EU autonomous sanctions or EU additions to UN sanctions are reviewed at regular intervals to ensure measures are adjusted as needed, in line with developments affecting the stated objectives and the effectiveness of the measures (EEAS 2016b).

Against following SADC member states such restrictive measures are currently in force:

Democratic Republic of Congo: the measures concern (i) embargo on arms and related materiel against non-governmental entities and individuals operating in DR Congo, (ii) ban on provision of certain services, (iii) freezing of funds and economic resources, (iv) restrictions on admission as well as (v) a list of persons, entities and bodies subject to restrictions (European Commission 2016a: 20-22).

Zimbabwe: the measures concern (i) embargo on arms and related materiel, (ii) ban on exports of equipment for internal repression, (iii) ban on provision of certain services, (iv) restrictions on admission (suspended as regards certain natural persons), (v) freezing of funds and economic resources (suspended as regards certain natural or legal persons, entities or bodies) and (vi) a list of natural and legal persons, entities and bodies (freezing of funds and economic resources and, as regards natural persons, restrictions on admission). (European Commission 2016a: 140-144).

For the moment two EU missions and operations in the field of security and defence policy take place in SADC member states:

The *EUSEC RD Congo mission*(EEAS 2016c), which has been deployed in the Democratic Republic of the Congo (DRC) since June 2005, reflects the EU's ongoing commitment to the Congolese people in terms of reforming their army. Working closely with the other contributing members of the international community, the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo) provides practical support for security-sector reform in the DRC by giving advice and assistance directly to the competent Congolese authorities. Advisers have been working with the military authorities in Kinshasa and the staffs of the military regions via the mission's detachment in Goma and the combined EUSEC-FARDC mobile team. Since the original mandate, which aimed to support integration into the Armed Forces of the DRC (FARDC) and to run the ‘Chain of payments’ project for ensuring the security of payments to the military, the mission has expanded its activities in this area with a view to modernising both administration and human resources management. It has also diversified its activities, providing assistance to its Congolese partners in the field of troop training. Four other missions – all in relation to the DCR – have been concluded in the years before.

Tanzania and the Seychelles are still involved in the ongoing *EU CAP Nestor mission* (EEAS 2016d). In July 2012, the EU launched EUCAP Nestor, a civilian mission which assists host countries develop self-sustaining capacity for enhancement of maritime security.
At its launch, EUCAP Nestor was mandated to work across the Horn of Africa (HoA) and Western Indian Ocean (WIO). As of the end of 2015, following a strategic review of the Mission, activities focus solely on Somalia (including Somaliland).

Consultation procedure under Article 96 of the Cotonou Agreement (Council of the European Union 2016)*:* The Cotonou Agreement serves as the framework for EU-ACP relations for a 20 year period, it includes a political dimension, economic and trade cooperation, and development cooperation.EU and ACP countries acknowledge that human rights, democratic principles, and the rule of law are essential elements of their partnership and key pillars for long-term development. They commit to protecting and promoting these areas,

in particular through political dialogue. They also established a procedure which may be used in cases where one of the parties does not comply with the above fundamental principles. For this purpose, the EU is considered as one party and each specific ACP country as another party. The rules for this procedure are set out in article 96 of the agreement. This article has been applied about 15 times since 2000, following violent government overthrows, escalation of violence or human rights violations. Cases concerning SADC member states include Zimbabwe (2002) and Madagascar (2010).

In practice, consultations under article 96 take place at governmental level. The parties should strive to have an equal level of representation during the consultations. The EU is represented in consultation procedures by the presidency of the Council and the European Commission. The length of the consultation period depends on the nature and gravity of the violation and the development of the discussions. It is determined by mutual agreement of the parties and cannot be longer than 120 days.

3.6 New priorities, other fora

We have shown that – over time – new issues dominated the SADC-EU dialogue and created new priorities. Especially, the discussions on (possible) EPAs blocked the limited negotiation capacities of SADC member states from the beginning. In addition, especially the new established EU-African Partnership created a number of new working structures, which also sometimes overlapped SADC-EU relations (EEAS 2016e):The EU-Africa relations are based on (i) the 2000 *Cotonou Agreement* with the ACP countries, which grew out of the 1975 Lomé Convention and (ii) the 2007 *Joint Africa-EU Strategy*. The Strategy encompasses the Africa-EU Partnership, the overarching political framework defining bilateral relations. Its goal is a partnership between equals that will jointly tackle issues of mutual concern.

Especially South Africa avoids more and more the SADC platform and operates at a higher/different level with the EU. The New Partnership for Africa's Development (NEPAD) initiative sought dialogue between Africa as a whole and the Group of Seven/Eight(G 7/8) states, and therefore also made its mark on EU-SADC relations. South Africa participates directly via the Group of 20 (G 20) in world politics and meets regularly with the EU side at the EU-South African Cooperation Councils (within the framework of the South

African-European Union Trade, Development and Cooperation Agreement)as well as at Head-of-State level at the South African-EU Summits (within the greater EU-South African Strategic Partnership). The special relationship between EU and South Africa can be explained by both the ineffectiveness of SADC and the EU's strategic economic interest in South Africa rather than the SADC region as a whole (Hettne, B., Söderbaum, F. 2005: 10).

4. Brexit and its implications for EU-SADC Relations

On 23 June 2016 the British citizens voted on a referendum to leave the EU. The departure of the United Kingdom from the EU — commonly referred to as the Brexit — will have negatively affects the global economy. But what are the potential consequences the Brexit might have on EU-SADC relations?

Perhaps the biggest impact of the Brexit would be the end of British 'outwardness' - the country's concern with and responsiveness to global development issues (Sow, Sy. 2016). An exit from the EU would also have dire consequences for the global EU development assistance. The United Kingdom is – after Germany and France - the third biggest contributors to the European Development Fund (EDF), the EU's key development assistance instrument, which provides also the main funding for the SADC region. The United Kingdom currently contributes making up 14.8 percent of all contributions to the EDF (Brocza. 2016).

Under the current system of the EU, the United Kingdom benefits from a myriad of EU trade agreements with third countries and groupings round the world. The Brexit will lead to unprecedented negotiations between the United Kingdom and the WTO's 161 other members. Bilateral trade agreements signed between the EU, on one hand, and other countries and regional communities, on the other, would also have to be renegotiated. One example of such deals is the recent EU-SADC Economic Partnership Agreement. The agreement, signed on 10 June 2016, includes clauses on allowing free access to the EU market for select SADC countries (Botswana, Lesotho, Mozambique, Namibia, and Swaziland). The agreement also introduces more flexible rules of origin, with the aim of promoting the development of regional value chains (Sow, Sy.2016).

The SADC EPA still has to be ratified by the parliaments of the signatories, including South Africa. Once this has happened it will come into force, but following the Brexit, the United Kingdom will not be party to it. The SADC EPA will however stand, but the SADC-United Kingdom relationship will have to be renegotiated. Of course, the UK could theoretically have exactly the same provisions in a stand-alone agreement or it gives SACU and the United Kingdom the opportunity to negotiate a tailormade agreement that is different to the EU-SADC EPA. In such a case Mozambique, which is now part of the SADC-EPA would also need to negotiate a separate agreement with the United Kingdom in the event (Parshotam, Prinsloo, Sidiropoulos. 2016).

Within the EU, the United Kingdom is one of Africa's largest trade partners. The Brexit, followed with the annulment of trade agreements, could accentuate said decline. For instance, scholars from North-West University argue that the Brexit would cause a 0.1 percent decline in South Africa's GDP due to the strong trade ties between the two nations (Sow, Sy.2016). However, a Brexit is likely to result in significant global financial volatility, with not only the British Pound losing value, but investors also becoming jittery about emerging markets. Capital constraints in the United Kingdom as a result of this volatility could also impact on the ability of countries such as South Africa to access financing from British banks. Such consequences place additional strains on South Africa's economy at a time when South Africa can least afford it (Parshotam, Prinsloo, Sidiropoulos. 2016).

An EU without the United Kingdom will shift its centre of gravity, with Eastern and Southern European voices becoming relatively more influential. As a result, foreign policy and development challenges from near neighbours - in North Africa, the Middle East and the former Soviet Union - threaten to eclipse engagement with the wider world, namely sub-saharian Africa. Already, the Eurozone troubles and migrant crises are causing the EU to expend a huge amount of political energy looking inward. The new EU Global Strategy, whose recent launch was overshadowed by the June 24 referendum, already demonstrates how concerns about security and stability in Europe are threatening to dictate and narrow EU foreign policy and funding choices. Brexit is likely to exacerbate this trend (Watt P. 2016). In this context also the revision of the Cotonou Partnerschip Agreement beyond 2020 and even the general framework for EU-ACP relationship is under consideration (Brocza. 2016).

5. Conclusion and outlook

It seems that interregional institutional development between the SADC and EU became sometimes politically boring – but at the same time solid enough to exist further on. This does not mean that both sides have lost general interest in meeting – but for the moment it seems that SADC's regional development is more and more of medium concern for the EU. In addition, it is important to mention that interregional dialogue between SADC and the EU is not restricted to an institutionalised EU-SADC framework. The same group of politicians and officials meets all the time on bilateral level and at conferences of other international organisations and groupings, especially within the EU-ACP framework and the EU-African Partnership. The interregional contact between SADC and the EU is therefore de facto even closer than the official interregional structure suggests.

References

Aggarwal, V. K., Fogarty E. A. (eds). 2004. *EU Trade Strategies: Between Regionalism and Globalism*. Basingstoke: Palgrave Macmillan.

Bretherton, C., Vogler, J. 1999. *Europe as a Global Actor*. London: Routledge.

Brocza S., Brocza A. 2012. *SADC-EU relations: What happened to the Berlin Initiative?* Chapter 6 of Monitoring Regional Integration in Southern Africa Yearbook 2011, Trade Law Centre for Southern Africa, the Konrad-Adenauer-Stiftung, 2012.

Brocza S. 2016. Brexit – das Ende der EU-Entwicklungspolitik. In: Südwind 9/2016, Vienna.

Buzdugan S. R. 2013. *Regionalism from without: External involvement of the EU in regionalism in southern Africa*. In: Review of International Political Economy, 1-30.

Communiqué. 2013. *Communiqué. SADC-EU Ministerial Political Dialogue*. 20 March, 2013. Maputo, Mozambique.

Communiqué. 2015. *Joint Communiqué. EU-SADC Political Dialogue Meeting at Ministerial Level*. Luxembourg, 27 October 2015.

Council of the European Union. 2016. *Article 96 of the Cotonou Agreement - consultation procedure*. http://www.consilium.europa.eu/en/policies/eu-africa/article-96-cotonou-agreement/ [10.9.2016].

European Commission, SADC. 2008. *Regional Strategy Paper and Regional Indicative Programme 2008-2013*.

European Commission. 2016. *Trade – SADC*. http://ec.europa.eu/trade/policy/countries-and-regions/regions/sadc/ [10.9.2016].

European Commission. 2016a. *Restrictive measures (sanctions) in force (Regulations based on Article 215 TFEU and Decisions adopted in the*

framework of the Common Foreign and Security Policy). List updated on 15.1.2016.

European Commission. 2015. *Regional Indicative Programme for Eastern Africa, Southern Africa and the Indian Ocean (EA-SA-IO) 2014 to 2020*.

European External Action Service (EEAS). 2016. *SADC & the EU*. http://www.eeas.europa.eu/delegations/botswana/eu_sadc/index_en.htm [10.9.2016].

European External Action Service (EEAS). 2016a. *Information note on the SADC Secretariat and the EU Delegation on their quarterly meeting on 17th of February 2016 to review the EU-SADC development cooperation*.

European External Action Service (EEAS). 2016b. *Sanctions policy*.http://eeas.europa.eu/cfsp/sanctions/index_en.htm [10.9.2016].

European External Action Service (EEAS). 2016c. *EUSEC RD CONGO*.http://www.eeas.europa.eu/csdp/missions-and-operations/eusec-rd-congo/index_en.htm [10.9.2016].

European External Action Service (EEAS). 2016d. *EUCAP-NESTOR*. https://www.eucap-nestor.eu/ [10.9.2016].

European External Action Service (EEAS). 2016e. EU-Africa Relations. http://www.eeas.europa.eu/africa/ [10.9.2016].

Gilson, J. 2002. *Defining Inter-Regionalism*. SEAS Electronic Working Papers, Vol. 1. Sheffield: University of Sheffield.

Hänggi, H. 2000. *Interregionalism: empirical and theoretical perspectives*. Paper prepared for the workshop Dollars, Democracy and Trade: External Influence on Economic Integration in the Americas, Los Angeles, 18 May.

Hänggi, H., Roloff, R. and Rüland, J. 2006. *Interregionalism and International Relations*. Milton Park, Abinton, Oxon: Routledge.

Hettne, B., Söderbaum, F. 2005. *Civilian Power or Soft Imperialism?* The EU as a Global Actor and The Role of Interregionalism. European Foreign Affairs Review.https://www.researchgate.net/publication/259576731.

Jetschke A., Murray P. 2012. *Diffusing Regional Integration: The EU and Southeast Asia*. In: West European Politics, 35:1, 174-191.

Katzenstein, P. 2005. *A World of Regions*. Ithaca, N.Y.: Cornell University Press.

Keohane, R.O., Nye, J. 1989. *Power and Interdependence: World Politics in Transition.* Boston, MA: Little, Brown.

Lenz T. 2012. *Spurred Emulation: The EU and Regional Integration in Mercosur and SADC*. In: West European Politics, 35:1, 155-173.

Reiterer, M. 2005. *Interregionalism: A new Diplomatic Tool. The European Experience with East-Asia.* Paper presented at the 3rd Conference of the European Union Studies Association Asia-Pacific (EUSAAP),Tokyo, December 8-10.

Parshotam A., Prinsloo C. and Sidiropoulos E. 2016. Does a Brexit matter for South Africa? South African Institute for International Affairs (SAIIA).http://www.saiia.org.za/opinion-analysis/does-a-brexit-matter-for-south-africa[10.9.2016].

Roloff, R. 2006. Interregionalism in theoretical perspective. State of the art. *In:* Hänggi, H., Roloff, R. and Rüland, J. 2006. *Interregionalism and International Relations*. Milton Park, Abinton, Oxon:Routledge: 17-30.

Rüland, R. 1996. *Politische und sozio-kultruelle Faktoren von Kooperation und Integration imasiatisch-pazifischen Raum. In* Eilenberger, G., Mols, M., Rüland, J. (eds.). *Kooperation, Regionalismusund Integration im asiatisch-pazifischen Raum*. Hamburg: Institut fur Asienkunde.

Rüland, R. 1999. *The EU as inter-regional actor*. Paper prepared for the International Conference Asia-Europe on the eve of the 21st century, Bangkok, 19-20 August.

Rüland, J. 2002. Inter– *and Transregionalism: Remarks on the State of the Art of a New Research Agenda, National Europe Centre Paper No. 35, Paper prepared for the Workshop on Asia–Pacific Studies in Australia and Europe*. A Research Agenda for the Future, Australian National University, 5–6 July.

Saurombe A. 2009. *Regional Integration Agenda for SADC 'Caught in the winds of change' Problems and Prospects*. In: Journal of International Commercial Law and Technology, 4:2, 100-106.

Schmeiser M. 2014. *Regional Integration in Southern Africa SADC's development strategy in the context of foreign influence*. Vienna.

Söderbaum F., Van Langenhove L. 2005. *Introduction: The EU as a Global Actor and the Role of Interregionalism, Journal of European Integration, 27:3, 249-262, DOI*: 10.1080/07036330500190073.

Sow M., Sy A.2016. The Brexit: What implications for Africa? Brookings. https://www.brookings.edu/2016/06/21/the-brexit-what-implications-for-africa/ [10.9.2016].

Waltz, S. 1979. *Theory of International Politics.* Waltham, MA: Addison-Wesley.

Watt P. 2016. Post-Brexit, where next for EU development policy? https://www.savethechildren.net/article/post-brexit-where-next-eu-development-policy [10.9.2016].

Chapter 2

China Africa Relations: A new type of strategic partnership?

Kizito Sikuka

1. Introduction

It is not a secret. Growing cooperation between Africa and its partners has had a noticeable impact on the performance of most African economies. For example, a number of African countries have witnessed a significant increase in trade, Foreign Direct Investment (FDI), aid and other development assistance from its partners in Europe, the United States, Brazil, India, Japan and Turkey. According to the Africa-European Union (EU) Partnership, it is estimated that around a fifth of global FDI that flows in Africa comes from the EU. In addition to this, the EU supports a number of priority programmes in Africa in key sectors such infrastructure development, agriculture, energy, as well as peace and security through its support to the African Union (AU), where it contributes more than 80% of the AU Commission (AUC) programme budget. In the area of trade, Africa and the EU are finalizing lucrative negotiations to implement an Economic Partnership Agreement (EPA) aimed at opening up the EU market to African goods, thereby promoting trade. To cement relations, the 4th EU-Africa Summit held in Brussels, Belgium in 2014 also saw the EU pledge to invest more than €40 billion (approximately US$44 billion) over the period 2014-2020 in Africa. Such support is critical to Africa's developmental agenda, as it will not only enable the continent to transform its economies but also become a major player in global affairs.

However, it is the increasing engagement with the new emerging economy of China over the past decades that has attracted a lot of attention within Africa and even among its traditional partners. This is partly due to the contribution of Chinese investments, trade and partnership cooperation to Africa's economic

growth and its implications for Africa's relations with traditional partners and other emerging powers (Cheru, 2011). Analysts argue that rapid engagement between China and Africa in recent years has, albeit with challenges, broadened and brightened Africa's prospects in so many ways and allowed the continent to experience socio-economic growth at a faster rate than most other continents. According to the African Economic Outlook 2015, increased foreign trade and investment, particularly from China, has seen Africa's Gross Domestic Product (GDP) continue to grow from 3.5% in 2013 to 4.5% in 2015, and an expected 5% in 2016 (African Development Bank (AfDB), Organisation for Economic Co-operation and Development (OECD), United Nations Development Programme (UNDP), 2015). This is a major milestone, especially if compared to the more than 40 years of Africa's engagement with other traditional partners, which has yielded very little.

China-Africa cooperation has come at a critical stage when most of the traditional partners had reduced their assistance to Africa due to a variety of factors, particularly the global economic and financial crisis of 2008. Furthermore, the conditions of accessing Chinese financial assistance is more flexible than those offered by traditional partners. In this regard, there is a strong assertion that the rise of China has had a profound effect on Africa's development path in the last few years. Increased China-Africa cooperation has opened up a new window of collaboration and partnership, and offered the continent with an option of not having to look only to the established advanced developed economies for support and partnerships but instead having the ability to pursue an alternative route with other partners (New Partnership for Africa's Development (NEPAD), 2012). And most importantly, this blooming 'new partnership' between China and Africa has also made Africa's traditional partners to suddenly pay closer attention to Africa's needs and priorities.

This paper, therefore seeks to explore why China-Africa cooperation is being hailed as a 'new type of strategic partnership' that has elevated Africa's position on the global scene. To identify the opportunities as well as challenges presented by China-Africa cooperation, special emphasis will be on unpacking the structure of trade and investment between China and Africa. The paper will also trace the historical development of China-Africa relations to appreciate its objectives, and highlight its variance with other partnerships that Africa has entered into. The paper concludes by discussing some concrete steps which need to be taken to improve the relationship and foster a more systematic and

balanced partnership that benefits both parties. This is in light of the fact that the growing presence of emerging economies in Africa also tends to pose serious risks to Africa's future growth if not properly addressed.

2. Overview of China-Africa Relations

2.1 Early engagement

Relations between China and Africa are not new. Even though the relations have somewhat become topical in the past decade due to their complexity and phenomenal trade volume recorded in the last few years, the cooperation can be traced back many centuries ago. The first Chinese traders to visit Africa are believed to have done so as early as in the 15th century when they came to East Africa. In the latter half of the 20th century, soon after consolidating its own revolution, China began to work with African countries on the liberation of those parts of the continent that were still under colonial rule (Johnson, 2015). Chinese cooperation with Africa was also strengthened through the Bandung Conference of 1955 held in Indonesia. The Bandung Conference brought together Asian and African countries, most of which were newly independent with the main aim of promoting Afro-Asian economic and cultural cooperation and to oppose colonialism or neo-colonialism (Marafa, 2009). However, China's modern relations with the continent began with the establishment of diplomatic relations with Egypt in 1956 (Kerry, 2009). Currently, China has established diplomatic ties with a majority of African countries except for a few, namely Burkina Faso, Chad, Gambia, Malawi and Swaziland, who still maintain relations with Taiwan (Afrol, 2016). Under the One China Policy, China will only establish diplomatic ties with countries that recognise only one state called China, despite the existence of two governments that claim to be 'China'. The state of Taiwan is another country that claims to be 'China'.

2.2 Economic cooperation

On the economic front, a classic example of China-Africa cooperation was achieved in 1970-75 when China provided a US$400 million interest-free loan for the landmark construction of a 1,800 km-long railway line linking Tanzania and Zambia (Schiere, 2011). The construction of the Tanzania-Zambia railway line commonly known as TAZARA is regarded as a decisive moment in China-

Africa relations because at that time China was still very much poorer than most African countries yet the Asian nation was ready to commit such a huge amount towards the development of Africa. Most importantly, some of Africa's traditional partners in the West were reluctant to fund the TAZARA arguing 'that the railway was both unnecessary and uneconomic' (Joint Publishers, 2015). Founding President of the United Republic of Tanzania said in his speech at the official handover of the TAZARA in 1964 that "I had underestimated the revolutionary commitment, and the internationalism of the Chinese people," adding that "we continued to beg the West to help us build the railway" but to no avail. This important gesture by China to build the railway line was, therefore, critical in the evolution of economic cooperation between China and Africa. Other major investments by China in Africa include infrastructure development in the form of public buildings and sports facilities such as the construction of the National Sports Stadium in Zimbabwe in 1987. In addition to this, China also provided various loans and economic aid to a number of African countries soon after their independence.

2.3 Establishment of FOCAC

It is not until the new Millennium that China-Africa partnership entered a new phase when a record 48 African leaders gathered in 2000 in Beijing, China with their Chinese counterpart to establish the China–Africa Cooperation Forum (FOCAC). The forum forms a critical part of China's engagement with Africa, as well as how the continent relates with the Asian nation. The FOCAC platform is based on the principles of South-South cooperation and mutual and equal benefit, with a view to addressing various areas of concern for Africa's socio-economic development and integration. Although FOCAC commitments are presented in a multilateral forum, they are implemented bilaterally (Johanna, 2009). The forum is held every three years and rotates between Chinese and African countries. In many ways it is an exemplary form of South-South cooperation, demonstrating the strengths of utilising an incremental and practical approach to tackling development issues of mutual concern (Alden, 2016).

This impressive cooperation between China and Africa under FOCAC is further cemented by frequent high-level reciprocal visits between African leaders and their Chinese counterparts. Each year, the first visit destination of the Chinese Foreign Minister is always Africa (Kerry, 2009). In return, a

number of senior government officials, ministers and African leaders also visit China each year. The same can be said about other Chinese officials who visit Africa annually. During these visits, mega socio-economic deals and agreements in various sectors of the economy are signed in a bid to strengthen economic cooperation between China and African countries. For example, when Chinese President Xi Jinping visited Zimbabwe in December 2015, a total of 12 investment agreements were signed covering aviation, energy, telecommunications, infrastructure and private sector ventures (Johnson, 2015). Similar investment deals were also signed when President Jinping visited South Africa and Egypt in December 2015 and Egypt in January 2016 respectively.

As predicted by the then Chinese President Hu Jintao in his statement to the inaugural FOCAC held in 2000 that 'our meeting today will go down in history,' China-Africa relations have indeed caught world attention. Since the emergence of the FOCAC, the blooming partnership has continued to change, strengthen and transform international development in the 21st century. For example, China's development has accelerated at a pace faster than most industrialised countries, overtaking the United States as the largest economy in the world in December 2014 (IMF, 2014). In the same period, Africa's engagement with China has seen its GDP reach a record 4.5% in 2015, and an expected 5% in 2016. In addition to this, while FDI into Africa has drastically declined from its traditional partners, Chinese investment in Africa has grown over the past decade, with direct investment estimated at more than US$30 billion in 2014 (Chinese Government, 2013). China has also became Africa's largest trading partner, having developed a mutual, sound and vibrant partnership with trade volume between the two increasing exponentially over the past decade, rising from about US$10 billion in 2000 to more than US$198 billion in 2012, and projected to reach US$220 billion for 2014 (Chinese Government, 2013).

The 2006 FOCAC meeting held in Beijing was another watershed moment in the history of China-Africa cooperation. At the meeting, China made commitments to open its market to African exporters and apply tariff-exemption to some products exported by African countries to China. Some of the ambitious pledges made include the following, and most of them have either been met or surpassed;

- double aid to Africa to reach about US$1 billion by 2009;
- establish a China-Africa Development Fund to boost Chinese companies' investments in Africa;
- provide US$3 billion in preferential loans and US$2 billion in preferential buyer's credits to African countries;
- cancel debts for 31 African countries;
- open China's market for exports to African countries;
- build hospitals and schools in rural areas in Africa; and
- Construct Agricultural Technology Demonstration Centres in Africa.

Relations between China and Africa scaled to new heights in 2015, when Africa hosted the Johannesburg Summit of FOCAC. The Summit marked the first time that African and Chinese leaders met in Africa to look at ways of deepening cooperation. In fact, the meeting was only the second time in the 15-year history of FOCAC that the leaders were meeting together, the first being in 2006 in China. At the summit, China announced a new US$60 billion Chinese fund to support development on the African continent. The plan covers development in a wide range of sectors of the African continent, including improvement of the continent's industrial capacity, agricultural modernisation, infrastructure development, upgrading rural and urban settlements, green development, trade and investment facilitation, poverty reduction, health improvement, culture and people to people exchange, and peace and security cooperation (Madakufamba, 2015). Chinese President Xi Jinping indicated that the fund, which consists of grants, favourable concessionary loans and other investment funds, will be channelled into areas selected by African countries as opposed to priorities imposed by others. In this regard, FOCAC has provided a more structured platform for deepening the ties between China and Africa in a broad spectrum of fields from political to economic areas.

Table 2 contains some of the main results or action plans of FOCAC since its inceptions. For example, the Program for China-Africa Cooperation in Economic and Social Cooperation of 2000 pledged to undertake 'joint efforts to improve trade and investment environment through such measures as granting each other preferential treatment in conformity with existing national laws, equitable treatment to all investors together with investment guarantees and just settlement of eventual disputes, in accordance with internationally accepted rules and practices'. China and Africa also agreed to establish a

China-Africa Joint Business Council, as well as the creation of a China-Africa Products Exhibition Centre in China to promote two-way trade and facilitate access for African products to the Chinese market.

Table 1: Six FOCAC meetings

Year	Place	Result
2000	Beijing	• Beijing Declaration of FOCAC • Program for China-Africa Cooperation in Economic and Social Cooperation
2003	Addis Ababa	• Addis Ababa Action Plan (2004-2006)
2006	Beijing	• Beijing Declaration • Beijing Action Plan (2006-2008)
2009	Sharm El Sheikh	• Declaration of Sharm El Sheikh • Sharm El Sheikh Action Plan (2010-12)
2012	Beijing	• Beijing Declaration • Beijing Action Plan (2013-2015)
2015	Johannesburg	• The Johannesburg Declaration of FOCAC • FOCAC Action Plan (2016-2018)

Source: Author

3. China-Africa Trade and Investment Cooperation

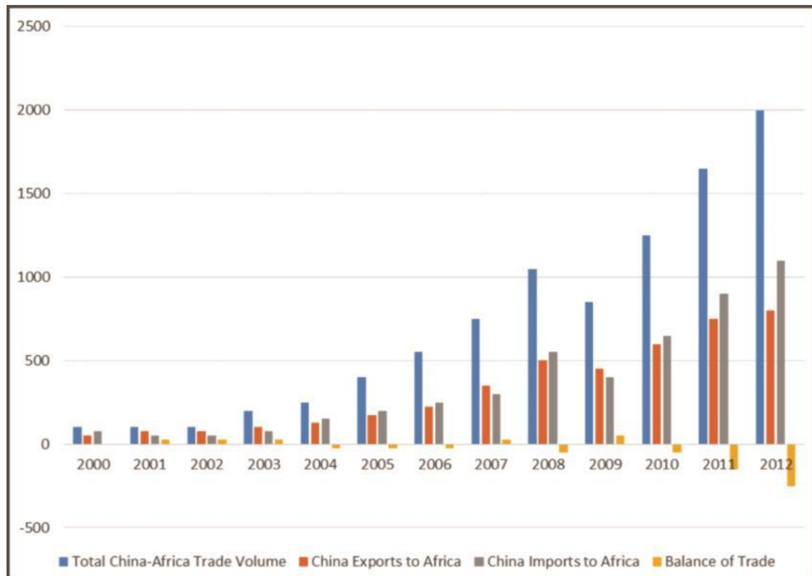
3.1 Core elements of China-Africa Trade

The Chinese approach to doing business in and with Africa is not any different from those pursued by other traditional partners (Cheru, 2011). Like most cooperations, China-Africa relations span various sectors of the economy including trade, finance, aid, health, agriculture and education. However, the core elements of the cooperation are trade and investment, and these two are clearly spent out within the framework of FOCAC (Chinese Government, 2013). For China, the African continent represents a growing source of raw materials, most importantly crude oil, iron ore and concentrates, and copper, which have helped fuel China's rapid infrastructure development (Gamache, 2013). In the case of Africa, the continent needs China to improve its poor infrastructure base, raise its global status, create promising choices in external partnerships, and strengthen African capacities in health care and economic growth. As a result of this, China has in past few decades become Africa's

largest trade partner, while on the other hand Africa is now China's major import source, and one of the largest overseas construction project contract market and investment destination. This trend is likely to continue in the coming years because of the natural resource intensity in China's economic growth, and Africa's natural resources abundance coupled with the continent's need to develop its economy (Drummond, 2013).

But one area of interest in the China-Africa trade cooperation is defining the structure of trade and investment. Identifying this structure is critical in unpacking the various opportunities and challenges presented by the so-called 'strategic partnership'. For a start, it is unquestionable that trade volumes between China and Africa have been on a steady increased over the last few decades. In fact, despite a background of sluggish global economic recovery in recent years including the global financial crisis of 2008, trade and investment between China and Africa has remained very high, resulting in China becoming Africa's number one trade partner in 2009. As depicted in Figure 1, trade volumes between China-Africa grew exponentially to reach record levels between 2000 and 2012. For example, in 2000, trade volume between China and Africa was estimated at about US$100 million, with Chinese exports to Africa at about US$50 million.

Figure 1: China-Trade Volume (2010-2012) (Unit: US$100 million)



Source: Chinese Government White Paper on China-Africa Economic and Trade Cooperation (2013)

By 2006, the volume reached more than US$500 million, while Chinese exports to Africa and imports from Africa were just about US$400 million. In 2011, trade hit the US$160 billion mark, with imports from Africa totalling more than US$1.1 billion and exports at more than US$800 million. This development has allowed China to catch up, and in some cases surpass other traditional partners including the US and the EU in becoming a major trading partner with Africa. However, it is also important to note that the balance of trade has been on a steady increase in the period under review. In 2010, the balance of trade was at about US$50 million, increasing to about US$150 million in 2011 and US$250 million by 2012. Projections by China are that trade volume between China and Africa would reach more than US$220 billion for 2014 while investment is expected at US$30 billion in 2014.

A similar study on China-Africa trade conducted by the Trade Law Centre (tralac) also revealed increased growth. For example, the compound growth rate of China's total trade with Africa shows that total trade increased by 25%

between 1995 and 2013. The study also indicated that over the same period, Chinese imports from and exports to Africa increased by 29% and 22%, respectively. It is estimated that in 1995 China's total trade with Africa accounted for only 1% of China's total world trade. This has steadily increased from to 3% in 2006 by between 3% and 5% per year over the last eight years (tralac 2014).

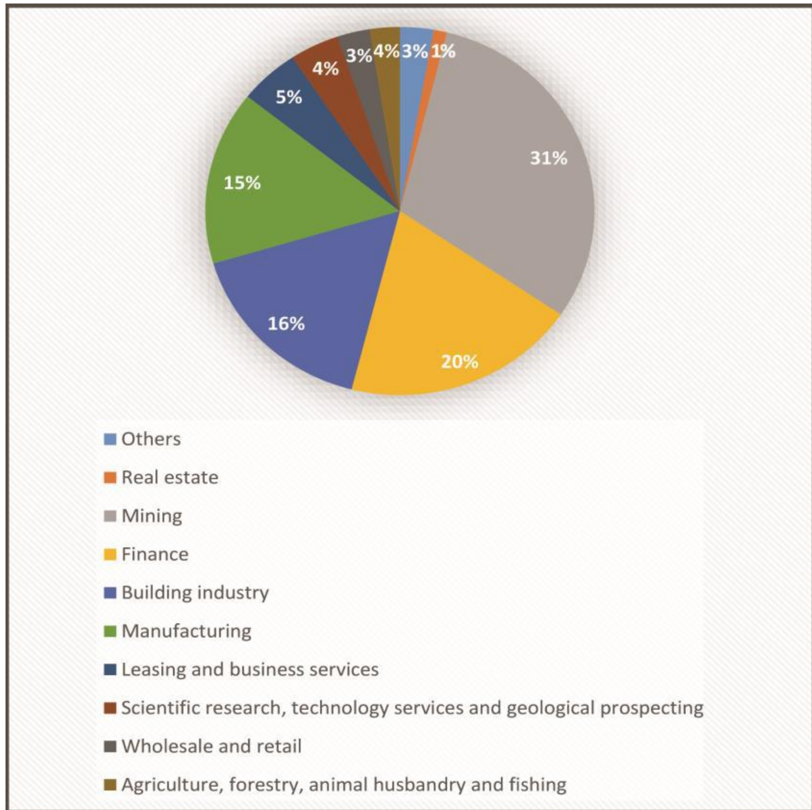
3.2 Structure of China-Africa Trade

According to available figures on trade and investment volumes, there is little debating that China-Africa cooperation is a 'new strategic partnership' which has broadened the options for growth in Africa and presented real and significant opportunities for the African continent. However, taking a closer look at the distribution of Chinese investment and trade in Africa by sector, one is tempted to view the partnership as unbalanced and not in favour of Africa but to China. This has led some scholars to liken the situation to what western countries did decades ago when they exploited African resources, thereby raising a question as to whether China is now a new coloniser or exploiter in Africa (Thompson, 2014.) As can be seen in Figure 2, the bulk of Chinese direct investment in Africa is in the mining sector. This buttresses the motion that for China, Africa represents a growing source of raw materials, which have helped fuel China's rapid infrastructure development. In fact, approximately 70% of African exports to China consist of crude oil and 15% of raw materials (AfDB, 2010).

As depicted in Figure 2, a total of 30.6% of Chinese investment in Africa by end of 2011 was channelled towards mining, finance (19.5%) and manufacturing at 15.3%. The least investment sector was agriculture, forestry and animal, which received a mere 2.5%. This is striking because the agricultural sector is regarded as an engine for socio-economic development in most African countries, yet very little was invested by China in the sector. According to the AU, agriculture accounts for about one-third of the continent's GDP, and more than two-thirds of its citizens rely directly on the sector for their livelihood. In this regard, one would expect agriculture to be a key strategic area in the China-Africa cooperation to ensure that Africa is able to reach its full potential in harnessing its agricultural potential. What is worrisome is that the share and profile of Chinese direct investment in Africa is likely to remain the same over the next few years. However, what is pleasing to

note is that China has acknowledged this disparity and together with Africa is exploring measures to promote the healthy development of China-Africa trade. These include implementing the “Special Plan on Trade with Africa,” which will expand the scope of zero tariff treatment for African products exported to China and increase China’s imports from Africa.

Figure 2: Distribution of Chinese Direct Investment in Africa (by end of 2011)



Source: Chinese Government White Paper on China-Africa Economic and Trade Cooperation (2013)

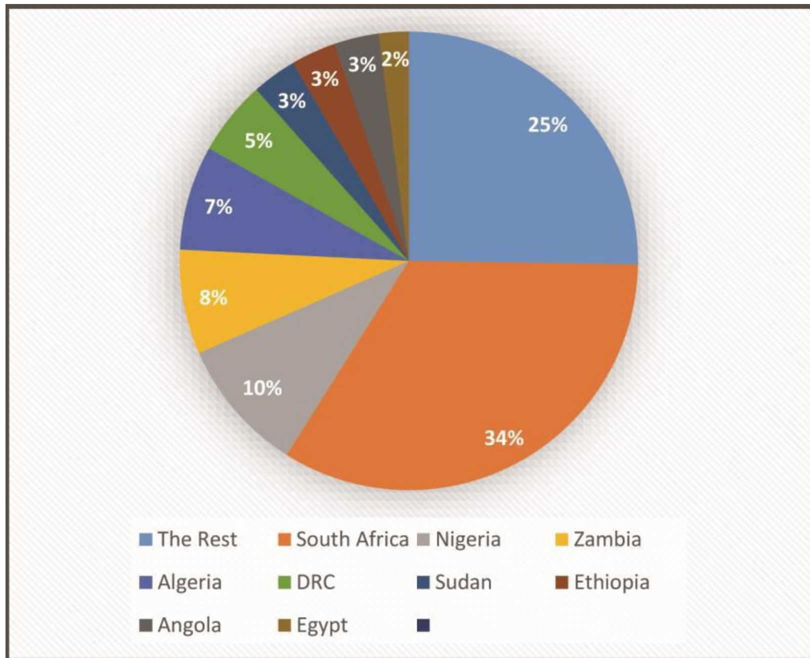
3.3 Chinese Investment Distribution in Africa

With regards to investment, despite a general decrease of foreign direct investment in Africa since 2009, there has been an accelerated growth of direct investment from China. For example, from 2009 to 2012, China's direct investment in Africa increased from US$1.44 billion to US$2.52 billion, with an annual growth rate of 20.5% (Chinese Government, 2013). Over the same period, China's accumulative direct investment in Africa increased from US$9.33 billion to US$21.23 billion, representing about 2.3 times the 2009 figure. The rapid growth of China's direct investment in Africa is indicative of Africa's development potential and investment appeal, and also points to the mutually beneficial nature of China-Africa cooperation. By the end of 2012, the volume of investment by African countries in China totalled US$14.242 billion, increasing by 44% over 2009 levels. Of that, the figure for 2012 was US$1.388 billion, according to the Chinese Government White Paper on China-Africa Economic and Trade Cooperation.

Nevertheless, it is worth noting that Africa remains a marginal trading partner of China compared to China's trade with other countries, RECs or continents. For example, it is estimated that China and the EU are trading more than €1 billion every day (EU, 2014). This figure is impressive, particularly if one considers that just two decades ago, China and the EU traded almost nothing. According to a factsheet on EU-China trade released by the EU in 2014, bilateral trade in goods between the two has reached a massive €428.1 billion in 2013, while trade in services was at €49.9 billion.

Further to this imbalance, trade data shows that Africa's trade with China is highly concentrated in only a few selected countries. This trade inequity may help to explain the structure of the China-Africa trade as it is focused on countries that have mining resources such as oil and minerals, buttressing the assertion that China's economic ties with Africa is driven by the need to explore Africa's resources. It is estimated that more than 70% of Chinese exports are destined for just a few selected African countries namely Angola, Algeria, DRC, Egypt, Ethiopia, Nigeria, South Africa and Zambia. As shown in Figure 3, a total of 34% of Chinese investment is destined for South Africa.

Figure 3: Distribution of Chinese Investment in by African countries



With regard to RECs, most Chinese imports and exports to Africa are destined for the Southern African Development Community (SADC). This is because the SADC region is endowed with natural resources including oil in Angola, diamonds in South Africa and gas in Mozambique. Other major RECs in terms of Chinese exports and imports are the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). It is estimated that the value of goods China imported from SADC, COMESA and the EAC in 2013 alone was approximately US$89 billion, US$14 billion and US$803 million respectively (Tralac, 2014). This accounted for roughly 76%, 12% and 1% of all Chinese imports from Africa in 2013.

It is important, therefore to assert that despite the challenges that characterise China-Africa trade, the cooperation is nevertheless impressive. More than 2,000 Chinese companies including joint ventures, the private and small and medium sized enterprises have established business in Africa (Daouda, 2012).

Furthermore, a number of Chinese financial institutions including the People's Bank of China, the China Development Bank, and the Export-Import Bank of China (Exim Bank of China) are supporting large-scale investments in Africa, mostly in infrastructure development (UNCTAD 2014; Shen 2014). Africa has profited from economic growth in China and its subsequent growth in demand for oil and other natural resources. Most importantly, China is also investing and providing assistance in areas that western aid agencies and private investors have long neglected: physical infrastructure, industry and agriculture (Anthony 2006).

4. How different is China-Africa relations from other partnerships?

Africa's engagement with China has aroused a lot of interest, as well as scrutiny to an extent that one is either for or against the partnership. Those against the relations often portray China's increased presence and engagement with Africa as prowling the resource-rich African continent. Key words to describe this relationship include words like 'neo-colonialism', 'propping up of dictators' and 'a new scramble for Africa.' On the other hand, those in support of the partnership view it as the 'best thing' to ever happen for Africa. However, as mentioned earlier in this paper, China's involvement with Africa is not new. In fact, it dates back many years. And most importantly, it is quite different from Africa's other engagements with some of its traditional partners that evolved from the colonial past. And due to this set up, most post-colonial cooperation between Africa and its traditional partners such as the US and Europe tend to be unbalanced, driven by one partner and therefore, less beneficial to Africa. In this regard, contrary to what many might think, China did not foist itself on African government like the western colonialists who took up the administrative governance and resources of each country they colonised (Thompson, 2014).

Furthermore, China-Africa cooperation is deploying a more ambitious perspective on African development by focusing efforts on growth and productivity, investment and South-South cooperation. This contrasts with a traditional donor-recipient type of relationship which is largely based on aid. The new partners of Africa also seem to adopt a different style of partnership vis-à-vis the African leadership. As clearly noted in the FOCAC agreement,

China does not interfere with the internal politics of African governments. Yet at the same time, China does do not seem to have major problems openly building alliances with controversial African elites. Obviously, this type of cooperation based on strong vested interests, may have contributed to more self-confident and assertive attitudes of African leaders in the partnership with other traditional partners (The European Centre for Development Policy Management (ECDPM), 2013.)

Another difference in the partnership is that while traditional partners in the West usually portray Africa as burdened by civil wars, epidemics and corruption, China usually celebrates Africa and sees opportunities for partner-ship and growth. According to numerous scholars, leaders of the People's Republic of China would never term Africa a 'hopeless continent'. They celebrate Africa's culture and achievements, while these are implicitly denigrated in the West, where all that is celebrated about Africa are leaders who hearken to Western advice (King, 2006). Such a relationship has thus cemented cooperation making a 'new type of strategic partnership' that has made other partnerships stand up and take a closer look, whether positively or negatively at the China-Africa relations.

More importantly, Chinese investments in Africa are not a threat to African countries, they are usually full of gains. First of all, Chinese government imposes no political conditions on African governments before signing contracts either for exploration or other economic activities. Secondly, Chinese firms are willing to invest where western companies and aid agencies are unwilling to invest in areas such as physical infrastructure, industry and agriculture (Thompson, 2014).

5. Conclusion and Way Forward

According to a 2011 report from African Development Bank (AfDB), 'China is a valuable trading partner, a source of investment financing, and an important complement to traditional development partners. China is investing massively in infrastructure, which helps alleviate supply bottlenecks and improve competitiveness'. However, like any partnership, it is not all-perfect. As such, there are some concrete steps which need to be taken to improve the relationship and foster a more systematic and balanced partnership that benefits both parties. This is in light of the fact that the growing presence of emerging

economies may also pose serious risks to Africa's future growth if not identified and addressed. For example, the structure of trade between China and Africa tends to be unbalanced in favour of the Asian country, hence, Africa needs to address this discrepancy to ensure that the continent fully benefits from its partnership with China. If the current trade imbalances is not resolved Africa will continue to primarily export raw materials while importing manufactured Chinese products, instead of the continent also exporting finished products to China.

One of the major recommendations is that African countries should continue to analyse strategic objectives of emerging economies, and opportunities as well as threats arising from their entry. As earlier mentioned, China sees Africa as a source of raw materials to help fuel its own rapid infrastructure development. In this regard, it is critical for Africa to scrutinise each agreement with China to ensure such agreements do not benefit one party at the expense of the other. Therefore, there is need for Africa to develop a vibrant strategy in its engagement with China to ensure the continent gets more from its resources.

Another pertinent issue with regard China-Africa relations is that while FOCAC commitments are presented in a multilateral forum, they are implemented bilaterally. Such an arrangement is prone to manipulation as some countries tend to benefit more than others in their engagement with China. In this regard, it is important for Africa to have a common position in its engagement with China. One way of achieving this is to extend cooperation with China through various regional initiatives such as the AU, different RECs including SADC and COMESA and even African institutions such as the AfDB and the New Partnership for Africa's Development (NEPAD) to maximise bargaining power and avoid wars of incentives. Such an arrangement will facilitate coordinated bargaining where it may be appropriate to include the interests not just of commodity exporting economies, but also non-exporting economies (UN. 2010). It is thus pleasing that at the recent Johannesburg Summit of FOCAC held in South Africa, China made an undertaking to expand its portfolio from bilateral support to individual countries to RECs.

While most scholars are in agreement that Africa has benefited from its engagement with China, the continent should nevertheless remain in charge of its own development plan and not leave its entire future development plan in the hands of external partners. As such Africa should be aware that it has an

abundance of natural resources such as diamonds, gold and platinum in the continent to finance its own development agenda. However, this development can only be attained if measures are put in place to address the scourge of Illicit Financial Flows (IFF) from the continent. It is estimated that Africa has lost more than US$1.8 trillion to IFF between 1970 and 2008 alone, and continues to lose resources valued at up to US$150 billion annually through IFF or 'illicit capital flight', this mainly through tax evasion and mispricing of goods and services by multi-national companies (according to a recent study commissioned by the AU). This, therefore, means that resources which are intended to develop Africa are being used elsewhere to improve the economies of other countries in Europe, Asia and the US.

Notwithstanding the economic benefits that Africa derives from China, another negative aspect of the relationship is the persevered lack of transparency, and the continued tendency by China to openly build alliances with African countries without any conditionalities such as those demanded by other partners. For example, most western partners demand good governance, sound economic management and established local accountability for any developmental assistance. Analyst have urged China to also strongly consider these issues in its engagement with African countries, and for African countries to also make public such agreements with a long view to protect its investments assets and citizens in Africa. Another important aspect is for Africa to learn more about China, its culture and history. Such knowledge is critical when negotiating agreements. At the moment, it seems China knows more about Africa while the continent knows little about its partner.

In a nutshell, growing relations between China and Africa presents various opportunities and challenges for Africa. The opportunities include increased Chinese investment that has re-shaped the economies of most countries in Africa, and seen the continent improve its infrastructure base. On the other hand, the challenges include the depletion of natural resources, as China's cooperation with Africa is mainly driven by the need for resources to fuel its own development agenda. Therefore, as indicated in the introduction, strategic partnerships have the capacity to make a positive difference if properly chosen and exploited. The onus is on Africa to ensure that it fully benefits from its partnership with China. Failure to do so, will render the partnership one-sided, and as what critics of China-Africa cooperation say the partnership will be 'neo-colonialism' of Africa. However, if Africa exhibits the same enthusiasm

as their Chinese partner then the cooperation will turn out to be a ‘new type of strategic partnership’ that other partnerships will surely want to follow and emulate as it is based on mutual trust and beneficial to both parties.

Abbreviations

African Development Bank (AfDB)

African Union (AU)

AU Commission (AUC)

China–Africa Cooperation Forum (FOCAC)

China- Africa Development Fund (CADFund)

Common Market for Eastern and Southern Africa (COMESA)

East African Community (EAC)

Economic Partnership Agreement (EPA)

European Union (EU)

Gross Domestic Product (GDP)

Foreign Direct Investment (FDI)

Illicit Financial Flows (IFF)

New Partnership for Africa's Development (NEPAD)

Regional Economic Communities (RECs)

Southern African Development Community (SADC)

Trade Law Centre (Tralac)

United States (US)

References

AfDB, 2010Chinese Trade and Investment Activities in Africa, Policy Brief. Volume1, Issue 4. 29 July, 2010

AfDB, OECD, UNDP, 2015, African Economic Outlook 2015: Regional Development and Spatial Inclusion.

Afrol, 2016, China woos Taiwan's African friends

Anthony L, 2006, More than Humanitarianism: A Strategic U.S. Approach toward Africa Report of an Independent Task Force, Council on Foreign Relations

AU, 2015, Continent and Country Partnerships

AUC, 2014. Africa-EU Relations 2014: Making EU-Africa Relations future-proof. The Bulletin of Fridays of the Commission. Newsletter Volume 6 No. 1 June/Juin 2014

Chinese Government, 2013. White paper on China-Africa Economic and Trade Cooperation, Beijing, China

Daouda C, 2012, FOCAC: trade, investments and aid in China - Africa relations. Policy Brief, the Centre for Chinese Studies (CCS) at Stellenbosch University, South Africa

Drummond P, 2013, Africa's Rising Exposure to China: How Large Are Spillovers through Trade? IMF Working Paper

Natalie M. Hess. EU Relations with "Emerging" Strategic Partners: Brazil, India and South Africa, GIGA German Institute of Global and Area Studies

Johanna J. 2009. The Forum on China-Africa Cooperation (FOCAC).A briefing paper by the Centre for Chinese Studies Prepared for World Wide Fund for Nature (WWF). The Centre for Chinese Studies (CCS) at Stellenbosch University, South Africa

Johnson, P. 2015. China-Africa and China-Zimbabwe: Past, Present and Future, Southern African News Features, SARDC

Joint Publishers, 2015. Julius Nyerere, Asante Sana, Thank You Mwalimu. Tien Wah Press (Pty) Ltd, Singapore

IMF, 2014, World Economic Outlook Data: October 2014 Edition

Kerry B, 2009, China in Africa – Preparing for the Next Forum for China Africa Cooperation

King, K, 2006, 'Aid within the Wider China-Africa partnership: A View from the Beijing Summit', paper to Workshop on China-Africa Links, 11-12 November 2006, Hong Kong University of Science and Technology.

Marafa L, 2009, Africa's Business and Development Relationship with China Seeking Moral and Capital Values of the Last Economic Frontier. Nordiska Afrikainstitutet, Uppsala

NEPAD, 2012, Africa's Decade of Change, August 2012, NEPAD Planning and Coordinating Agency

Schiere R, 2011, China and Africa: An Emerging Partnership for Development? – An overview of issues, Working Paper, African Development Bank

Thompson A, 2014, China in Africa: An Evaluation of Chinese Investment. Initiative for Public Policy Analysis (IPPA) Working Paper, Nigeria

UN, 2010, Africa's Cooperation with New and Emerging Development Partners: Options for Africa's Development, United Nations publication

Chapter 3

Chinese imports from Africa: the impact of the recent commodity price declines

Ron Sandrey, Emmanuel Igbinoba, Rodney Hoaeb and Tebogo Mojafi[2]

1. Introduction

Over the most recent time period through to the end of 2015 there have been two major features of the global economy. These have been the decline in commodity prices that generally started in mid to late 2014 and was accentuated through 2015; and the decline in the growth and the decline in the GDP growth rates in China. In the context of slow growth rates for many of the major developed countries the decline in China's growth from a period of stellar growth in the region of 10% or higher to the steady decline from around the start of 2011 to the recent data of marginally under 7% may not seem to be all that important, but given that China's growth has been a major contributor to global growth in recent times this decline has caused alarm. There is of course a strong correlation between these two events, and it is no coincidence that the decline in commodity prices has taken place more or less concurrently with the commodity price decline, as China has developed a significant appetite for commodity imports. This relationship is however only one in the complex world of commodity trading and overall economic relationships.

The objective for this paper is to examine Chinese imports from Africa in recent years, with an emphasis on the changes in these imports over the 2015 December year. We make no attempt to examine the impacts of these changes

[2] Respectively tralac Associate; Research Analysts, Centre for Chinese Studies, Stellenbosch University; Policy Analyst, Namibia Trade Forum; and Project Manager – Maritime Research, Innovation and Industry Engagement, South African Maritime Authority

on the individual African countries, many of whom have devalued their currencies as a partial shield against the declining commodity prices, but rather examine the changes in trade flows to China firstly in aggregate and then by individual countries and commodities. We use data sourced from the International trade Center (ITC) for Chinese imports only, and these imports are at the HS 4 level and expressed in US dollars. We make no attempt to reconcile these Chinese imports with the comparable African exports but rather exclusively use the Chinese data on the basis that in contrast with African export data at this stage it is complete for 2015 and that using the one source should lead to consistency notwithstanding the problems that exist with trade data in general. As in all cases where we have used the ITC trade data we eschew a reference to the individual tables.

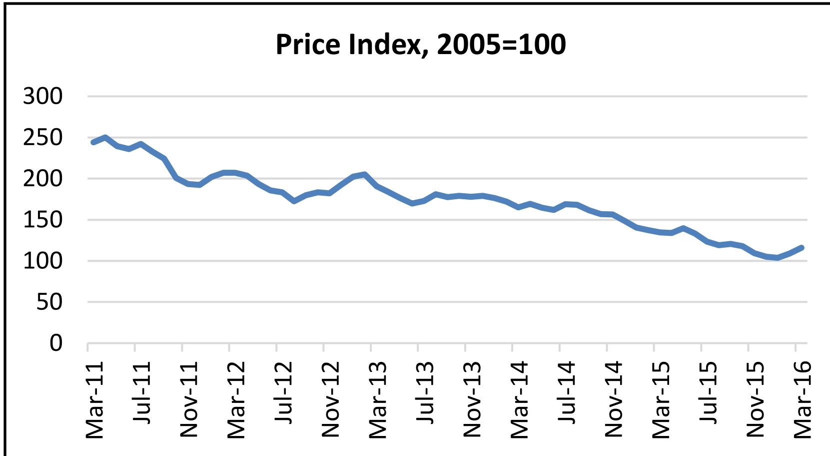
This paper is then just one piece of the complex jigsaw of African economies. In some cases China is an important destination for African exports while in other cases it is less so. In almost all cases though African exports are strongly dependent on commodities, so even if China is not a major destination there will be comparable trade impacts to other destinations from the commodity price declines. Thus a more complete picture would entail an examination of African exports to all destinations. At this stage such an examination is just not possible for many of the African countries as their trade data for 2015 is not reported as of early 2016.

The paper is structured as follows. An overview of global commodity prices in recent years is provided to set the scene for an examination of the 2015 import data against that for 2014 in particular, and this is followed by a presentation of the 'big picture' profile for these imports. We follow this up by a more in-depth examination of the imports by both the major country sources and the HS 4 classification commodities.

2. The overall commodity price profile

To set the overall scene for an analysis of the impacts of the falling commodity prices we show firstly an overall metals index and then the index values for crude oil and iron ore prices. In Graph 1 the overall index has been trending downwards since March of 2011.

Graph 1: Commodities metal price index from 2011, where 2005=100

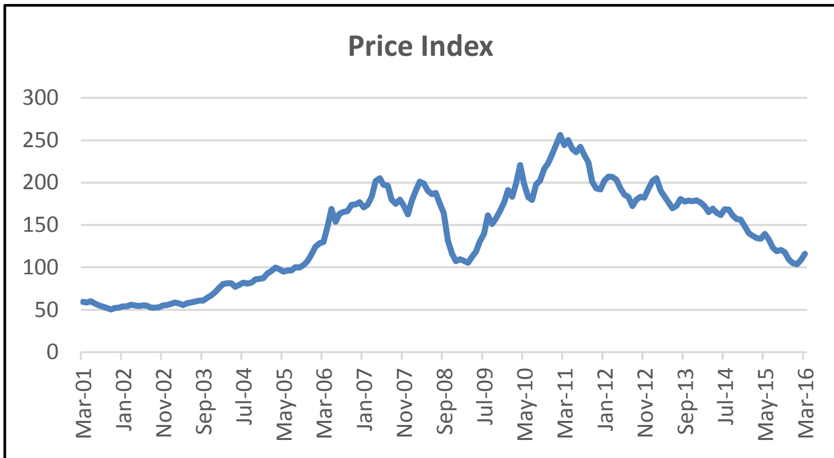


Source: Index Mundi, includes Copper, Aluminium, Iron Ore, Tin, Nickel, Zinc, Lead, and Uranium Price Indices

Although in this paper we have concentrated upon the imports into China during 2015 and the changes over the 2014 imports, it is instructive to extend Graph 1 above to a longer time period. This is done in Graph 2 and shows a 16 year history and highlights that 2011 was a high. While prices retreated from that high they are still above the prices for the early part of the period shown. Another interesting feature of the Index Mundi commodity index graphs (and especially some not shown) are that over the three months of 2016 they are showing an increase. It is of course too early to assess as to whether this is a temporary feature or the start of a recovery.

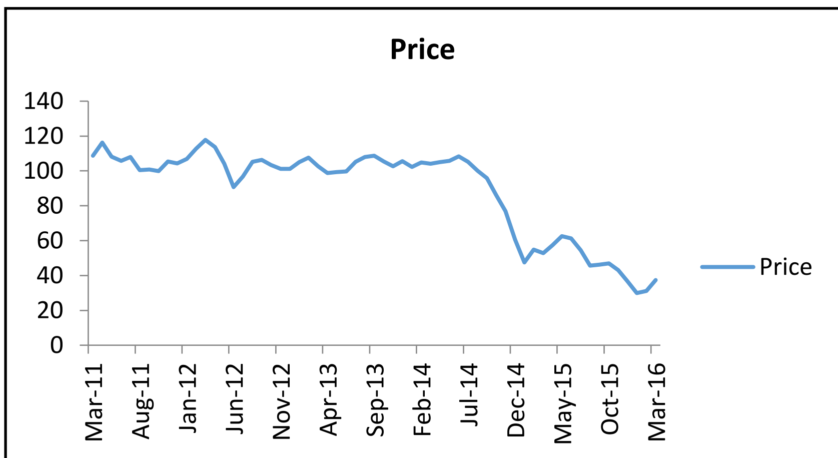
The index of most interest to many African exporters is the crude oil index, and this shown in Graph 3. Here the precipitous fall during 2014 that continued at a less dramatic rate during 2015 is highlighted.

Graph 2: Commodities price index from March 2001.



Source: Index Mundi

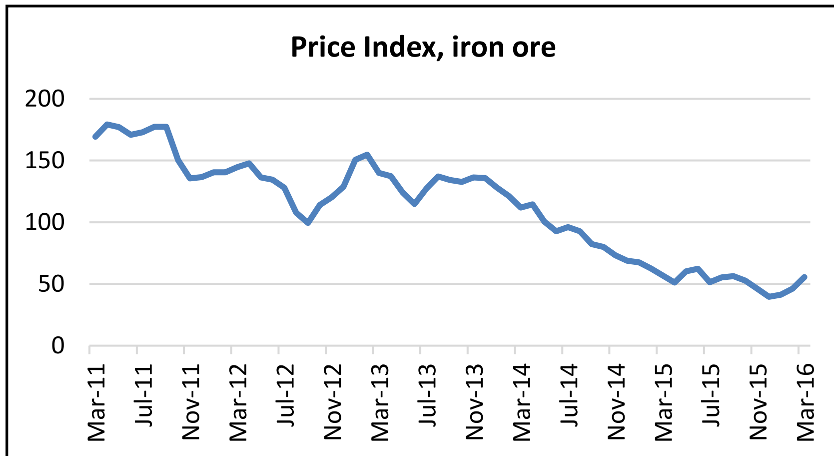
Graph 3: Price index for crude oil, March 2011 to March 2016.



Source: Index Mundi

As we shall see later another important index is the one for iron ore (Graph 4) where the index value declined from 101 in May of 2014 to a low of 40 in December 2015 before showing the upward trend during the first three months of 2016.

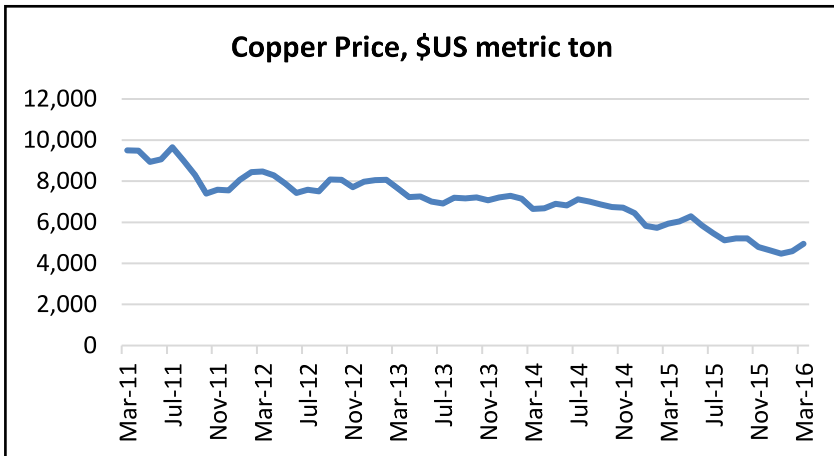
Graph 4: Price index for iron ore



Source: Index Mundi

Finally, given the importance of copper to countries such as Zambia we show the price per metric ton in Graph 5. Note that this is not an index, but rather the actual price. While there has been a steady downward trend, this trend was accentuated from March of 2014.

Graph 5: Copper prices, US $ per metric tons from March 2011



Source: Index Mundi

Overall, commodity prices certainly declined during 2015, although in many instances this followed a downward trend since early 2011. Also, it must be stressed that the 2011 prices were the highest reported for the last thirty years and even current prices are above those for the first twenty years.

3. The overall import profile

We start the trade data analysis by examining the big picture profile of Chinese imports by source country as shown in Table 1. This data is for the five year period from 2011 to 2015 December years, with the left hand side of the table showing the imports in US $ millions and the right hand side showing firstly the overall share of the top-20 African imports in total Chinese imports and then the respective shares of the African countries in the overall imports from Africa. For the first ten African sources the imports during 2015 were all lower than their 2014 levels, and this generally but not always holds for the next ten sources. Overall African imports declined to some 4.19% of the Chinese total from levels of close to 6% over the previous two years. South Africa has consistently been the main individual source, followed by Angola and further back Sudan and the DRC. South Africa and Angola have contributed around two-thirds of the total imports in recent years.

A clearer picture of the changes during 2015 from the 2014 base is shown in Table 2. Here the 2014 imports are indexed to a value of 100 and the other total imports values are assessed against this.

The top data line in the table shows that Chines global imports were stable during both 2013 and 2014 after gradually rising from 89 in 2011 to 93 in 2012. The global fall to 86 (–14%) in 2015 was significantly less than the comparable and very significant fall to 61 (–39%) for African imports. Further examining the African data shows that the rise from an index of 81 during 2011 was more rapid than global imports, while the index for 2012 of 98 highlights that African imports were very stable from 2012 to 2014 inclusive, and this makes the step decline during 2015 all the more dramatic.

There is significant variation in the relative declines of imports from the individual countries, with several showing declines of half or more during 2015 while others (but less significant suppliers) actually increasing their exports. We again caution that given we are examining one African market this early profile may be misleading as countries may be diversifying their export destinations but our hypothesis is that given the comprehensive nature of the commodity price falls and the dependence of Africa on commodity exports this profile would be repeated across the board.

Table 1: Chinese imports from Africa, $ million and % shares (of firstly Africa in Chinese imports and then the respective shares of African countries)

Exporters	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
World	1,743,395	1,818,199	1,949,992	1,958,021	1,681,671	% shares of Chinese imports – (Total then African)				
Africa Aggregation	93,238	113,245	117,454	115,659	70,469	5.35%	6.23%	6.02%	5.91%	4.19%
South Africa	32,095	44,654	48,388	44,571	30,226	34.42%	39.43%	41.20%	38.54%	42.89%
Angola	24,922	33,562	31,973	31,106	15,997	26.73%	29.64%	27.22%	26.89%	22.70%
Sudan (North + South)	9,542	2,054	4,568	5,851	3,056	10.23%	1.81%	3.89%	5.06%	4.34%
Congo, DRC	3,162	3,527	2,746	2,816	2,665	3.39%	3.11%	2.34%	2.43%	3.78%
Congo	4,672	4,555	5,712	5,479	2,617	5.01%	4.02%	4.86%	4.74%	3.71%
Zambia	2,776	2,687	3,048	3,071	1,815	2.98%	2.37%	2.59%	2.66%	2.58%
Ghana	363	644	1,203	1,452	1,296	0.39%	0.57%	1.02%	1.26%	1.84%
Nigeria	1,584	1,274	1,547	2,658	1,237	1.70%	1.12%	1.32%	2.30%	1.76%
Equatorial Guinea	1,673	1,823	2,470	3,217	1,165	1.79%	1.61%	2.10%	2.78%	1.65%
Gabon	578	618	899	1,608	1,101	0.62%	0.55%	0.77%	1.39%	1.56%
Libya	2,064	6,376	2,039	726	950	2.21%	5.63%	1.74%	0.63%	1.35%
Egypt	1,518	1,321	1,852	1,159	916	1.63%	1.17%	1.58%	1.00%	1.30%
Algeria	1,961	2,312	2,165	1,315	782	2.10%	2.04%	1.84%	1.14%	1.11%
Cameroon	663	890	366	689	782	0.71%	0.79%	0.31%	0.60%	1.11%
Zimbabwe	464	584	688	837	766	0.50%	0.52%	0.59%	0.72%	1.09%
Mauritania	1,517	1,469	1,729	1,171	745	1.63%	1.30%	1.47%	1.01%	1.06%
Morocco	476	558	531	518	529	0.51%	0.49%	0.45%	0.45%	0.75%
Mozambique	257	403	455	1,650	452	0.28%	0.36%	0.39%	1.43%	0.64%
Ethiopia	292	309	316	490	380	0.31%	0.27%	0.27%	0.42%	0.54%
Tanzania	490	379	553	436	379	0.53%	0.33%	0.47%	0.38%	0.54%
% of total						97.7%	97.1%	96.4%	95.8%	96.3%

Table 2: China's imports from Africa by source, indexed to 2014 values and growth 2015 over 2014

Exporters	Index 2011	Index 2012	Index 2013	Index 2014	Index 2015	Growth 2015/2014 %	Imports 2015, $ M
World	89	93	100	100	86	-14	1,681,671
Africa Aggregation	81	98	102	100	61	-39	70,469
South Africa	72	100	109	100	68	-32	30,226
Angola	80	108	103	100	51	-49	15,997
Sudan (North + South)	163	35	78	100	52	-48	3,056
Congo, DRC	112	125	98	100	95	-5	2,665
Congo	85	83	104	100	48	-52	2,617
Zambia	90	87	99	100	59	-41	1,815
Ghana	25	44	83	100	89	-11	1,296
Nigeria	60	48	58	100	47	-53	1,237
Equatorial Guinea	52	57	77	100	36	-64	1,165
Gabon	36	38	56	100	69	-31	1,101
Libya	284	878	281	100	131	31	950
Egypt	131	114	160	100	79	-21	916
Algeria	149	176	165	100	59	-41	782
Cameroon	96	129	53	100	113	13	782
Zimbabwe	55	70	82	100	92	-8	766
Mauritania	130	125	148	100	64	-36	745
Morocco	92	108	103	100	102	2	529
Mozambique	16	24	28	100	27	-73	452
Ethiopia	60	63	64	100	78	-22	380
Tanzania	112	87	127	100	87	-13	379

Table 3: Shares of African exports destined for China (mirror data in many instances)

	2011	2012	2013	2014	2015
South Africa	11.6%	10.5%	12.7%	9.6%	9.1%
Angola	43.1%	37.9%	45.2%	44.8%	48.8%
Sudan	0.0%	79.5%	65.3%	72.0%	70.4%
DRC	45.7%	51.3%	35.8%	40.0%	63.2%
Congo	20.9%	27.9%	21.5%	40.4%	34.9%
Zambia	65.6%	61.5%	58.3%	63.2%	58.7%
Ghana	0.9%	1.0%	1.4%	4.0%	3.6%
Nigeria	1.7%	2.0%	5.6%	1.2%	1.6%
Equatorial Guinea	12.6%	11.7%	17.0%	24.9%	18.2%
Gabon	5.5%	6.1%	9.2%	19.3%	22.5%
Libya	11.0%	11.0%	4.8%	3.6%	10.0%
Egypt	2.0%	2.5%	1.9%	1.2%	
Algeria	3.0%	3.6%	3.3%	3.0%	
Cameroon	8.5%	15.3%		14.7%	
Zimbabwe	5.3%	2.2%	0.9%	0.4%	0.2%
Mauritania	36.9%	44.1%	50.5%	32.7%	
Morocco	0.9%	1.3%	1.6%	1.1%	
Mozambique	4.7%	18.4%	2.6%	4.3%	2.7%
Ethiopia	10.8%	11.1%	8.1%	9.4%	11.3%
Tanzania	14.3%	9.5%	7.0%	12.0%	

To gain some indication of the importance of China as an export destination Table 3 shows the percentage of the respective export shares destined for China. It highlights some extreme variations, and note that for 2015 even mirror data is not available for many countries. In addition, we emphasise that when available ITC mirror data may not be comprehensive but it is still the best data source.

For South Africa, the main Chinese source, the data shows that China has been a consistent destination for around 10% of South African exports in recent years. At one extreme are Sudan, DRC and Zambia[3] with China being the destination of over half the total exports. At the other extreme Nigeria, Egypt, Zimbabwe and Morocco report that China is the destination of only around one per cent of their exports.

3.1 Imports from Africa by commodity

In this section we examine the trade profile of Chinese imports by the top 15commodity at the HS 4 level. The left hand segment of Table 4 shows the HS codes and their descriptions along with Chinese imports expressed in $ millions, while the middle segment shows global imports and the right hand segment shows African market shares. Note that these top 15 HS 4 lines represent at least 90% of the total imports from Africa each year, but only 25% to 26% of total Chinese global imports. The top HS 4 entry is crude oil, and here imports from Africa almost halved on their levels of the previous three years prior to 2015. Global imports did not decline by such a large amount, and hence Africa lost market share (19.6% from 22.4% and higher in the previous three years). The second HS entry of ‘commodities not elsewhere specified (nes)’ is a large value entry. Switzerland has contributed around one third of the Chinese imports that have been between $81 billion and $105 billion in the last three years, and the next contributor is South Africa with reported imports into China of $30 billion, $27 billion and $15 billion over the past three years. Examining the trade in HS 7108 (gold) it appears certain that this trade is almost exclusively gold imports. China does not report imports of gold, yet

[3] For Zambia we have combined the exports to both Switzerland and China, as examination of Zambian trade data strongly suggests that copper related exports, which constitute the bulk of Zambian exports, are reported as being destined for both Switzerland and China whereas in reality it is all destined for China. Switzerland is wrongly identified as the company involved with copper exports has its headquarters in Switzerland.

exports from Switzerland to combined China and Hong Kong match the HS 9999 Chinese import data, and similarly for Australia, the third import source of HS 9999.

South Africa does not report its exports of gold by destination so we are unable to verify the South African imports of HS 9999. Note that the HS 9999 imports from Africa declined to little more than half of their 2014 imports during 2015 but conversely imports from the world were only down marginally. An examination of the Mundi Index for gold prices shows that from July of 2013 prices declined to a low at December 2015 but these declines have been less dramatic than those for most other commodities. We do not consider that there is enough trade data evidence to attribute the decline in imports from Africa during 2015 to a price decline but suggest that the answer may lie in a substitution for, or overall reduction of African exports. Imports of diamonds from Africa have fluctuated in recent years, and we note that data on the right hand side shows African imports being above global imports.

To gain a more comprehensive understanding of the changes over the 2014–2015 period Table 5 shows the trade data in Index form. These numbers are again sourced from the ITC database. On the left hand side they show an index of China's imports from Africa where the 2014 values are based at 100, while on the right hand side global imports into China for these same HS codes are similarly based at 2014 equals 100. This enables the relative changes in imports to be clearly seen and highlights the variations. In many but not all codes the African imports were relatively stable over the three years of 2012 to 2014 inclusive after rising from lower values during 2011. The table also makes it easy to assess the relative changes in African imports against the similar changes in Chinese global imports (although in some instances Africa makes a significant contribution to Chinese global imports). Again, it is not all gloom, as further down the table there are instances where African imports increase or decline only modestly in 2015.

Table 4: Chinese imports from Africa, $ millions by HS 4 codes, along with China's imports from the world and Africa's share

		China's imports from Africa					**China's imports from world**					**Africa's share in China's imports**				
HS code	**Product label**	**2011**	**2012**	**2013**	**2014**	**2015**	**2011**	**2012**	**2013**	**2014**	**2015**	**2011**	**2012**	**2013**	**2014**	**2015**
Total	All products	93,238	113,245	117,454	115,659	70,469	1,743,395	1,818,199	1,949,992	1,958,021	1,681,671	**5.35%**	**6.23%**	**6.02%**	**5.91%**	**4.19%**
2709	Crude oil	47,107	53,936	51,018	51,033	26,271	196,771	220,794	219,660	228,320	134,341	23.9%	24.4%	23.2%	22.4%	19.6%
9999	Commodities nes	15,927	28,958	30,725	26,946	14,983	49,498	68,769	104,735	82,758	80,519	32.2%	42.1%	29.3%	32.6%	18.6%
7102	Diamonds, loose	1,402	1,617	2,572	4,498	3,846	5,438	4,473	5,196	4,191	3,340	25.8%	36.2%	49.5%	*107.3%*	*115.1%*
2601	Iron ores	7,319	7,163	8,933	7,821	3,792	112,409	95,619	106,175	93,520	57,871	6.5%	7.5%	8.4%	8.4%	6.6%
7110	Platinum	1,944	2,183	2,906	2,422	2,288	5,438	4,473	5,196	4,191	3,340	35.7%	48.8%	55.9%	57.8%	68.5%
7202	Ferro-alloys	1,322	918	1,045	1,396	1,787	3,702	3,705	3,335	3,786	4,679	35.7%	24.8%	31.3%	36.9%	38.2%
7403	Refined copper	2,010	2,414	1,685	1,883	1,735	25,194	27,672	23,965	25,502	21,050	8.0%	8.7%	7.0%	7.4%	8.2%
7402	Unrefined copper	2,117	2,110	2,332	2,001	1,573	3,762	4,174	4,563	4,058	3,029	56.3%	50.5%	51.1%	49.3%	51.9%
4403	Logs	941	1,156	1,239	2,013	1,540	8,274	7,252	9,320	11,782	8,051	11.4%	15.9%	13.3%	17.1%	19.1%
2610	Chromium ores	1,373	917	1,195	1,002	1,248	2,664	2,034	2,388	1,832	1,792	51.5%	45.1%	50.0%	54.7%	69.6%
2602	Manganese ores	1,235	1,003	1,618	1,391	1,086	2,678	2,186	3,192	2,718	1,994	46.1%	45.9%	50.7%	51.2%	54.4%
1207	Oil seed	481	503	741	1,065	1,075	667	653	849	1,207	1,166	72.1%	77.0%	87.3%	88.2%	92.2%
2711	Petroleum gases	789	668	1,454	1,808	969	13,438	20,199	24,727	30,182	24,980	5.9%	3.3%	5.9%	6.0%	3.9%
8105	Cobalt	486	424	567	563	789	581	524	666	683	951	83.7%	81.0%	85.1%	82.5%	82.9%
2401	Tobacco	333	442	610	736	713	1,028	1,196	1,334	1,566	1,293	32.4%	36.9%	45.7%	47.0%	55.1%
Subtotal $ million		84,787	104,410	108,639	106,578	63,693										
Subtotal % of total		91%	92%	92%	92%	90%	25%	26%	26%	25%	21%					

Table 5: China's imports from Africa and from the world, indexed to 2014=100

		Index of China's imports from Africa						Index of China's imports from world				
HS code	**Product label**	**2011**	**2012**	**2013**	**2014**	**2015**		**2011**	**2012**	**2013**	**2014**	**2015**
Total	All products	81	98	102	100	61		89	93	100	100	86
2709	Crude oil	92	106	100	100	51		86	97	96	100	59
9999	Commodities nes	59	107	114	100	56		60	83	127	100	97
7102	Diamonds, loose	31	36	57	100	85		130	107	124	100	80
2601	Iron ores	94	92	114	100	48		120	102	114	100	62
7110	Platinum	80	90	120	100	94		130	107	124	100	80
7202	Ferro-alloys	95	66	75	100	128		98	98	88	100	124
7403	Refined copper	107	128	89	100	92		99	109	94	100	83
7402	Unrefined copper	106	105	117	100	79		93	103	112	100	75
4403	Logs	47	57	62	100	76		70	62	79	100	68
2610	Chromium ores	137	91	119	100	125		145	111	130	100	98
2602	Manganese ores	89	72	116	100	78		99	80	117	100	73
1207	Oil seed	45	47	70	100	101		55	54	70	100	97
2711	Petroleum gases	44	37	80	100	54		45	67	82	100	83
8105	Cobalt	86	75	101	100	140		85	77	98	100	139
2401	Tobacco	45	60	83	100	97		66	76	85	100	83
Subtotal $ million		84,787	104,410	108,639	106,578	63,693						
Subtotal % of total		91%	92%	92%	92%	90%		25%	26%	26%	25%	21%

4. Chinese imports from Africa by source for the HS 4 commodities

In this section we explore the details of the imports at the HS 4 level by the major African sources. We show the imports by $ millions and then again index these aggregate values where 2014 = 100 to give a clearer picture of the changes in these values. This is followed on the right hand side by the average unit prices as downloaded from the ITC. Note that this analysis is not available for ‘commodity not elsewhere specified’ and diamonds, as average prices are not available for the first category and for diamonds (a) the data is incomplete and (b) as it is expressed in value per carat, we consider that it may be a misleading indicator in when available.

Table 6 starts by showing the details for imports of crude oil, HS 2709, where Angola has consistently been the dominant source for China. Beneath Angola there is a deal of annual variation in the imports from the other suppliers. Sudan and Congo have been second and third suppliers, but as recently as 2012 Libya was the second supplier. These variations are highlighted in the middle segment of the table where the values are indexed to 2014 for each country. In the right hand segment the real impacts of the commodity price declines are apparent, as this shows the index of average unit values of the imports. The 2012 and 2013 years were very similar and represent the high values, and during 2014 there is a modest decline apparent. The real declines are during 2015, with these values consistently little more than half of the 2014 values (which were themselves declining from the highs). Given that imports of crude oil represent over one third and up to one half of Chinese imports from Africa over the period it is these declines on the right hand side of the table that are the real impact in declining Chinese import values from Africa. There is some variation in the average price index values, and we assume that represents different grades of oil and perhaps timing of imports over a calendar year.

Next is the data for iron ore as shown in Table 7, and here South Africa dominates the trade with lesser and more variable contributions from Mauritania, Sierra Leone and Liberia.

Platinum as shown in Table 8, and here the precious metal is exclusively sourced from South Africa.

Similarly South Africa dominates the trade in ferro-alloy, although there is an important contribution from Zimbabwe (Table 9). The average price index declined by 7% for South Africa, and note that 2015 imports from this source were the highest reported over the period.

Table 6: Imports of HS 2709, crude oil: values $ Millions and index 2014=100, average unit price

Country	2,011	2,012	2,013	2,014	2,015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Angola	24,810	33,373	31,809	30,893	15,955		80	108	103	100	52	105	109	105	100	54
Sudan	9,418	1,995	4,368	5,679	2,881		166	35	77	100	51	105	115	108	100	52
Congo	4,352	4,266	5,455	5,180	2,312		84	82	105	100	45	105	108	105	100	54
Libya	2,050	6,375	2,031	704	969		291	905	289	100	138	108	120	116	100	61
Ghana	108	335	317	676	947		16	50	47	100	140	106	114	111	100	59
Equatorial Guinea	1,448	1,691	1,962	2,464	862		59	69	80	100	35	108	111	107	100	56
Egypt	881	621	1,051	707	620		125	88	149	100	88	114	108	113	100	58
Gabon	132	274	392	1,144	612		12	24	34	100	54	106	120	111	100	53
Cameroon	364	499	0	370	425		98	135	0	100	115	109	122		100	58
Nigeria	839	792	899	1,533	302		55	52	59	100	20	102	110	111	100	60

Table 7: Imports of HS 2601, iron ore: values $ millions and index 2014=100, average unit price

Country	2,011	2,012	2,013	2,014	2,015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
South Africa	6,437	5,538	6,039	4,855	3,080		133	114	124	100	63	160	122	126	100	61
Mauritania	838	833	1,163	942	408		89	89	123	100	43	180	131	136	100	58
Sierra Leone	3	462	1,390	1,650	148		0	28	84	100	9	156	135	134	100	66
Liberia	10	179	128	252	146		4	71	51	100	58	164	131	128	100	61

Table 8: Imports of HS 7110, platinum: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
South Africa	1,944	2,183	2,906	2,422	2,288		80	90	120	100	94	126	116	107	100	75

Table 9: Imports of HS 7202, ferro-alloy: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
South Africa	1,286	876	988	1,280	1,710		100	68	77	100	134	121	111	107	100	93
Zimbabwe	33	40	45	108	72		31	37	42	100	67	126	112	105	100	91

Table 10: Imports of HS 7403, refined copper: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Congo, DRC	792	1,198	379	586	1,050		135	205	65	100	179	123	113	105	100	77
Zambia	1,146	1,111	1,191	1,173	429		98	95	102	100	37	124	115	106	100	78
South Africa	55	87	83	55	113		99	157	150	100	204	129	112	104	100	81

Table 11: Imports of HS 7402, unrefined copper: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Zambia	1,351	1,364	1,617	1,563	1,203		86	87	103	100	77	129	116	103	100	82
Congo, DRC	739	725	537	373	253		198	195	144	100	68	131	118	109	100	80
South Africa	17	4	0	34	92		51	12	1	100	271	120	117	108	100	80

Tables 10 and 11 contain the data for refined and unrefined copper respectively. Here the trade is dominated by Zambia and the DRC, and as there is reported to be a deal of trade between the main refining plants in the copper belt that straddles both countries perhaps the individual import values need to be read with caution. The overall values are however expected to be accurate notwithstanding that Zambia reports major copper exports to Switzerland that are in fact destined for China as discussed later. The price fall in unit values was about 20% for 2015.

Table 12 shows the first entry of a non-metal or mineral commodity. The unit price index for logs however still declined from between 8% to 27% from the countries shown. Note that Nigeria is a new entrant over the period shown for log imports.

Chromium (Table 13) is again dominated by imports from South Africa, and while import values increased during 2015 the unit values declined modestly.

Similarly, Table 14 shows that South Africa leads the imports of manganese, with Gabon in second place and varying contributions from Ghana. Unit price declines were in the range of 31% for Ghana to a lesser 25% for South Africa.

Table 15 introduces oil seeds, the first agricultural product to make the list of HS 4 imports. Ethiopia has been the main African supplier, with increasing contributions from Togo, Tanzania, Sudan, Niger and Mali. Unit prices declined by up to one third.

Table 16 reverts back to mineral fuels in the form of petroleum gases, and here the unit price declines are up to 38%. Although large, this is not as significant a decline as those reported for crude oil, however. Nigeria has been the main supplier, with inconsistent supplies from both Algeria and Equatorial Guinea.

Cobalt imports (Table 17) are dominated by DRC imports, and the 6% unit price decline is modest in the overall context of the HS 4 imports.

Table 12: Imports of HS 4403, logs: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Nigeria	1	3	31	350	349		0	1	9	100	100	63	79	76	100	90
Mozambique	100	149	168	335	288		30	45	50	100	86	79	86	89	100	92
Cameroon	134	146	161	187	184		72	78	86	100	99	109	96	93	100	85
Equatorial Guinea	123	132	149	177	179		69	75	84	100	101	121	109	100	100	73
Congo	284	260	199	241	178		118	108	83	100	74	114	103	93	100	79

Table 13: Imports of HS 2610, chromium ores: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
South Africa	1,250	881	1,155	958	1,205		130	92	120	100	126	161	118	103	100	96
Madagascar	29	28	30	27	34		107	103	109	100	124	140	99	104	100	83
Sudan	19	5	4	11	7		165	40	38	100	66	108	102	88	100	94

Table 14: Imports of HS 2602, manganese: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
South Africa	688	567	918	873	730		79	65	105	100	84	131	113	117	100	75
Gabon	354	213	385	280	254		126	76	138	100	91	129	108	118	100	71
Ghana	144	177	226	155	55		93	115	146	100	35	116	102	108	100	69
Côte d'Ivoire	1	0	35	44	29		2		80	100	66	136		115	100	74

Table 15: Imports of HS 1207, oil seed: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Ethiopia	224	256	258	405	289		55	63	64	100	71	63	60	82	100	67
Togo	12	23	69	101	177		12	23	69	100	175	59	58	77	100	64
Tanzania	63	85	155	163	132		39	52	95	100	81	67	70	80	100	75
Sudan	78	32	114	101	146		77	31	113	100	145	67	69	99	100	64
Niger	2	5	14	38	120		5	14	38	100	317	65	62	81	100	70
Mali	32	48	29	54	71		60	89	53	100	132	61	60	85	100	68

Table 16: Imports of HS 2711, petroleum gasses: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Nigeria	542	324	472	614	463		88	53	77	100	75	94	100	106	100	63
Algeria	0	51	156	355	341		0	14	44	100	96		107	105	100	62
Equatorial Guinea	101	0	359	576	124		17	0	62	100	22	104		111	100	77

Table 17: Imports of HS 8105, cobalt: values $ millions and index 2014 = 100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Congo, DRC	391	383	484	507	746		77	76	96	100	147	139	99	83	100	94
South Africa	10	0	0	4	16		241	11	8	100	370	89	180	82	100	95
Zambia	73	36	70	49	19		149	73	144	100	39	60	274	35	100	76

Table 18: Imports of HS 2401, tobacco: values $ millions and index 2014=100, average unit price

Country	2011	2012	2013	2014	2015		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
	$ million						Index of import values					Index of average unit price				
Zimbabwe	281	369	491	575	595		49	64	85	100	103	86	87	99	100	97
Zambia	30	54	95	134	79		22	40	71	100	59	86	82	99	100	96

The final entry of tobacco, Table 18, is another trade line where the African data is misleading and highlights the advantages of using Chinese import data. Examining export data for this agricultural crop from Zimbabwe does not show China as an export destination, and South Africa is reported as the main destination. Conversely, South African imports from Zimbabwe are conversely very modest, and further examination of the trade data suggests that it seems to be unprocessed tobacco just transiting through South Africa on the way to China.

5. Chinese imports from Africa by source for their respective HS 4 commodities

In this final analytical section we look at each of the top countries in turn and present the main HS 4 commodities as ranked by their 2015 imports into China during 2015. To break the pattern used in the HS 4 code analysis we combine the source data into one large table (Tables 19A, 19 B, 19 C and 19 D) that is broken into four parts with more than one source shown in each table. The table(s) shows the familiar five year total imports, firstly by $ millions, then Indexed to 2014 = 100 for each country, and then the major HS 4 imports into China for that country. In almost all cases for the 20 countries examined the individual top HS imports into China are represented by the 15 aggregate import HS 4 lines. The exceptions are HS 2605, cobalt ores from DRC; HS 4407, timber from Gabon; HS 2515, marble from Egypt; HS 2710, refined petroleum from Algeria; HS 5201, cotton from Cameroon; and HS 2604, nickel ore from Zimbabwe.

South Africa, the leading import source and the first country examined, has seven HS lines shown, and this is the most by any country (this includes HS 9999, and recall that this is likely but not certain to be gold). Similarly, Morocco has a diversified portfolio with China, and the HS codes listed account for only 56% of the imports into China for 2015. Conversely, several countries (Angola, Sudan and Libya) show that the one product line of crude oil dominates and accounts for almost all the Chinese imports from that source. To check the unit price index the reader is referred to the HS 4 tables above, as it is not replicated here.
Also note that as this data is often mirror data rather than direct data, as the country concerned did not report this direct data, these values therefore show (perhaps incomplete) partner imports and not direct exports per se.

Table 19 A: Chinese imports from the top African suppliers, main HS 4 codes, values $ million and Index

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
South Africa											
Total	All products	32,095	44,654	48,388	44,571	30,226	72	100	109	100	68
9999	Commodities nes	15,927	28,958	30,281	26,671	14,885	60	109	114	100	56
7102	Diamonds	1,249	1,373	2,407	4,323	3,742	29	32	56	100	87
2601	Iron ores	6,437	5,538	6,039	4,855	3,080	133	114	124	100	63
7110	Platinum	1,944	2,183	2,906	2,422	2,288	80	90	120	100	94
7202	Ferro-alloys	1,286	876	988	1,280	1,710	100	68	77	100	134
2610	Chromium ores	1,250	881	1,155	958	1,205	130	92	120	100	126
2602	Manganese	688	567	918	873	730	79	65	105	100	84
Sub total % Total		90%	90%	92%	93%	91%					
Angola											
Total	All products	24,922	33,562	31,973	31,106	15,997	80	108	103	100	51
2709	Crude oils	24,810	33,373	31,809	30,893	15,914	80	108	103	100	52
2711	Petroleum gases	0	57	98	167	41	0	34	59	100	25
7102	Diamonds	99	100	50	30	18	326	327	164	100	59
Sub total % Total		99.9%	99.9%	100.0%	100.0%	99.9%					
Sudan											
Total	All products	9,542	2,054	4,568	5,851	3,056	163	35	78	100	52
2709	Crude oils	9,418	1,995	4,368	5,679	2,881	166	35	77	100	51
1207	Oil seeds	78	32	114	101	146	77	31	113	100	145
Sub total % Total		99.5%	98.7%	98.1%	98.8%	99.1%					

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
DRC											
Total	All products	3,162	3,527	2,746	2,816	2,665	112	125	98	100	95
7403	Refined copper	792	1,198	379	586	1,050	135	205	65	100	179
8105	Cobalt	391	383	484	507	746	77	76	96	100	147
2605	Cobalt ores	772	346	325	388	442	199	89	84	100	114
7402	Unrefined copper	739	725	537	373	253	198	195	144	100	68
2709	Crude oils	303	725	907	778	57	39	93	117	100	7
Sub total % Total		94.8%	95.7%	95.9%	93.4%	95.6%					

Table 19 B: Chinese imports from the top African suppliers, main HS 4 codes, values $ million and Index

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Congo											
Total	All products	4,672	4,555	5,712	5,479	2,617	85	83	104	100	48
2709	Crude oils	4,352	4,266	5,455	5,180	2,312	84	82	105	100	45
4403	Logs	284	260	199	241	178	118	108	83	100	74
Sub total % Total		99.2%	99.4%	99.0%	98.9%	95.1%					
Zambia											
Total	All products	2,776	2,687	3,048	3,071	1,815	90	87	99	100	59
7402	Unrefined copper	1,351	1,364	1,617	1,563	1,203	86	87	103	100	77
7403	Refined copper	1,146	1,111	1,191	1,173	429	98	95	102	100	37
2401	Tobacco	30	54	95	134	79	22	40	71	100	59
Sub total % Total		91.0%	94.1%	95.3%	93.4%	94.3%					
Ghana											
Total	All products	363	644	1,203	1,452	1,296	25	44	83	100	89
2709	Crude oils	108	335	317	676	969	16	50	47	100	143
9999	Commodities nes	0	0	444	275	97	0	0	162	100	35
2602	Manganese	144	177	226	155	55	93	115	146	100	35
Sub total % Total		69.4%	79.7%	82.0%	76.1%	86.4%					
Nigeria											
Total	All products	1,584	1,274	1,547	2,658	1,237	60	48	58	100	47
2711	Petroleum gases	542	324	472	614	463	88	53	77	100	75
4403	Logs	1	3	31	350	349	0	1	9	100	100
2709	Crude oils	839	792	899	1,533	302	55	52	59	100	20
Sub total % Total		87.2%	87.8%	90.6%	93.9%	90.0%					

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Equatorial Guinea											
Total	All products	1,673	1,823	2,470	3,217	1,165	52	57	77	100	36
2709	Crude oils	1,448	1,691	1,962	2,464	862	59	69	80	100	35
4403	Logs	123	132	149	177	179	69	75	84	100	101
2711	Petroleum gases	101	0	359	576	124	17	0	62	100	22
Sub total % Total		100%	100%	100%	100%	100%					

Table 19 C: Chinese imports from the top African suppliers, main HS 4 codes, values $ million and Index

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Gabon											
Total	All products	578	618	899	1,608	1,101	36	38	56	100	69
2709	Crude oils	132	274	392	1,144	612	12	24	34	100	54
2602	Manganese	354	213	385	280	254	126	76	138	100	91
4407	Timber	74	107	105	161	222	46	66	65	100	138
Sub total % Total		97.0%	96.1%	98.2%	98.6%	98.9%					
Libya											
Total	All products	2,064	6,376	2,039	726	950	284	878	281	100	131
2709	Crude oils	2,050	6,375	2,031	704	947	291	905	289	100	135
Sub total % Total		99.3%	100.0%	99.6%	96.9%	99.8%					
Egypt											
Total	All products	1,518	1,321	1,852	1,159	916	131	114	160	100	79
2709	Crude oils	881	621	1,051	707	620	125	88	149	100	88
2515	Marble	207	228	232	196	127	106	116	118	100	65
Sub total % Total		71.7%	64.3%	69.2%	77.8%	81.5%					
Algeria											
Total	All products	1,961	2,312	2,165	1,315	782	149	176	165	100	59
2711	Petroleum gases	0	51	156	355	341	0	14	44	100	96
2710	Refined petroleum	11	0	383	152	269	7	0	251	100	176
2709	Crude oils	1,942	2,256	1,620	801	165	242	281	202	100	21
Sub total % Total		99.6%	99.8%	99.8%	99.5%	99.1%					

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Cameroon											
Total	All products	663	890	366	689	782	96	129	53	100	113
2709	Crude oils	364	499	0	370	425	98	135	0	100	115
4403	Logs	134	146	161	187	184	72	78	86	100	99
4407	Timber	39	57	56	64	84	60	89	87	100	131
5201	Cotton	90	173	132	61	71	148	285	217	100	117
Sub total % Total		94.6%	98.2%	95.2%	98.9%	97.9%					
Zimbabwe											
Total	All products	464	584	688	837	766	55	70	82	100	92
2401	Tobacco	281	369	491	575	595	49	64	85	100	103
7202	Ferro-alloys	33	40	45	108	72	31	37	42	100	67
2604	Nickel ores	0	0	12	98	52	0	0	12	100	52
Sub total % Total		67.8%	70.0%	79.7%	93.4%	93.8%					

Table 19 D: Chinese imports from the top African suppliers, main HS 4 codes, values $ million and Index

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Mauritania											
Total	All products	1,517	1,469	1,729	1,171	745	130	125	148	100	64
2601	Iron ore	838	833	1,163	942	408	89	89	123	100	43
2603	Copper ore	468	453	425	203	330	231	223	210	100	163
Sub total % Total		86.1%	87.6%	91.9%	97.8%	99.0%					
Morocco											
Total	All products	476	558	531	518	529	92	108	103	100	102
8542	Integrated circuits	169	144	145	148	147	114	97	98	100	99
2603	Copper ores	3	10	5	22	43	14	45	21	100	189
8541	Diodes	39	37	33	45	39	88	83	74	100	87
2608	Zinc ores	16	9	9	22	37	73	43	43	100	171
3105	Fertilizers	35	50	48	13	34	267	389	374	100	260
Sub total % Total		54.9%	44.9%	45.1%	48.2%	56.6%					
Mozambique											
Total	All products	257	403	455	1,650	452	16	24	28	100	27
4403	Logs	100	149	168	335	288	30	45	50	100	86
1207	Oil seeds	30	33	47	93	59	33	36	51	100	64
Sub total % Total		50.8%	45.2%	47.3%	25.9%	76.9%					
Ethiopia											
Total	All products	292	309	316	490	380	60	63	64	100	78
1207	Oil seeds	224	256	258	405	289	55	63	64	100	71
Sub total % Total		76.8%	82.7%	81.7%	82.6%	76.0%					

HS code	Product label	China's imports ($ million)					Index of Chinese imports (Value)				
		2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Tanzania											
Total	All products	490	379	553	436	379	112	87	127	100	87
1207	Oil seeds	63	85	155	163	132	39	52	95	100	81
2616	Precious metal	329	181	119	102	89	323	178	117	100	87
7403	Refined copper	0	0	11	32	34	0	0	35	100	107
7402	Unrefined copper	4	5	138	14	18	31	36	1011	100	135
Sub total % Total		80.8%	71.5%	76.6%	71.1%	72.3%					

Chapter 4

Imports into the BRICs from Africa: 2015 over 2014

Ron Sandrey

1. Introduction

Over the last few years Africa has had a love affair with the BRICs (Brazil, Russia, India and China) as these countries have become important destinations for African exports. In this paper we examine the impacts of the recent commodity price declines on these exports as measured by BRIC imports from Africa. The particular focus is to examine the 2015 imports over 2014 against a background of imports over the period from 2011. We exclusively use BRIC import data as sourced from the International Trade Commission (ITC), with this data expressed in US Dollar millions and relative % shares. The reason for using BRIC import data is that African export data is of uncertain quality and often expressed as mirror data[4] anyway.

The paper has its genesis in Sandrey et al. 2016 who examined the impacts of this commodity crisis on China imports from Africa, and in effect extends that analysis to cover the comprehensive BRIC imports from Africa. We start by providing a snap-shot of commodity prices over recent years to set the scene for African imports into the BRICs, as it is well known that Africa is largely a commodity exporter. We then provide an overall profile of BRIC imports from

[4] Mirror data is when, for example African export data is expressed as BRIC import data, as a comprehensive set of African export data is not available at the time of analysis. Thus when reporting export data from many African countries it is reality partner import data anyway. We make no attempt to reconcile this BRIC import data, and note that tralac research has highlighted many problems associated with the China – South Africa trade data in particular.

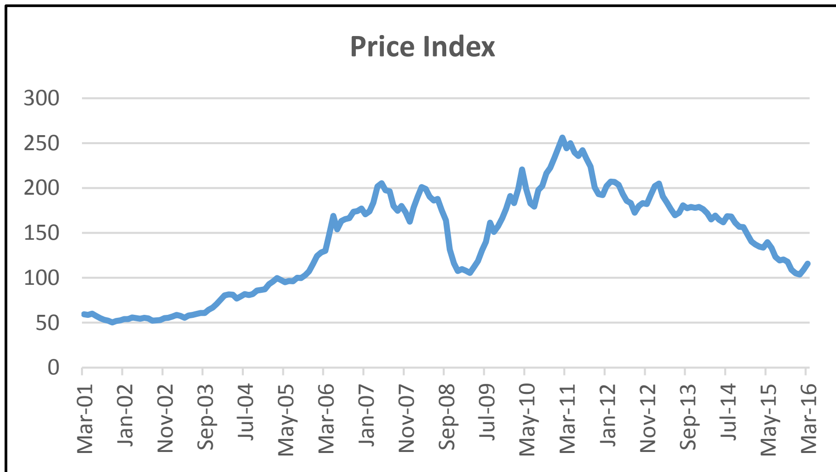
Africa and then sequentially provide an analysis of the individual BRIC member imports from Africa.

In summary we find that imports from Africa into the BRICs had been very stable over the three years from 2012 to 2014 inclusive, but during 2015 they declined by one third of the 2014 values. The biggest declines were in Brazil and China, while both India and Russia's declines were not as dramatic. For 2015 total BRIC imports were $115,3 billion, with China importing some $70,5 billion, India $33,8 billion, Brazil $8,8 billion and Russia a modest $2,3 billion. The major BRIC sources in Africa have been South Africa, followed by Angola and Nigeria. Further back there were another 12 sources with imports of at least a billion dollars during 2015. By product mineral fuels had been recording between 55% and 59% of the total values in the four years to 2015, but during 2015 this share dropped to 47% and thus was a prime reason as to why the overall import values declined. A classification of 'commodities not elsewhere defined', which seems to be gold imports into China from South Africa, was the next largest single HS 2 Chapter import, followed by precious stones and metals and then ores.

2. The commodity prices indexes

Although in this paper we have concentrated upon the imports into the BRICs during 2015 and the changes over the 2014 imports, it is instructive to examine commodity prices over a longer time period. This is done in Graph 1 and shows a 16 year history and highlights that 2011 was a high. While prices retreated from that high they are still above the prices for the early part of the period shown. Another interesting feature of the Index Mundi commodity index graphs in general is that over the first three months of 2016 they are showing an increase. It is of course too early to assess as to whether this is a temporary feature or the start of a recovery.

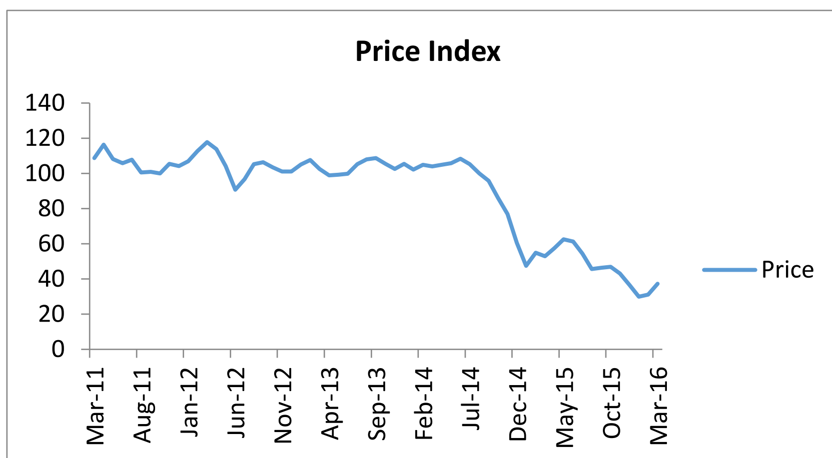
Graph 1: Commodities price index from March 2001



Source: Index Mundi.

As we shall see during the analysis of BRIC imports and those into China in particular the index of most interest to many African exporters is the crude oil index. This is shown in Graph 2. Here the significant fall during 2014 that continued at a less dramatic rate during 2015 is highlighted.

Graph 2: Price index for crude oil, March 2011 to March 2016



Source: Index Mundi.

Given the well-known dependence on Africa for commodity exports, against this commodity price decline background we can hypothesis that there will be a precipitous fall in African exports as proxied by BRIC imports where commodities are a significant part of the export profile.

3. The overall profile

Table 1 starts by providing an overall profile of the BRIC imports by individual countries over the period 2011 to 2015 inclusive. The top half of the table shows the import values in $ millions, while the bottom half puts these imports in perspective by giving the values indexed to 2014 imports. This latter analysis highlights the dramatic fall in BRIC imports, both overall and in all instances. Leading up to 2015 the index values had been remarkably stable, with the possible exceptions of the rise into China from an index of 81 during 2011 to the consistent 98 to 102 over the next three years and a decline to 84 in Brazilian imports during 2012. The right hand column however emphasises the declining 2015 imports, with the overall index dropping to 66 or to two-thirds of the previous virtually three years. The largest declines were into Brazil (to about one half) and China's decline to 61, while both India's and Russia's imports were less dramatic. Crucially the table also shows that China with

imports of $70,5 billion and India with imports of $33,8 billion dominate the BRIC total of $115 billion during 2015. Russia is a modest player in the African import profile.

Table 1: BRIC imports from Africa, $ million and index of values

Importers	2011	2012	2013	2014	2015
Imports, $ million					
BRIC Aggregation	151 197	173 045	177 076	175 877	115 296
China	93 238	113 245	117 454	115 659	70 469
India	39 780	43 017	39 417	40 366	33 780
Brazil	15 436	14 266	17 446	17 061	8 764
Russia	2 743	2 518	2 760	2 791	2 283
Index values, 2014 = 100					
BRIC Aggregation	86	98	101	100	66
China	81	98	102	100	61
India	99	107	98	100	84
Brazil	90	84	102	100	51
Russia	98	90	99	100	82

Source ITC and author calculations of index values.

As shown in Table 2 South Africa was the major source of BRIC imports during 2015, followed by the oil exporters of Angola and Nigeria. Again, a clearer picture of the imports by source over the last five years is given in the lower half of the table where the index values are shown. There is significant variation in these values, both by individual countries over the period and by 2015 values against 2014 imports.

Table 2: BRIC imports from individual African countries, $ million and index of values

Exporters	2011	2012	2013	2014	2015
BRIC imports, $ million					
Africa Aggregation	151 197	173 045	177 076	175 877	115 296
South Africa	42 800	54 223	57 242	51 987	37 705
Angola	31 366	41 628	39 498	37 858	19 199
Nigeria	23 600	23 273	24 985	27 834	16 127
Ghana	892	1 071	1 622	2 471	4 630
Sudan	10 011	2 234	4 902	6 566	3 245
Congo	4 804	5 185	5 808	5 748	2 923
Algeria	7 050	6 593	6 163	4 886	2 890
Egypt	5 202	4 568	4 990	3 719	2 879
Morocco	3 692	3 862	3 485	3 221	2 819
DRC	3 276	3 563	2 787	2 953	2 808
Zambia	2 920	2 988	3 336	3 307	2 246
Equatorial Guinea	2 262	2 463	3 943	5 037	2 110
Cameroon	1 000	1 406	671	1 277	1 533
Tanzania	795	924	1 439	1 414	1 430
Gabon	647	1 470	1 818	2 392	1 218
Index values, 2014= 100					
Africa Aggregation	86	98	101	100	66
South Africa	82	104	110	100	73
Angola	83	110	104	100	51
Nigeria	85	84	90	100	58
Ghana	36	43	66	100	187
Sudan	152	34	75	100	49
Congo	84	90	101	100	51
Algeria	144	135	126	100	59
Egypt	140	123	134	100	77
Morocco	115	120	108	100	88
DRC	111	121	94	100	95
Zambia	88	90	101	100	68
Equatorial Guinea	45	49	78	100	42
Cameroon	78	110	53	100	120
Tanzania	56	65	102	100	101
Gabon	27	61	76	100	51

Source: ITC and author calculations of index values. Where Sudan is both North and South combined and DRC represents the Democratic Republic of the Congo.

The commodities imported by the BRICs as defined by HS 2 chapters are shown in Table 3. Mineral fuels dominate these imports, with a share of over half for the first four years. This declined to 47% in 2015, and as Table 4 shows the index value of fuels declined to 55. As this index was below the overall index value of 66 (Table 4) fuels were dragging down the imports from Africa. Next is the HS code of 99, commodities not elsewhere specified. This is an unusual category that focusses on Chinese imports from largely South Africa that seems to be gold imports. Because South Africa does not report gold exports by destination it is difficult to verify this. Precious stones and metals and ores are the next most significant imports, followed by copper and articles of copper.

Table 3: BRIC imports from Africa by HS 2 commodities, $ million and % of fuels

Description	2011	2012	2013	2014	2015
All products	151 197	173 045	177 076	175 877	115 296
Mineral fuels	88 744	98 980	97 946	97 235	53 846
% fuels	59%	57%	55%	55%	47%
Commodities other	15 968	28 969	30 745	26 949	14 998
Precious stones/metals	9 982	8 870	10 200	12 629	13 241
Ores	13 264	11 970	14 473	13 821	9 423
Copper & articles	4 703	5 271	4 834	4 621	4 114
Iron and steel	2 266	2 050	1 917	2 280	2 544
Logs & timber	1 374	1 702	1 801	2 712	2 369
Fruit & nuts	1 875	1 687	1 717	1 966	2 139
Inorganic chemicals	2 369	1 828	1 349	1 284	1 384
Oil seed	558	588	926	1 248	1 281
Tobacco	538	679	827	955	913
Cement etc	812	1 270	898	966	892

Source: ITC

The importance of fuel imports is highlighted in Table 4, as along with the ubiquitous **commodities other** and ores the decline in these imports drags down the overall import values. Many of the other imports more or less held their index values or increased in several cases.

Table 4: BRIC imports from Africa by commodity indexed to 2014 = 100

Description	2011	2012	2013	2014	2015
All products	86	98	101	100	66
Mineral fuels	91	102	101	100	55
Commodities other	59	107	114	100	56
Precious stones/metals	79	70	81	100	105
Ores	96	87	105	100	68
Copper & articles	102	114	105	100	89
Iron and steel	99	90	84	100	112
Logs & timber	51	63	66	100	87
Fruit & nuts	95	86	87	100	109
Inorganic chemicals	185	142	105	100	108
Oil seed	45	47	74	100	103
Tobacco	56	71	87	100	96
Cement etc	84	131	93	100	92

Source: ITC and author calculations of index values.

4. The individual BRIC profiles

4.1 Brazil

Africa had slowly built up to an import share into Brazil of 7,4% during 2014 before this declined sharply to 5,1% during 2015. The African 2015 index value reduced to 51 or half of its 2014 value as imports dropped to $8,8 billion from the $17,0 billion in 2014. This decline was greater than the overall decline in Brazilian global imports which saw an index decline to 75, thus accounting for the reduced overall import share. The oil exporters of Nigeria and Algeria accounted for a significant share of the African total, and these two sources had index declines to 49 (just under half of the previous year) and 62 respectively. Included in the table are imports from Angola and Libya even though their 2015 values were minor as they both had been significant suppliers to Brazil in the earlier years. Imports from South Africa were the most consistent over the period.

Table 5: Brazilian imports from Africa, $ million and index values

Exporters	2011	2012	2013	2014	2015
$ million & % share from Africa					
World	226 243	223 149	239 621	229 060	171 446
Africa Aggregation	15 436	14 266	17 446	17 061	8 764
% from Africa	6,8%	6,4%	7,3%	7,4%	5,1%
Nigeria	8 386	8 012	9 648	9 495	4 633
Algeria	3 137	3 198	3 075	2 918	1 813
Morocco	1 196	1 281	1 434	1 249	740
South Africa	912	849	720	732	645
Equatorial Guinea	588	189	975	1 104	524
Egypt	345	251	276	146	108
Côte d'Ivoire	93	175	34	47	64
Tunisia	104	137	136	73	58
DRC	107	16	17	19	40
Ghana	28	38	63	110	34
Angola	438	46	727	1 110	32
Libya	1	0	230	0	0
Index values, 2014 = 100					
World	99	97	105	100	75
Africa Aggregation	90	84	102	100	51
Nigeria	88	84	102	100	49
Algeria	107	110	105	100	62
Morocco	96	103	115	100	59
South Africa	125	116	98	100	88
Equatorial Guinea	53	17	88	100	48
Egypt	236	172	189	100	74
Côte d'Ivoire	199	373	74	100	136
Tunisia	144	189	187	100	80
DRC	564	83	89	100	213
Angola	25	35	58	100	31
Libya	39	4	65	100	3

Source: ITC and author calculations of index values.

The importance of fuel imports are highlighted in Table 6, as they have consistently constituted over 80% of the total import value into Brazil. Imports of fertilisers are the only other consistently significant import, while vehicles (from South Africa) have shown a dramatic increase.

Table 6: Brazilian imports from Africa by commodity at HS 2 Chapters

	2011	2012	2013	2014	2015
Import values, $ million & % of fuels					
All products	15 436	14 266	17 446	17 061	8 764
Mineral fuels	12 992	11 854	15 101	15 005	7 230
% fuels	84,2%	83,1%	86,6%	87,9%	82,5%
Fertilisers	1 046	1 107	1 286	878	544
Vehicles	4	5	27	78	163
Cement etc	133	126	89	94	94
Iron and steel	126	136	89	103	83
Miscellaneous chemicals	72	98	97	90	82
Index values, 2014 = 100					
All products	90	84	102	100	51
Mineral fuels	87	79	101	100	48
Fertilisers	119	126	147	100	62
Vehicles	5	7	35	100	208
Cement etc	141	133	94	100	100
Iron and steel	123	133	87	100	81
Miscellaneous chemicals	80	109	108	100	91

Source: ITC and author calculations of index values.

4.2 Russia

Even though Russia has been a relatively minor part of African imports into the BRICs, these imports have been both stable and are an increasing share of Russia's global imports. The top five import sources are also relatively consistent and more even than the top five into the other BRICs as no one source dominates. And of course since Russia is itself a significant global exporter of mineral fuels there are no oil exporters in the top African sources.

Table 7: Russian imports from Africa, $ million, % share and index values

Exporters	2011	2012	2013	2014	2015
Imports, $ million and % from Africa					
World	306 091	316 193	314 945	286 649	177 293
Africa Aggregation	2 743	2 518	2 760	2 791	2 283
% from Africa	0,9%	0,8%	0,9%	1,0%	1,3%
South Africa	464	685	782	690	559
Morocco	508	541	566	586	451
Egypt	483	343	442	540	395
Côte d'Ivoire	178	155	203	230	188
Kenya	128	133	135	150	170
Tunisia	101	102	137	130	92
Ghana	116	108	94	103	81
Index values, 2014 = 100					
World	107	110	110	100	62
Africa Aggregation	98	90	99	100	82
South Africa	67	99	113	100	81
Morocco	87	92	97	100	77
Egypt	89	63	82	100	73
Côte d'Ivoire	77	67	88	100	81
Kenya	85	89	90	100	113
Tunisia	77	79	105	100	71
Ghana	113	105	92	100	78

Source: ITC and author calculations of index values.

The composition of Russian imports are shown in Table 8, where agricultural products dominate. Fruit and nuts are the main imports, followed by cocoa and cocoa products and vegetables. Again, as in the overall totals and the African sources, there is a degree of consistency in these imports even though they almost all declined in value during 2015. Coffee and tea were the exceptions here as they increased by 18%.

Table 8: Russian imports from Africa by commodity $ million and index values

	2011	2012	2013	2014	2015
Imports by commodity at HS 2 Chapters					
All products	2 743	2 518	2 760	2 791	2 283
Fruit & nuts	704	665	771	728	578
Cocoa	317	279	315	341	285
Vegetables	269	166	226	372	281
Tobacco	196	210	210	203	189
Coffee & tea	111	113	108	128	152
Ores	78	127	152	148	121
Apparel	105	117	152	152	102
Vehicles	49	164	135	143	96
Index values, 2014 = 100					
All products	98	90	99	100	82
Fruit & nuts	97	91	106	100	79
Cocoa	93	82	92	100	84
Vegetables	72	45	61	100	76
Tobacco	96	104	103	100	93
Coffee & tea	87	88	84	100	118
Ores	53	86	103	100	82
Apparel	69	77	100	100	67
Vehicles	34	114	94	100	67

Source: ITC and author calculations of index values.

4.3 India

Africa has a significant presence in the Indian market, with a very stable share between a low of 8,5% during 2013 to a high of 8,8% in both 2012 and 2014. This share was still at 8,6% during 2015 even though African imports declined by 16% as this decline was very similar to the decline in Indian global imports of 15%. Nigeria dominates by source, followed by South Africa and then Ghana and Angola during 2015. While the overall African index value is stable, the same cannot be said for the individual sources. Notable are the declines from earlier years in imports from South Africa and Egypt and the rise

from Botswana in particular. Many of the sources show healthy increases in 2015 over 2014 imports, with Ghana a stand-out here.

Table 9: Indian imports from Africa by source, $ million, shares and index values

Exporters	2011	2012	2013	2014	2015
Imports by source, $ million & % from Africa					
World	462 403	488 976	466 046	459 369	390 745
Africa Aggregation	39 780	43 017	39 417	40 366	33 780
% from Africa	8,6%	8,8%	8,5%	8,8%	8,6%
Nigeria	13 605	13 962	13 759	15 663	10 234
South Africa	9 329	8 035	7 352	5 994	6 276
Ghana	385	281	261	805	3 220
Angola	6 005	8 020	6 798	5 642	3 170
Egypt	2 856	2 653	2 420	1 873	1 461
Morocco	1 513	1 481	954	868	1 100
Tanzania	255	492	819	927	1 004
Cameroon	323	503	291	578	744
Côte d'Ivoire	419	442	332	524	571
Botswana	37	65	191	1 046	565
Index values, 2014 = 100					
World	101	106	101	100	85
Africa Aggregation	99	107	98	100	84
Nigeria	87	89	88	100	65
South Africa	156	134	123	100	105
Ghana	48	35	32	100	400
Angola	106	142	121	100	56
Egypt	152	142	129	100	78
Morocco	174	171	110	100	127
Tanzania	28	53	88	100	108
Cameroon	56	87	50	100	129
Côte d'Ivoire	80	84	63	100	109
Botswana	4	6	18	100	54

Source: ITC and author calculations of the index values.

A significant share of African imports into India are again represented by fuels, with a share as high as 73,1% during 2013. The reduced fuel imports to two-thirds of their 2014 values during 2015 saw a decline in this fuel share to

56,5% during 2015, and this was sufficient to drag the overall import index down to 84 from what had been very consistent index values over the previous four years. Compensating for the fuel decline though were index increases in many other imports, and also we must note the consistency in most of the import index values.

Table 9: Indian imports from Africa by commodity, $ millions, % of fuels and index values

	2011	2012	2013	2014	2015
Import values by commodity, $ millions					
All products	39 780	43 017	39 417	40 366	33 780
Mineral fuels	26 579	30 894	28 806	28 756	19 091
% represented by fuels	66,8%	71,8%	73,1%	71,2%	56,5%
Precious stones/metals	6 396	4 900	4 543	4 408	6 866
Fruit & nuts	1 063	880	804	1 039	1 313
Inorganic chemicals	1 608	1 410	1 102	1 050	1 133
Ores	517	508	473	1 140	992
Iron and steel	678	912	706	692	619
Copper & articles	194	354	398	365	583
Cement etc	406	810	434	514	554
Index values, 2014 = 100					
	99	107	98	100	84
Mineral fuels	92	107	100	100	66
Precious stones/metals	145	111	103	100	156
Fruit & nuts	102	85	77	100	126
Inorganic chemicals	153	134	105	100	108
Ores	45	45	42	100	87
Iron and steel	98	132	102	100	89
Copper & articles	53	97	109	100	159
Cement etc	79	158	84	100	108

Source: ITC and author calculations of index values.

4.4 China

Rather than repeat the tables on Chinese imports from Africa as we have for the other BRICs above we will summarise China's imports from Africa as assessed by Sandrey et al. 2016.Their profile of Chinese imports from Africa by value showed that they were very consistent over the three years from 2012 to 2014 inclusive at around $115 billion, but during 2015 they declined by 39% in aggregate to $70,5 billion. This decline was significantly greater than the 14% decline in Chinese global imports, and meant that the African share of the Chinese global imports declined from being consistently close to 6% over the previous three years to 4,19% during 2015.

South Africa has been the main African supplier, with a share of around 40% of the African imports in recent years. Combined with imports from Angola of around 25% this means that around two-thirds of the total have consistently been from two sources. Next in order for 2015 were Sudan, DRC, Congo itself and Zambia. These countries are followed by a further ten sources with 2015 shares of between one and two percent of the total[5], and the top twenty are rounded off by Ethiopia and Tanzania with 0,54% of the Chinese imports from Africa each. Using the aggregate decline of 39% (an Index value of 61 where 2014 = 100) Sandrey et al found that 11 countries had less severe declines than the benchmark, and this included the 32% decline from South Africa. Both Angola and Sudan had declines of around one half, and all the countries in the top 10 experienced declines in their imports into China. Only the lesser sources of Libya, Cameroon and Morocco actually increased their imports during 2015, but Libya was still significantly below its values of $6,5 billion during 2012 that put it into third place as a Chinese source from Africa that year.

Examining the import profile at the HS 4 digit level they found that HS 2709, crude oil, with imports of $26 billion or 37% of the total, was the main import during 2015. This import value was just 51% of the 2014 value, and furthermore Africa lost market share in China as it slipped to 19,6% from previous shares in the Chinese market of 22,4% in 2014 to 24,4% in 2012. The next main import at this level was HS 9999, commodities not elsewhere

[5] These ten include Nigeria. While this country has both the largest GDP in Africa and the largest exports from Africa it exports little to China but rather mostly petroleum products to the US and EU.

specified (nes). This is an unusual classification used as a **catch all** by several countries to in part disguise their trade. It is significant for Chinese imports from Africa, and during 2015 represented 21% of the total value (thus, the top two commodity lines of crude oil and commodities nes represented some 58,5% of the imports). Further analysis strongly suggests that these imports of HS 9999 may well be gold imports from mainly South Africa with possibly some Hong Kong transhipments from possibly Switzerland also involved. To further complicate trade data analysis South Africa does not report gold exports. The next six main imports were loose diamonds, iron ores, platinum, ferro-alloys and the two separate classifications of refined and unrefined copper.

Examining the profile of HS 4 commodities by the major sources, Sandrey et al introduced the index of average unit prices as sourced directly from the ITC database[6]. This, when set alongside the index of import monetary values allowed for a meaningful profile of both import values and average unit prices to give a proxy for the import quantities (as with this current paper, they are not directly reported on these quantities). If the indexed unit price falls by more than the indexed total value there has been an increase in quantity to compensate the falling prices. Conversely, should the overall values decline by more than the unit price then quantity has declined. Starting with crude oil they showed that in general the 2015 average unit values were just over half of that for 2014, and the major suppliers were Angola, Sudan, Congo, Libya, Ghana and Equatorial Guinea. Libya has been an inconsistent supplier over the last five years, as has Equatorial Guinea to a lesser extent.

Sandrey et al. were unable to provide a meaningful analysis of the trade in diamonds (from mostly South Africa) as unit values were not reported. The data does however show that unit values for what is likely to be gold were only 56% of the 2014 index unit values. Iron ore imports are mostly from South Africa and Mauritania; platinum is exclusively from South Africa; ferro-alloy is predominantly from South Africa with a minor contribution from Zimbabwe; and both refined and unrefined copper are mostly from DRC and Zambia with modest contributions from South Africa. Logs are more diversely sourced, with contributions from Nigeria, Mozambique, Cameroon, Equatorial Guinea and

[6] In the rest of this paper that Index was calculated directly from ITC data as opposed to using the ITC Index per se.

Congo; chromium ores are almost all from South Africa; manganese is from South Africa and Gabon; oil seeds are from Ethiopia, Togo, Tanzania, Sudan and Niger; petroleum gasses are from Nigeria and Algeria; cobalt is mostly from DRC; and the final entry of tobacco is mostly from Zimbabwe but some from Zambia.

Finally they looked at the major sources and their contributions. South Africa has a diverse portfolio with the major imports into China being commodities nes, diamonds, iron ores, platinum, ferro-alloys, chromium and manganese. The imports from Angola, Sudan, Congo, Libya and Algeria are effectively all petroleum products. Most of the trade from DRC is copper and cobalt, while from Zambia it is virtually all copper. Trade from Ghana, Nigeria, Equatorial Guinea, Egypt and Cameroon is mostly petroleum products, but Ghana features in the commodities nes trade, Nigeria and Equatorial Guinea in logs, Egypt has some marble and Cameroon has logs, timber and cotton. Gabon's trade of $1,1 billion again has crude oil as the main contribution but also manganese and timber. Further down the import sources Zimbabwe is mostly tobacco, Mauritania iron ore and copper ore, Morocco is unusual in that it has the manufacturing product of integrated circuits as the lead entry and a more diversified mix than is generally the case outside of South Africa. Mozambique is about logs and oil seeds, Ethiopia is dominated by oil seeds and lastly Tanzania profiles oil seeds, other precious metals and copper.

Overall they found that the Chinese imports from Africa during 2015 were dominated by the two source countries of South Africa and Angola with some 65% of the imports between them and the two commodities of crude oil and the mystical commodities nes (possibly gold) with an import share of 58,5%. Most of the other commodities were similarly prized from below the earth's surface, while the three remaining (logs, oil seeds and tobacco) were grown on the earth's surface. There are no manufacturing products in the conventional sense of note in the main imports. By value the imports were down by 39%, and as this decline was greater than the decline in Chinese global imports Africa lost significant market share in China. Driving this change was a fall in average unit prices across all of the major imports.

References

R. Sandrey, E. Igbinoba, R. Hoaeb and T. Mojafi. 2016. 'Chinese imports from Africa: the impact of the recent commodity price declines'. tralac Working Paper available at www.tralac.org.

Chapter 5

The Southern African Development Community and Its 'New' Tribunal: Some Remarks

Elisa Tino

1. Introduction

On 18th August 2014, during the ordinary SADC Summit, the Heads of State and Government adopted the new Protocol on Tribunal (hereafter, new Protocol)[7]. This was the last step in the long history on the SADC Tribunal! The new Protocol, which is not yet in force, introduces relevant legal changes to the regional judicial system and raises questions about the SADC leaders' intention to move their regional cooperation towards a rules-based system.

For the purpose of some legal considerations about SADC judicial 'reform', this paper will analyse the new Protocol in a comparative perspective with the previous regulation expressed by the 2000 Protocol on SADC Tribunal (hereafter, 2000 Protocol)[8], which is formally still in force as it is inferable from Article 48 of the new Protocol.

2. Historical background

As known, the Tribunal was established in 1992 by Article 9 of the SADC Treaty as one of SADC institutions but the regulation of its composition, functioning and jurisdiction was deferred to the adoption of a specific Protocol

[7] See Protocol on the Tribunal in the Southern African Development Community, Victoria Falls, 18 August 2014 (hereafter, new Protocol).
[8] See Protocol on Tribunal and Rules of Procedure thereof, Windhoek, 7 August 2000 (hereafter, 2000 Protocol).

by the Summit (art. 16 SADC Treaty). This was signed in 2000 and the Tribunal became operational in 2005[9].

According to Article 16 of the SADC Treaty the Tribunal had '[…] to ensure the adherence to and the proper interpretation of the provisions of the Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it'. The 2000 Protocol clarified that it was entitled to hear disputes between States, between natural/legal persons and States, between natural/legal persons and the Organisation and between the latter and its staff[10]. Moreover the Tribunal had jurisdiction to give advisory opinions at the request of the Summit and the Council as well as preliminary rulings in proceedings of any kind before national courts or tribunals. Finally it had an appellate function in relation, for instance, to the trade panels established in terms of Article 31 (b) of the SADC Protocol on Trade (Article 20A of the 2000 Protocol).

Since its inception the Tribunal heard just about 20 cases: none of them was initiated by a member State or concerned a preliminary ruling[11]. On the

---

[9] Regarding the entry into force of the 2000 Protocol some clarifications are needed. Just thirteen SADC member States signed the 2000 Protocol and among them only five ratified it. Zimbabwe didn't! Article 38 of the 2000 Protocol provided that the latter entered into force after the deposit of the instruments of ratification by two-thirds of signing States. This meant that at least seven ratifications were needed. In 2001 member States amended the SADC Treaty (Agreement amending the Treaty of the Southern African Development Community, Blantyre, 14 August 2001). In particular, concerning Article 22 they regulated the adoption of Protocols in detail and repealed from its paragraph 2 the following provision 'each Protocol […] shall thereafter become an integral part of the Treaty'. This wording was then moved to Article 16 and integrated its paragraph 2 now providing that 'The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol **which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty** (bold added)'. Finally, pursuant to its Article 32 the Agreement amending the Treaty entered into force on the 14th August 2001, that is to say on the date of its adoption by the Summit members. Consequently, on the same date even the incorporation of the 2000 Protocol into the Treaty became effective pursuant to the amended Article 16 and the 2000 Protocol entered into force binding all SADC States. The following Agreement amending the Protocol on Tribunal (Luanda, 3 October 2002) took note of this amendment and repealed Article 35 providing for ratification.

[10] It is worth bearing in mind that natural and legal persons might resort to the Tribunal against SADC institutions as well as against any member State; in the latter case they had first to exhaust any domestic legal remedy (Article 15 par.2 of the 2000 Protocol).

[11] On the one hand this was due to the common reluctance of States to sue each other - being strongly characterised by the will to preserve their own sovereignty - and on the other hand to the fact that probably the SADC law is not well-known within the region and national judges are not used to perceive themselves as judges of SADC law.

contrary, it heard primarily disputes between the Organisation and its staff[12] and sometimes it was resorted to by individuals lamenting violations of their human rights by a SADC member State[13]. The negative ending of the Tribunal's life may be ascribed even to these latter rulings. Indeed, the second case the Tribunal adjudicated dealt with the assessment of the validity of the Zimbabwean Government's land reform program. Precisely, the applicants – Mike Campbell and 77 others - contested the unlawful expropriation of private land without compensation[14]. The SADC Tribunal ruled that Zimbabwean legislation violated human rights, democracy and rule of law, so it was in breach of Article 4 (c) and Article 6 para. 2 of the SADC Treaty requiring member States to comply with these principles[15]. However, twice Zimbabwe refused to comply with the Tribunal's decisions alleging the invalidity of the 2000 Protocol and the 2001 Amendment Treaty. According to the Zimbabwean Government, they both lacked the two-third ratifications to enter into force[16].

---

[12] See, for example, *Ernest Francis Mtingwi* v. *the SADC Secretariat*; *Bookie Monica Kethsegile and Juru* v. *The SADC Parliamentary Forum*; *Clement Kanyama* v. *SADC Secretariat*; *Angelo Mondlane* v. *The SADC Secretariat*.

[13] It is worth noting that the SADC Tribunal was not expressly endowed with jurisdiction over disputes concerning human rights violations. However it inferred its competence on such cases from Article 4 (c) of the SADC Treaty which makes reference to human rights, democracy and rule of law as governing principles of interstate cooperation. All SADC member States are required to act in accordance with them (Phooko, 2015: 531-567).

[14] See *Mike Campbell and Others* v. *The Republic of Zimbabwe* (interim order); *Mike Campbell and Others* v. *The Republic of Zimbabwe* (2007); *Mike Campbell and Others* v. *The Republic of Zimbabwe* (2009). On the same matter see also *Luke Munyandu Tembani* v. *The Republic of Zimbabwe*; *Barry Gondo and others* v. *the Republic of Zimbabwe*. Regarding these judgments in legal literature see Chigara, 2009: 530-533; Di Lieto, 2009: 432-436; Ashimizo, 2011: 203-205; Ndlovu, 2011: 63-78.

[15] In particular, the SADC Tribunal ruled that Zimbabwe should have paid the farmers fair compensation for their expropriated land and ordered the Government to take all necessary measures to protect the possession, occupation and ownership of the applicants' other land and to ensure that no action was taken to evict the farmers or to interfere with their peaceful residence of their properties.

[16] In particular Zimbabwe claimed that: 1) the 2000 Protocol was not binding upon it because it had not been ratified by the requisite two-thirds of the States as provided for by its Article 38; and 2) the Agreement amending the SADC Treaty had not yet entered into force since it had not yet been ratified by two-thirds of the States. Moreover, Zimbabwe had not ratified either of them.

Clearly such reaction indicated the tendency of Zimbabwe to give primacy to municipal law and jurisdiction over the SADC law[17] and, more generally, its reluctance to surrender some aspects of its sovereignty to the Organisation. However, from legal point of view its objections were not well grounded. Indeed, pursuant to Article 36 of the SADC Treaty and Article 32 of the Agreement amending the Treaty the latter became effective after its adoption by three quarters of all members of the Summit, so it didn't need for ratification. Moreover, it was adopted and signed by all SADC member States at that time, so even by Zimbabwe. As already said, its entry into force made effective the incorporation of the 2000 Protocol into the SADC Treaty as provided for by the amended Article 16, so no further ratification was needed[18].

Because the respondent failed to comply with the Tribunal's decisions, the applicants approached again the regional judicial organ. In turn, it determined Zimbabwe's non-compliance and reported its finding to the Summit of Heads of State and Government for 'appropriate action' in term of Article 32 para. 5 of the 2000 Protocol. It is worth noting that the 2000 Protocol as well as the SADC Treaty don't explain what 'appropriate action' means, so the Summit had a great discretionary power in this determination. Maybe it might have adopted economic sanctions or suspension of the non-compliant State but, surprisingly, in 2010 it decided not to renew the terms of judges and not to appoint new ones thus suspending the activities of the Tribunal[19]. This meant that it was unable to hear new cases!

---

[17] This was expressly declared by Zimbabwean High Court in case *Richard Thomas Etheredge* v. *Minister of State for National Security Responsible for Lands*. Zimbabwean farmers filed an appeal to the High Court in order that the judgment of the SADC Tribunal was enforced and expropriation land order was annulled. However, the High Court rejected the complaint stating that the SADC Tribunal was not superior to national courts so it was not allowed to annul domestic legislation. This reasoning was then confirmed by the High Court in the following case *Gramara Ltd* v *The Republic of Zimbabwe.* It stated that the enforcement of SADC Tribunal's judgments was neither automatic nor unavoidable as it was subject to domestic law of civil procedure which provides that a foreign judgment cannot be recognised and enforced if it is contrary to the Constitution and public policy. According to the High Court this was the case of SADC Tribunal's judgments. Then, these arguments were contested by the South African Supreme Court of Appeal which registered and enforced the ruling of the SADC Tribunal (*Government of the Republic of Zimbabwe* v *Fick &others*). Regarding this ruling, see Erasmus, 2012: 1.

[18] Even the Zimbabwean High Court dismissed its Government's arguments as 'essentially erroneous and misconceived' (*Gramara Ltd* v *The Republic of Zimbabwe*, 9-13).

[19] See Communiqué 30th Summit, 2010; Communiqué Extraordinary Summit, 2011; Final Communiqué 32nd Summit, 2012. For critical considerations about the decision to 'close'

3. Reactions against and legal considerations about the suspension of the SADC Tribunal

The political decision of SADC Heads of State and Government to suspend the activities of the Tribunal did not invalidate the legal validity of the 2000 Protocol which is still formally in force. No provisions regulating its termination or member States' withdrawal are contained. So, formally it will cease to be effective only when a following protocol regulating the same matter – such as the new Protocol - will enter into force[20].

However, the lacking appointment of new judges and renewal of their terms prevent de facto the functioning of the Tribunal. The decision of SADC Heads of State and Government to suspend it pending its review creates the impression that member States are not really committed to regional integration; they are strongly anchored to their sovereignty and this doesn't let their interstate cooperation move from power-oriented form to a rule-based one. It has also raised critical reaction by public opinion and particularly by Zimbabwean farmers who had won cases against their Government before the SADC Tribunal. As its judgment in their favour was not complied with, they sought remedy from the African Commission on Human and Peoples' Rights (hereafter, the African Commission) hoping that the latter submitted the case to the African Court on Human and Peoples' Rights (hereafter, African Court). They claimed that the decision of the SADC Summit to suspend the Tribunal violated Articles 7 and 26 of the African Charter on Human and Peoples' Rights (hereafter, African Charter), as well as the SADC Treaty (Articles 4 and 6) and the 2000 Protocol in that it infringed the right of access to court terminating existing proceedings and interfered with the independence, competence and institutional integrity of the SADC Tribunal, trespassing on the doctrine of separation of powers. The African Commission considered the case during its October-November 2013 meeting. It stated that the complaint was admissible as it fulfilled procedural requirements (Communication n. 409/12, paras. 82-114). However it rejected the claim on the merit advancing well-founded legal reasoning which cannot be objected. First of all, it noted that the African Charter does not authorise it to supervise the application and

---

the SADC Tribunal, in literature, see Scholtz, 2011: 197-201; Fritz, 2012: 1; Cowell, 2013: 1-15; Nathan, 2013: 870-892; Meckler, 2016: 1007-1038.

[20] This is confirmed by Article 48 of the new Protocol stating that 'the 2000 Protocol on the Tribunal […] is repealed with effect from the date of entry into force of this Protocol'.

implementation of other international treaties, such as the SADC Treaty. So, it may only determine the responsibility of respondent States arising from the provisions of the African Charter that had been invoked by the complainant (para. 131). Then, more importantly, it acknowledged that Article 7 of the African Charter imposes an international legal obligation on States to ensure access to national courts and not to regional ones, namely the SADC Tribunal[21]. Similarly, it clarified that the States' duty to guarantee the independence of the Courts provided for by Article 26 of the African Charter does not refer to an international court but is akin and related to the national judicial organs mentioned in Article 7 (paras. 143-144). So it concluded that the decision of the Summit to suspend the Tribunal did not violate Articles 7 and 26 of the African Charter (para. 146). Moreover, the Commission decided not to submit the communication to the Court as originally requested by complainants maybe because it was aware of political implication underlying such case. Either way, even if it has been widely criticised by African public opinion, as already said, the legal reasoning of the African Commission is absolutely well grounded and fully shareable. Indeed, it is based on strict application of the aforementioned articles of the African Charter, whose wording is clear and does not leave space for a different interpretation.

Although the African Commission decided not to resort to the African Court, the latter was directly requested by two associations of African lawyers to give an advisory opinion about the legality of the SADC Summit's decision to suspend the Tribunal. However, the African Court declined the request because it related to a matter pending before the African Commission (Request for advisory opinion n. 002/2012). Its legal reasoning is incontrovertible pursuant to Article 4 para. 1 of the Protocol establishing the African Court[22]. However, it can be objected that the Court could have waited for the final report of the African Commission before rendering its decision. Thus, it could have given its opinion on the matter. Probably its decision not to wait could depend once again on political reasons.

---

[21] It is worth noting that the interpretation of the African Commission coincides with the position of the European Court of Human Rights (ECtHR) whose jurisprudence can be of inspirational value in accordance with to the Articles 60 and 61 of the African Charter.

[22] See Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Ouagadougou, 9 June 1998. It entered into force on 25 January 2004.

Objections against the suspension of the Tribunal have not been crushed by the aforementioned decisions of the African Commission and Court. Indeed stakeholders and law societies have continued to mobilize their forces. Thus, in March 2015 the Law Society of South Africa (LSSA) launched an application in the South African High Court to declare the process of suspending the SADC Tribunal as well as all actions related thereto, including the voting for, signing and planning to ratify the new Protocol, to be unconstitutional because they all aim to deprive citizens to have access to regional justice '[…] as set out in the SADC Treaty, to which the Government of the Republic of South Africa is a party to and bound in law' (High Court of South Africa – Gauteng Division - case n. 20392/15). Currently the case is still pending but final decision of the High Court will be particularly relevant as it might be regarded as a precedent by other African courts before which similar actions are in process or are going to be launched. In sum, hopes for the SADC Tribunal to start functioning have not disappeared.

4. The reviewing process of the SADC Tribunal

As mentioned above, contextually to the suspension of the Tribunal's activities, the Summit decided the review of its role, functions and terms of reference. For this purpose the SADC Secretariat commissioned the World Trade Institute Advisors (WTIA)[23] who submitted their report in February 2011 stating that the SADC Tribunal was properly constituted under international law and therefore its decisions should be binding on Zimbabwe. Importantly, they also recommended that the SADC Tribunal should be allowed to function. This report was then considered by SADC Ministers of Justice who adopted a set of recommendations which were presented to the Summit in May 2011. In that occasion the latter mandated SADC Ministers of Justice to continue with their review of the Tribunal (Communiqué Extraordinary Summit, 2011: para. 7). The final report was then submitted to the Summit of Heads of State and Government in 2012, but it was not appreciated: the review of the Tribunal's

[23] The study was required to address: 1) the jurisdiction of the Tribunal; 2) the interface between Community law and national laws in the SADC; 3) the mandate of the existing appeals Chamber of the Tribunal; 4) the recognition, enforcement and execution of the Tribunal's decisions; 5) the qualifications and the process of nomination and appointment of judges; 6) the tendency of member States to give primacy to domestic law/jurisdiction over the SADC law; 7) the reluctance of member States to relinquish some aspects of their sovereignty to the SADC.

role wasn't as severe as the Summit wished for. Indeed SADC Ministers were conscious that it was no longer a legal issue but a political one and that they should have proposed some amendments to the 2000 Protocol which might have dissolved the antagonism felt for it by the Summit. However, in the meantime they wanted to save the efficiency of the SADC judicial system, so their report retained a provision affording the rights of individuals to have access to the SADC Tribunal but they recommended that its human rights jurisdiction was put on hold pending the adoption of a separate optional human rights protocol.

However, as said, in 2012 Maputo Summit the SADC Heads of State and Government disregarded completely the Ministers' report. They stated that a new Protocol on Tribunal would have to be negotiated among member States and that its jurisdiction would have been limited to resolving interstate disputes (Final Communiqué 32nd Summit, 2012: par. 24). This implied the removal of the right of natural and legal persons to approach the Tribunal.

As it is evident, this decision was completely in opposition to the recommendation of Ministers of Justice, but it can be justified by States' desire to prevent future political embarrassment to any member of the kind yielded by the Tribunal's rulings against Zimbabwe. Indeed there is poor human rights records in SADC member States which do not want to be held accountable for this by a Tribunal located outside their countries and far from their political influence. All this confirms the above mentioned SADC States' reluctance to cede the exercise of part of their sovereignty and the strong intergovernmental nature of their cooperation. In the light of such considerations it is interesting to note that in its preamble the new Protocol claims to be an outcome of a process including 'a review of the role, responsibility and terms of reference of the Southern African Development Community (SADC) Tribunal led to recommendations that require a new Protocol on Tribunal in the SADC'. Maybe the Heads of State and Government have introduced this 'false' assumption to give more legitimacy to their *questionable* decision to 'renew' the Tribunal.

As already said, its review process ended in 2014 with the adoption of the new Protocol. Even if all SADC member States were present at the 34th Summit and the text of the new Protocol was adopted by *consensus* – that is to say no SADC member State raised a formal objection to its adoption – only nine of

them signed it[24]. Maybe this reveals uncertainty among SADC member States about the convenience of this 'new' Tribunal. So, pursuant to the principle of variable geometry, which is widely used within the SADC (Tino, 2013/2014: 141-162), some member States have decided to 'delay' signature of the new Protocol not impeding its entry into force, which is subordinated to the deposit of the instruments of ratification by two-thirds of member States (Articles 52-53 of the new Protocol). Currently it is still pending as no one has ratified it. So, as already said, the 2000 Protocol continues to be in force and the SADC Tribunal continues to exist by virtue of the SADC Treaty, although it is not operational.

Finally, it is to be noted that in order to review the Tribunal's regulation, SADC member States did not comply with the procedure provided for in Article 37 of the 2000 Protocol concerning its amendment[25]. On the contrary, they opted for the replacement of the Protocol with a new one. Maybe this expresses their intent to introduce relevant changes whose adoption was largely agreed to, thus hoping to avoid further critics or rejection of the Tribunal's jurisdiction in the future. In fact, the procedure established by Article 37 of the 2000 Protocol requires the positive vote of three quarters of SADC member States for amendments to be adopted; on the contrary, the substitution of the 2000 Protocol with a new one required the member States *consensus*, namely none of them had to raise an objection.

5. The 'new' SADC Tribunal: What does it change?

As said above, the new Protocol on Tribunal adopted in August 2014 introduces important changes in the SADC judicial system and has serious implications for the development of the regional integration process. The following paragraphs will be devoted to the legal analysis of the new Protocol in comparison with the 2000 Protocol in order to put in evidence its possible strong, as well as weak, points. In particular the investigation will be limited to

[24] Angola, Botswana, Madagascar, Mauritius, Seychelles and Swaziland have not signed the new Protocol yet. No public explanation has been reported for this, however their concern may have centred on the need for the SADC to finalize consequential amendments to the SADC Treaty itself, before allowing the new Protocol to come into force. In sum, maybe they want merely to be sure that undue haste at this stage does not lead to legal mistakes.

[25] It is worth noting that the review procedure has been accused to be neither inclusive nor transparent (Erasmus, 2015: 2-5).

provisions of the new Protocol – regulating the composition and the functioning of the Tribunal, its competences and jurisdiction, the applicable law and the enforcement of its judgments – and not even to Rules of procedure which have not yet been adopted. In fact Article 29 of the new Protocol states that the Tribunal shall adopt its own rules by a two-thirds majority. This means that the existing rules of procedure, which are annexed to the 2000 Protocol and form an integral part thereof (Article 23), will be also repealed when the new Protocol will come into force. However the adoption of new rules will only happen after the appointment of new judges, so this will determine a further delay of the 'new' SADC Tribunal's functioning.

5.1. Composition and functioning of the 'new' Tribunal

From the analysis of the new Protocol, first of all it comes to light that its provisions regulating composition and functioning are literally borrowed from those contained in the 2000 Protocol. Sometimes the new Protocol regulates more in detail some technical aspects than the 2000 Protocol; in these cases its provisions are borrowed from the rules of procedure annexed to the 2000 Protocol.

Consistently with previous discipline, the 'new' SADC Tribunal 'shall consist of not less than 10 judges appointed (…) from nationals of member States'[26]. Five of them will be designated by the Council as regular judges, while the others shall constitute a pool from which the President may choose a judge to join the Tribunal whenever a regular one is temporally absent or unable to carry out his/her functions. Regarding judges' designation, they continue to be selected by the Council of Ministers from the list of candidates nominated by member States and appointed by the Summit. They will have to carry out their duties independently, impartially and conscientiously (Article 6) during their mandate which will last five years and will be renewable once (Article 7). It is worth remembering that SADC judges are not appointed on a full-time basis so the Tribunal shall sit when required to consider a matter submitted to it (Article 9); its seat will remain in Windhoek.

[26] Concerning the requirement to be appointed as judge, Article 3 para. 1 of the new Protocol provides that the candidate has to possess the qualifications required for appointment to the highest judicial offices in their respective member States or to be jurist of recognised competence or – in addition to previous requirements provided for by Article 3 para. 1 of the 2000 Protocol – to have expertise in international law.

Even provisions regulating judges' resignation, expiration of terms and recusal (Articles 10 and 12) are the same as those contained in the 2000 Protocol (Articles 8-9) but, differently from the latter, the new Protocol also regulates the hypothesis of judges' removal from office (Article 11). In particular it establishes that judges may be removed if they become permanently incapacitated or have committed a serious breach of their duties or a serious act of misconduct; in such cases, an independent ad hoc tribunal will decide the question of removal. Moreover, regarding disqualification or refusal, differently from the 2000 Protocol, the new Protocol states that when there is a conflict of interest as defined in Article 12 para. 4 the affected judge has to recuse himself or herself in the matter concerned. So, in this regard the legal discipline established by the new Protocol seems to be a little more complete than that provided for by the 2000 Protocol.

Then, similarly to the previous Tribunal as well as to every (national and international) court, the 'new' Tribunal shall have its own President, whose duties are regulated by Article 15, and a registry consisting of the registrar and his/her staff (Articles 16-27 of the new Protocol).

As mentioned above, no change affects even the functioning of the Tribunal. Thus, according to the new Protocol, the sittings of the Tribunal continue to be held in public – unless otherwise decided – and all deliberations shall be conducted in closed sessions and shall remain confidential (Articles 36-37)[27]. Furthermore, similarly to previous regulation (Article 27 of the 2000 Protocol), parties to the dispute shall be represented before the Tribunal by an adviser, agent or representative of their choice (Article 32 of the new Protocol) and even those States which are not parties to the dispute may be granted to intervene before the Tribunal. In this regard it is worth noting that Article 42 of the new Protocol is more synthetic than its 'counterpart' in the 2000 Protocol. Indeed it provides for no conditions to be accomplished in order to be authorized to intervene in a dispute before the Tribunal and, unlike Article 30 of the 2000 Protocol, the third party applying for intervention does not have to prove the existence of his own legal interest that may be affected by the subject matter of the dispute.

[27] It is worth noting that only judges who are present at oral proceedings of a case may take part in the deliberations giving his/her motivated opinion (Article 37 paras. 2-3 of the new Protocol).

Finally, the new Protocol provides expressly for the possibility to consolidate proceedings involving substantially the same disputes and the same parties (Article 43).

5.2. Jurisdiction and competences of the 'new' Tribunal

The above analysis reveals that the new Protocol does not modify structural and technical aspects of the SADC Tribunal, which are still the same. In reality, changes in the SADC judicial system are contained just in one synthetic provision concerning the jurisdiction of the Tribunal.

As already said, the 2000 Protocol provided for the exclusivity of the Tribunal's jurisdiction over all disputes between member States and the Organisation, between natural/legal persons and the Organisation, and between the Organisation and its staff. This meant that parties were not allowed to solve these kinds of litigations through any other means different from the Tribunal.

Moreover the Tribunal had jurisdiction over disputes between member States and between legal/natural persons and member State, but it was not exclusive. Indeed some protocols adopted within the SADC establish other dispute settlement mechanisms to solve interstate litigations arising from their application[28], so the resort to the Tribunal is just one of the means at States' disposal to settle their disputes. Regarding controversies between individuals and member States, the applicant had to exhaust all available remedies under the domestic jurisdiction before referring the matter to the Tribunal, so the latter's competence over such disputes was only residual. Finally, the SADC

[28] In particular, the SADC Protocol on Trade provides for an arbitral mechanism and the resort to the Tribunal is possible just to appeal the panel report. In contrast, other protocols provide that any dispute regarding their interpretation or application which cannot be settled amicably shall be referred to the Tribunal; so, in these cases, the resort to the judicial body is just potential and residual, not compulsory. In this sense we can see, for example, the Protocol on extradition (2002), the Protocol against corruption (2001), the Protocol on the control of firearms, ammunition and other related materials (2001), the Protocol on culture, information and sport (2001), the Protocol on health (1999) and Protocol on combating illegal drugs (1996). Differently, some other protocols provide that, failing the amicable settlement of disputes through negotiation, the matter shall be referred to the intergovernmental organs of the Organisation (the Council or the Summit) for determination. Failing that solution, the dispute shall be referred to the Tribunal. In this sense we can consider, for instance, the Protocol on the facilitation on movement of persons (2005) and Protocol on education and training (1996).

Tribunal had jurisdiction to give preliminary rulings to national courts and advisory opinions at the request of the SADC Summit and Council.

In contrast with such wide competences, the new Protocol endows the Tribunal with the power to solve only interstate litigations concerning the interpretation of the SADC Treaty and Protocols. So, in comparison with the 2000 Protocol it limits the jurisdiction of the Tribunal *ratione materiae* as well as *ratione personae* and saves only its competence to give advisory opinions on such matters as the Summit or Council may refer to it (Article 34 of the new Protocol).

a. *Ratione materiae* limitations of the Tribunal's jurisdiction

Synthetically Article 33 of the new Protocol states that 'the Tribunal shall have jurisdiction on the interpretation of the SADC Treaty and Protocols relating to disputes between member States'. This means that the new Tribunal shall exercise only an interpretative function and, consequently, it may not assess the validity or the correct application of SADC law anymore. Moreover, according to Article 33 the Tribunal's interpretative power shall concern only the SADC Treaty and Protocols; this means that all other normative acts adopted by SADC institutions in order to reach the goals of the Organisation shall be excluded from its jurisdiction[29]. Furthermore, unlike the 2000 Protocol (Article 14 c), the new Protocol does not provide for the possibility for the Tribunal to settle disputes referred to it in the light of an arbitration agreement included in international treaties concluded by some member States.

Then, the new Protocol does not confer to the Tribunal the power to settle disputes between the Organisation and its staff. In this sense it differs not only from the regulation provided for by the 2000 Protocol but also from the practice of other regional organisations (i.e. EU, COMESA, CEMAC, EAC, ECOWAS, etc.) whose courts have jurisdiction over disputes concerning the

[29] Unlikely Article 14 (b) of the 2000 Protocol provided that 'the Tribunal shall have jurisdiction over all disputes […] which relate to: […] the interpretation, application or validity of the Protocols, all subsidiary instruments adopted within the framework of the Community, and acts of the institutions of the Community'.

Organisation and its employees[30]. Luckily, last August the SADC Summit decided to establish the SADC Administrative Tribunal (SADCAT) whose sole function is to settle disputes between the Organisation and its employees (Communiqué 35th Summit, 2015). It is worth noting that this body is entirely distinct from the SADC Tribunal, whose establishment is still pending. From a legal point of view the SADCAT has been established by resolution, namely an organic act of the Summit, and not by Protocol; this makes it a lesser body or, more properly, a subsidiary organ of the Summit[31]. Anyway its establishment is appropriate as it has filled a normative gap thus putting an end to a *dangerous* practice. Indeed since the suspension of the SADC Tribunal, disputes between the Organisation and its employees have been heard by national courts which have settled them in terms of their municipal law thus determining the possibility of different judicial solutions for analogous disputes[32].

Last consideration about the *ratione materiae* limitation of the 'new' Tribunal's jurisdiction concerns Article 50. It provides that any member State – which is party to the new Protocol – may withdraw from it upon the expiration of twelve months from the date of giving written notice to that effect to the Executive Secretary. This provision, which was not present in the 2000 Protocol[33], seems to be in contrast with the wording of the new Protocol as well as of the SADC Treaty. In fact the first one confirms that the '[…] Tribunal is hereby constituted in terms of Article 16 of the Treaty and shall function in accordance with the provisions of the Treaty, this Protocol and the Rules' (Article 2). Then, Article 16 of the SADC Treaty states that the Protocol on the Tribunal forms an integral part of the Treaty, so member States may not opt out of it as long as they remain members of the SADC. By introducing Article 50 in the new Protocol SADC member States have ignored such an important

30 It is worth noting that until now some regional courts (such as the COMESA CJ and the *Cour de Justice* CEMAC) have settled mainly disputes between the Organisation and its staff.

31 In reality the practice to establish administrative Tribunals by organic acts within international organisations is not new. Among others, we can see the experience of the United Nations Administrative Tribunal (UNAT) which was established by the General Assembly in its resolution 351 A(IV) of 24 November 1949.

32 Thus, in 2011 the High Court of Botswana ruled that it had jurisdiction over a dispute between an official of the SADC Secretariat and the Organisation (Erasmus, 2015: 8-9).

33 According to the 2000 Protocol the jurisdiction of the SADC Tribunal was compulsory for member States which had expressly accepted it. Indeed the adoption and ratification of the 2000 Protocol implied *ipso facto* the member States' acceptance of its jurisdiction, without requiring any further consent case by case.

benchmark provided for by the SADC Treaty, which is the primary source of law of the Organisation (Erasmus, 2015: 11-12). Any provision in contrast with it is void, so, if SADC member States really want to maintain Article 50 of the new Protocol, they should amend Article 16 of the Treaty. However the decision to introduce this provision is understandable; the possibility for a member State – expressly regulated – to get away from the jurisdiction of the Tribunal without the need to motivate its decision represents a legal means to prevent further breakdown of the SADC judicial system in the future.

b. *Ratione personae* limitations of the Tribunal's jurisdiction

Stating that the Tribunal shall have jurisdiction over the interpretation of the SADC Treaty and Protocols relating to interstate disputes, Article 33 of the new Protocol allows only SADC member States to resort to the Tribunal. So, institutions as well as natural and legal persons are granted *locus standi* no more. This *ratione personae* limitation of jurisdiction should not be surprising as it is consistent with and confirms the strongly intergovernmental legal nature of the SADC. Indeed, regarding institutions, generally their standing before the regional court is strictly related to the role they play within the Organisation. So, the more member States want to create powerful institutions playing an important role in enhancing the integration process, the more their right to access to the court is wide and vice versa. As known, SADC institutions do not exercise autonomous powers from member States; indeed only intergovernmental organs take part in the decision-making process adopting primarily protocols to reach statutory goals. These acts are addressed to member States and need their signature and then their ratification to produce legal effects within national territories, so the intergovernmental organs' power consists simply in elaborating and 'sponsoring' the adoption of legal instruments which are not formally imputable to them but to member States[34]. On the other hand, non-governmental organs (such as Parliamentary Forum, Secretariat, etc.) do not take part in the decision-making procedure and have a marginal role within the SADC. Thus, SADC institutions' lack of relevant autonomous powers from member States explains and justifies somehow their 'disqualification' before the Tribunal.

---

[34] In the legal theory on international organisations such protocols are generally qualified as *improper derivative law*.

Then, more importantly, the new Protocol has been widely criticised as it deprives legal and natural persons of their right to refer a dispute against a State or a SADC institution to the Tribunal; they are not granted direct access to regional justice anymore. As known, the establishment of a court within a regional organisation reveals the members' intention to subject their interstate cooperation to the rule of law, thus moving from a power-oriented organisation to a rule-oriented one, and in this sense the direct access of natural and legal persons to justice is very important. Indeed it provides a means for overcoming the traditional reluctance of States to sue each other; it performs the constitutional function of limiting the power of Government to decide which disputes are worth litigating and it enhances the legitimacy of the Organisation's legal order. In this perspective the new Protocol provision granting the standing only to member States renders an effective judicial remedy nugatory in the Organisation and represents a giant step backwards for the development of interstate integration within the SADC.

However, I think that if we consider SADC legal feature, individuals' deprivation of *locus standi* before the Tribunal is less serious than it appears and, rather, the real weak point of the 'new' SADC judicial system consists in the elimination of preliminary ruling procedure. Indeed, as mentioned above, SADC normative production to pursue statutory goals consists mainly in protocols. These are international treaties addressed to member States (not to their natural and legal persons) binding only those which have signed and ratified them. In dualistic systems they need to be incorporated within the domestic legal order to produce legal effects; this means that their provisions are instilled in national norms, so that natural and legal persons are entitled to challenge them before national courts or tribunals to protect their rights[35]. In the same way, the compatibility of national acts or State actions with the SADC Treaty may and must be determined by national judges. This is confirmed by the 2000 Protocol provisions conferring to the Tribunal just a residual competence on disputes between natural/legal persons and States (Article 15 para. 2). In sum, in this perspective, from strictly legal point of view individuals are not deprived of judicial remedies completely as their rights or interests may be protected by national justice.

---

[35] In support of this thesis, it is to be reminded that in the past years the SADC Tribunal never heard cases between natural or legal persons and the Organisation pursuant to Article 18 of the 2000 Protocol.

In the light of this reasoning what is serious is that according to the new Protocol the Tribunal has the jurisdiction to give preliminary rulings in proceedings before domestic courts or tribunals no more. Indeed, limiting its jurisdiction to interstate disputes the new Protocol excludes de facto that the SADC Tribunal can be requested by a national court to give a preliminary ruling on a question concerning interpretation, application or validity of SADC provisions, whenever such court considers it necessary to give judgment. This gap in the judicial system will be particularly damaging for the Organisation because, as the European Union experience has shown (Carruba, Murrah, 2005: 399-418; Galetta, 2012: 431), the interaction between the regional court and national judges through references for preliminary rulings is crucial in making effective the law of the organisation and in developing a homogeneous jurisprudence in the region. Being deprived of such competence the Tribunal will not be able to ensure the uniform interpretation and correct application of SADC law in each member State. Inevitably, this will go to the detriment of the Organisation because, when applying SADC norms, national judges could give diverging interpretations and application thus jeopardizing the unity and coherence of SADC law and impeding its further development[36].

Finally the new Protocol has been widely criticised because, limiting access to States only, it doesn't allow the Tribunal to hear cases concerning human rights violations. However this does not mean that individuals from SADC member States are deprived of their human rights protection *tout court.* Indeed it is to be taken into account that all SADC member States are also parties to the African Charter of Human and Peoples' Rights so, pursuant to its Articles 55-58 read together with rules 93-113 of the African Commission Rules of procedure, their individuals may submit a communication to the African Commission claiming a violation of their human rights. Moreover, as six out of fifteen SADC member States (namely, Lesotho, Malawi, Mauritius, Mozambique, South Africa and Tanzania) have also ratified the protocol establishing the African Court, communications against them submitted before the African Commission may be referred by the latter to the African Court pursuant to Article 5 para. 1 of its Protocol of establishment and Articles 84 and 118 of the African Commission's Rules of procedure. Thus, the African Commission

---

[36] It is worth noting that much as the preliminary ruling mechanism is crucial to the application of the law of the Organisation at national level, it has never been tested within the SADC. Probably this indicates that the SADC law is not well-known within the territory of its member States, even by the judicial community.

would act as a filter between individuals' claims and the African Court. Furthermore, it is worth noting that two out of six SADC member States ratifying the Protocol establishing African Court (Malawi and Tanzania) have also accepted the competence of the Court to receive cases filed by Non-Governmental Organisations (NGOs) with observer *status* before the African Commission and individuals. So natural and legal persons from these States may resort to the African Court directly.

Surely, as seen, the system of human rights protection is not homogeneous within the SADC region at the current stage, because individuals from most SADC member States may not resort directly to the African Court while their complaint before the African Commission concludes simply with a non-binding report. Once again the main problem is that, even if the regional judicial or quasi-judicial function is not an end in itself and is not limited to mere cognisance, it is not supported by an effective mechanism of enforcement.

5.3. Applicable law and enforcement of Tribunal's judgments

The 2000 Protocol (Article 21) as well as the new one (Article 35) expressly provide for which law the Tribunal has to apply in order to settle disputes. However, the new regulation seems to be partially different from the previous one. Indeed Article 35 of the new Protocol simply provides that 'The Tribunal shall apply the SADC Treaty and the applicable SADC Protocols'. This synthetic wording does not instil any doubt; it does not provide for the possibility to apply either subsidiary instruments or any other organic act adopted by SADC institutions, or any principle and rule of international law or principles of the law of States. So the applicable law consists in SADC law but coinciding exclusively with binding conventional acts adopted within the Organisation. Hopefully such restrictive provision will be integrated by the Tribunal's jurisprudence thus establishing the applicability of SADC law in its entirety (conventional as well as organic acts) and the public international law at least in a residual way as provided for in any international judicial system.

Unlikely, the new Protocol introduces no change regarding legal aspects of the Tribunal's judgments and their enforcement. Indeed Article 38, literally borrowed from the corresponding one in 2000 Protocol, provides that decisions are taken by majority and delivered at public sitting; they are final and binds

parties to the dispute[37]. As already said, even regarding the enforcement of the judgments nothing changes[38]; according to Article 44 of the new Protocol as well as Article 32 of the 2000 Protocol member States and SADC institutions are under obligation to take all necessary measures to ensure the execution of the Tribunal's decisions which are enforceable within the territories of the State concerned. If the 'loser party' to a dispute fails to comply with the judgment, the last decision still remains to the Summit. Indeed, according to the 'new' Protocol the Tribunal continues to be just entitled to ascertain a member State's non-compliance with its judgment. Then, it has to report its findings to the Summit for the latter to take appropriate action. As Article 32 para. 5 of the 2000 Protocol, the Article 44 para. 4 of the new Protocol does not explain what 'appropriate action' means, thus saving the wide discretionary power of the Summit in this regard. Once again this enforcement mechanism reflects and confirms the intergovernmental nature of interstate cooperation within the SADC but, as past events revealed, it is not effective and hampers the efficiency of the regional judicial system which remains at the mercy of the political will[39]. In this regard, it is worth bearing in mind that even the application of such mechanism has led to the ongoing review of the SADC judicial system!

6. Concluding Remarks

The experience of other regional organisations – primarily that of the European Union – has shown that regional courts or tribunals are cardinal institutions in accelerating regional integration, protecting human rights, promoting rule of law, fostering regional trade and economic development[40].

---

37 Even Articles 39 and 40 of the new Protocol, regulating respectively default decisions and the possibility to apply for review of a decision, are literally borrowed from corresponding provisions of the 2000 Protocol (Articles 25 and 26).

38 Article 32 of 2000 Protocol also provided that the execution of regional rulings was governed by rules of civil procedures for registration and enforcement of foreign judgments in the territory of the member State in which the judgment is to be enforced. Thus, the rulings of the Tribunal were assimilated to judgments delivered by foreign courts, as if the SADC law system was 'alien' to domestic law systems of member States.

39 For a general description and critical considerations about this enforcement mechanism, see Thomashausen, 2002: 26-37; Mkandawire, 2010: 567-573; Oppong, 2010: 115-135.

40 About the role of the Court of Justice within the European integration process, see among others, Court of Justice of the European Union, 2013.

Given the determination to 'ensure through common action, progress and well-being of the peoples in Southern Africa' expressed in the Preamble of the SADC Treaty, the establishment of the Tribunal is aptly consistent with the principles of solidarity, peace and security; peaceful settlement of disputes; equality, balance and mutual benefit; and particularly respect of human rights, democracy and rule of law (even outlined in Article 4 of the SADC Treaty), which should govern regional interstate cooperation. And, in reality, since 2005 the SADC Tribunal had started establishing itself as a well-respected international tribunal which was gradually evolving human rights remedies and jurisprudence appropriate to the need of SADC integration process and its nationals. However, as said, the adoption of the new Protocol in 2014 has introduced few but really relevant amendments to previous regulation, which have changed the SADC judicial system radically. As discussed above, it is not completely proper stating that, as a consequence of the new Protocol, natural and legal persons will remain without any judicial protection *tout court* as, in the light of SADC legal features, they may appeal domestic justice and redress. For this purpose it is desirable that national judges really reconsider their role and start working as 'decentralised' judges of SADC law applying it to cases brought before them. However, if this happened, the abolition of the Tribunal's competence to give preliminary rulings would be really serious as in settling disputes which require the application of SADC law the domestic judges of each member State could give diverging interpretation of same regional rules. This would determine the fragmentation of the law of the Organisation! So, it would be desirable to introduce a mechanism for judicial dialogue between the SADC Tribunal, on the one hand, and national judges, on the other hand, in order to safeguard the coherence and uniformity of SADC law. Consistently with the strong intergovernmental nature of the Organisation such judicial dialogue may be introduced in the form of advisory opinion delivered by the Tribunal at the request of national courts. For this purpose, for instance, SADC could draw from the experience of Mercosur (Carvalho de Vasconcelos, Tavares, 2014: 117-134). Pending this integration in the SADC judicial system, it would be suitable that national judges take into account the jurisprudence of courts from other SADC member States as an authoritative source of inspiration when interpreting and applying SADC law, thus developing a profitable judicial dialogue. This practice might contribute to the uniformity of SADC law.

Undoubtedly, the limitation of jurisdiction to interstate dispute makes the SADC Tribunal lose its importance. Indeed, if we take into account the traditional reluctance of States to sue each other in order to preserve their own sovereignty (thus, in past years no litigation between member States were brought before the SADC Tribunal and, as already said, since its inception it heard only cases concerning human rights violations or SADC contracts of employment), hence it is presumable that it will be inactive in the future.

In sum, the adoption of the new Protocol on Tribunal represents a giant step backwards in the quest for democracy within the region and shows the member States' failure in the very first test of accountability under the rule of law and basic principle of human rights. This indicates that the SADC integration process is still at the mercy of the political will of member States; it still remains a power-oriented system which is not able – or, more probably, which does not want – to move towards a rule-based cooperation system. More in general, the aforementioned decisions of SADC member States represent a litmus paper proving that the international law structure is still anchored to a Westphalian-based model founded on the classical principle of state sovereignty (Pascale, 2015: 853-880). So, illustrating the central position still occupied by States in the international legal system, events occurred within SADC contradict recent theories on the constitutionalism of international law which consider individuals as main subjects of international law (Klabbers, 2009).

References

Ashimizo A. 2011. Barry Gondo & 8 others v. the Republic of Zimbabwe, SADC (T) 05/2008. *SADC Law Journal*, 203-205.

Carrubba C., Murrah L. 2005. Legal integration and use of the preliminary ruling process in the European Union. *International Organization*, 59: 399-418.

Carvalho de Vasconcelos R., Tavares S. M. 2014. La competencia consultiva del Tribunal Permanente de Revisión del MERCOSUR: legitimación y objeto. *Revistas del Tribual Permanente de Revisión*, 4:117-134.

Chigara B. 2009. Introductory note to Southern African Development Community (SADC) Tribunal – Mike Campbell (PVT) Limited and Others v. Republic of Zimbabwe. *International Legal Materials*, 3: 530-533.

Communiqué of the 30th Jubilee Summit of the SADC Heads of States and Government, Windhoek, 19 August 2010.

Communiqué of the Extraordinary Summit of the SADC Heads of States and Government, Windhoek, 20 May 2011.

Communiqué of the 35th Summit of SADC Heads of State and Government, Gaborone, 17-18 August 2015.

Court of Justice of the European Union 2013. *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*. The Hague: Springer.

Cowell F. 2013. The death of the Southern African Development Community Tribunal's human rights jurisdiction. *Human Rights Law Review*, 1: 1-15.

Di Lieto A. 2009. La discriminazione razziale contro i bianchi in Zimbabwe nella giurisprudenza del Tribunale della Comunità dello Sviluppo dell'Africa Australe. *Diritti umani e diritto internazionale*, 2: 432-436.

Erasmus G. 2012. Another chapter in the SADC Tribunal saga: South African Court confirms the Tribunals costs order. *Tralac Working Paper* n° S12WP09/2012: 1.

Erasmus G. 2015. The New Protocol for the SADC Tribunal: Jurisdictional Changes and Implication for SADC Community Law. *TRALAC Working Paper No. US15WP01/2015*: 2-5.

Final Communiqué of the 32nd Summit of SADC Heads of State and Government, Maputo, 18 August 2012.

Final Communiqué of the 34th Summit of the SADC Heads of State and Government, Victoria Falls, 17-18 August 2014.

Fritz N. 2012. Up in smoke: the SADC Tribunal and the rule of law in the region. *SAFPI Policy Brief*, 11: 1-8.

Galetta D.U. 2012. Rinvio pregiudiziale alla Corte di Giustizia UE ed obbligo di interpretazione conforme del diritto nazionale: una rilettura nell'ottica del rapporto di cooperazione (leale) fra giudici. *Rivista Italiana di Diritto Pubblico Comunitario*, 2: 431.

Klabbers J. et al. (eds.) 2009. *The Constitutionalization of International Law.* Oxford: Oxford University Press.

Meckler S. 2016. A Human Rights "Monster" that devoured no one: the far-reaching impact of dismantling the SADC Tribunal. *New York University Journal of International Law and Politics*, 48: 1007-1038.

Mkandawire C. 2010. The SADC Tribunal perspective on enforcement of judgments. *Commonwealth Law Bulletin*, 3: 567-573.

Nathan L. 2013. The Disbanding of the SADC Tribunal: a Cautionary Tale. *Human Rights Quarterly,* 34: 870-892.

Ndlovu P. N. 2011. Campbell vs. Republic of Zimbabwe: a moment of truth for the SADC Tribunal. *SADC Law Journal*, 1: 63-78.

Oppong F. R. 2010. Enforcing judgments of the SADC Tribunal in the domestic courts of member states. In A. Bösl et al. (eds.), *Monitoring regional integration in Southern Africa Yearbook*. Stellenbosch: Tralac, 115-135.

Pascale G. 2015. Sulla posizione dell'individuo nel diritto internazionale: il caso Campbell e le vicende successive nell'Africa australe. *Rivista di Diritto Internazionale*, 3: 853-880.

Phooko M. 2015. No longer in suspense: clarifying the human rights jurisdiction of the SADC Tribunal. *Potchefstroom Electronic Law Journal*, 3: 531-567.

Scholtz W. 2011. Review of the role, functions and terms of reference of the SADC Tribunal. *SADC Law Journal*, 1: 197-201.

Tino E. 2013/2014. The Variable Geometry in the Experience of Regional Organisations in Developing Countries. *Spanish Yearbook of International Law*, 18: 141-162.

Thomashausen A. 2002. The enforcement and recognition of judgments and other forms of legal cooperation in the SADC. *Comparative and International Law Journal of South Africa*, 1: 26-37.

Cases cited

African Commission on Human and Peoples Rights Communication n. 409/12 – Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others, Banjul, 5 November 2013.

Angelo Mondlane v. The SADC Secretariat SADC (T) Case No. 07/2009, 5 February 2010.

Barry Gondo and others v. the Republic of Zimbabwe SADC (T) Case No. 05/2008, 9 December 2010.

Bookie Monica Kethsegile and Juru v. The SADC Parliamentary Forum SADC (T) Case No. 02/2009, 5 February 2010.

Clement Kanyama v. SADC Secretariat SADC (T) Case No. 05/2009, 29 January 2010.

Ernest Francis Mtingwi v. the SADC Secretariat SADC (T) Case No. 01/2007, 27 May 2008.

Richard Thomas Etheredge v. Minister of State for National Security Responsible for Lands, HC 3295/08 [2009] ZWHHC 16, 4 February 2009.

Government of the Republic of Zimbabwe v Fick & others, 657/11 [2012] ZASCA 122, 20 September 2012.

Gramara Ltd v The Republic of Zimbabwe, HC 33/09 [2010] ZWHHC 1, 26 January 2010.

High Court of South Africa – Gauteng Division – case n. 20392/15, the Law Society of South Africa v. the President of the Republic of South Africa, the Minister of Justice of the Republic of South Africa, the Minister of international relations and cooperation of the Republic of South Africa, Founding Affidavit, Pretoria, 19 March 2015.

Luke Munyandu Tembani v. The Republic of Zimbabwe SADC (T) Case No. 07/2008, 14 August 2009.

Mike Campbell and Others v. The Republic of Zimbabwe SADC (T) 1 Case No. 02/2007 (interim order), 13 December 2007.

Mike Campbell and Others v. The Republic of Zimbabwe SADC (T) 2 Case No. 02/2007, 28 November 2008.

Mike Campbell and Others v. The Republic of Zimbabwe SADC (T) 1 Case No. 03/2009, 5 June 2009.

Request for Advisory Opinion n. 002/2012 by Pan African Lawyers' Union and Southern African Litigation Cent.

Chapter 6

Cape Town as a Gateway City: Interlinking the Sub-Saharan Oil and Gas Sector Globally

Sören Scholvin

1. Introduction

During the last few decades some countries from the Global South, including South Africa, have realised a remarkable economic development. The World Bank (2009) argues that these countries serve as **leading areas** assuming the role of regional economic nodes due to their dynamic economies and sheer size. Developing countries should cluster around leading areas in order to benefit from development impulses. There are numerous according studies on the impact of China's and India's economic rise on the Global South (e.g. Bangar and Kumar 2013, Gu 2009, Humphrey and Schmitz 2008, Jenkins and Dussel Peters 2007, Kaplinski et al. 2007, Lederman et al. 2007a, 2007b). The state of research on the effects generated by other emerging economies conversely is thin and somewhat contradictory (Scholvin and Malamud 2014).

Together with Draper (2012) and Malamud (2014), I have made inroads into studying the effect of economic, geographical and political factors on South Africa's role as a **gateway** and Brazil's **geo-economic nodality**. My co-authors and I show that – in addition to the economic potential for regional trade as well as policies that affect foreign investment – traditional factors such as distance, physio-geographical barriers and transport infrastructure are crucial for the economic interaction of Brazil, South Africa and their neighbouring countries. According obstacles limit any positive effects that Brazil and South Africa might generate for South America and Sub-Saharan Africa respectively.

It moreover appears that the state-centric perspective that marks research on emerging economies is hardly adequate. Economic impulses for the periphery originate in the advanced and dynamic cities of emerging economies, which feature business districts at First-World level and industries that process raw materials from the periphery. My research with Malamud (2014) suggests that São Paulo largely accounts for Brazil's regional economic ties, as demonstrated by exports of cars to Argentina and imports of natural gas from Bolivia. Rossi, Beaverstock and Taylor (2005, 2007) show that São Paulo's banking sector is a stepping stone for Brazilian companies that internationalise their business. Johannesburg serves as a hub for transnational companies in Sub-Saharan Africa (Draper and Scholvin 2012);so does Cape Town, albeit to a lesser extent. This means that we have to study the global and especially the regional connectivity of global cities from emerging economies so as to learn about the role of their host countries for the respective spheres of influence and, more generally, the processes that account for the major shifts of the world-economy in the early 21st century.

Cape Town and the oil and gas sector are a good starting point for explorative research in the direction just described. Cape Town is recognised as a global city by the Globalisation and World Cities Research Network (2009a, 2009b, 2010, 2011, 2014): it rose from gamma status in 2000 and 2004, gamma+ in 2008 and beta in 2010 to beta+ in 2012.[41] Given that there are few global cities in Sub-Saharan Africa, Cape Town has a large potential sphere of influence that it can interlink globally. The oil and gas sector consists of extractive activities that occur in the periphery – because of the location of according resources – and processing and consumption in the semi-periphery and cores of the world-economy. Oil and gas has furthermore been identified as a strategic sector by the public authorities of Cape Town and the Western Cape.

Based on two major concepts from economic geography (global cities and global commodity chains), I show in this paper that Cape Town interlinks the Sub-Saharan periphery globally because it is an agglomeration of transnational companies, related industries and services providers. Referring to the 2009

[41] The hierarchy of global cities that this research group uses is based on the connectivity of cities through four advanced producer services: accountancy, advertising, banking/finance and law. Itcomprises alpha, beta and gamma cities as well as 'sufficiency level cities'. Alpha cities are divided into four sub-levels. The connectivity, and thus the importance, of cities declines along the hierarchy.

World Development Report, I subsume these factors as **density** and add Cape Town's sophisticated institutional setting and its role as a transport hub. The interaction of Cape Town with the Sub-Saharan periphery depends on conditions that the World Bank summarises as **distance** –the cost and time of transport from Cape Town to peripheral places – and **division**, meaning all other tariff and non-tariff barriers that hamper Cape Town's regional economic ties. In other words, I answer the following main question: How do density, distance and division shape the global interlinking of the Sub-Saharan periphery by Cape Town in the oil and gas sector?

In the first section of this paper I link global cities, global commodity chains and the three Ds as analytical concepts. The second section is then dedicated to the density that Cape Town offers, its institutional setting and its role as a transport hub. The third and fourth sections deal with distance and division so as to show how these factors influence Cape Town's impact on the Sub-Saharan periphery. The conclusion of this paper summarises the main findings and also hints at analytical shortcomings of the gateway-city perspective.

2. Global cities, global commodity chains and the three Ds

Research on global cities goes back to Friedmann and Wolff, who pointed out that global cities are 'basing points' of global capital. They 'serve as banking and financial centres, administrative headquarters [and] centres of ideological control […]. Without them, the worldspanning system of economic relations would be unthinkable' (1982: 311–2; also Friedmann 1986). Those who carry out research in the tradition of Friedmann and Wolff concentrate on the headquarter–subsidiary relations of transnational companies (e.g. Alderson and Beckfield2004, 2012, Wall and van der Knaap 2012). Other features that interconnect global cities are not excluded: business services, the financial sector, and infrastructures for communication and transport have been studied (e.g. Cai and Sit 2003, Knox and Taylor 1995).Some researchers, especially those from the Globalisation and World Cities Research Network, shift the analytical focus to practices of control, concentrating on advanced producer services. Advanced producer services – accountancy, advertising, banking/ finance and law – are, according to Sassen (2001a, 2001b), essential to transnational enterprises because of the increasing complexity of globalised production and commercialisation. Global cities possess a business environment that is necessary for the generation of these services as they are

information loops that cannot be replicated through telecommunication. By bundling and providing knowhow, global cities become 'highly concentrated command points' from where global economic processes are managed (Sassen 2001a: 3).

A problem of these approaches is that they define global cities by what they contain. Yet global cities gain their competitive advantages from their connectivity. Beaverstock, Taylor and their co-authors (1999, 2002a, 2002b) therefore try to capture the flows between global cities. They identify important providers of advanced producer services such as KPMG in accountancy and Standard Chartered in banking. They then count the offices of these companies in potential global cities and rank the cities according to the number and size of offices. Assuming that large offices generate more intense flows than small offices, Beaverstock, Taylor and their co-authors derive the intensity of inter-city flows from office size. Strictly speaking, this methodology remains at the level of counting what global cities contain. I seek to fix this shortcoming by bringing global cities together with global commodity chains. I conceptualise the former as gateway cities, meaning as cities that interlink peripheral places globally. As I show below, the gateway-city perspective comes along with indicators that address the conditions for flows instead of guesstimating them.

Global commodity chains – as advanced in the edited volume *Commodity Chains and Global Capitalism* (1994) – represent all actors involved in the production and commercialisation of a particular good or service along a chain, revealing the sequential stages of production and commercialisation too.[42] This approach enables me to direct my attention to the locations of particular segments of the chain, whilst simultaneously illuminating how these discrete locations are connected to each other as constituent links that collectively comprise the commodity chain. Some segments of global commodity chains, especially their coordination and management, take place in global cities; amongst other reasons because the place-specific institutional setting there allows transnational companies and their partners to choose modes of governance that they consider suitable for their business (Meyer and Revilla Diez 2014, Meyer, Schiller and Revilla Diez 2012). The focus of this paper

[42] I do not refer to global value chains and global production networks here. They are more elaborated versions of global commodity chains but do not offer additional insight for this study.

apparently lies on the segments of the oil and gas commodity chain that are located in Cape Town.

What is more, researchers have pointed out that some global cities – in particular those that fulfil a gateway function – are transport hubs (e.g. Grubesic and Matisziw 2012, Hesse 2010, Jacobs et al. 2010). Transport hubs are places where commodity chains become territorially embedded in a very demonstrative way. Bringing together global cities and global commodity chains is also eased by a particularity of global cities in the Global South: they host industries that process raw materials. This feature distinguishes them from global cities in the Global North, which are largely de-industrialised. In the Global South it is also sensible to think of producer services instead of advanced producer services because globally interlinking places like Lüderitz (Namibia) or Nacala (Mozambique) requires basic services – for example equipment maintenance and training of staff – in addition to services in accountancy, advertising, banking/finance and law.

Based on these concepts, I expect the agglomeration of transnational companies, related industries and producer services, adequate institutions and transport infrastructure to be the key conditions for the interlinking of the periphery of the world-economy by global cities in emerging economies. We find a somewhat similar but cruder argument in the *World Development Report* (2009), which points out that density, meaning the agglomeration of companies, is essential for development. As noted, the World Bank is interested in how economic impulses spread from such agglomerations to the periphery. Hence they add distance and division as further determining factors: distance is about cost and time to transport goods, information and people; division captures tariff and other non-tariff barriers, for instance different business languages. Sound policies, the World Bank argues, facilitate agglomeration to boost density, infrastructural development to overcome distance and regional integration to end division.

Bringing together the three Ds and the concept of gateway cities, I advance two research questions that capture the gateway role of global cities in the Global South – obviously within the limits of an explorative study. These research questions help to answer the aforementioned main question:

- Are institutions that are suitable to transnational companies and the agglomeration of such companies, related industries and producer services as well as transport infrastructure – in one word density – essential location advantages that allow Cape Town to assume a key role in the commodity chain of oil and gas?
- Does the intensity of the flows that connect the Sub-Saharan periphery and Cape Town, and as a result development impulses that the latter generates for the former, decline if distance and/or division increases between them?

I am aware that the *World Development Report* is not a basic theory. It summarises major debates in Economics and Economic Geography, illustrating causal factors traditionally considered as relevant and translates them into policy advice: Porter (1990, 1996, 1998, 2000) stresses the relevance of geographical clustering for competitive advantages in international trade. Krugman (1991a, 1991b, 1992) argues that location – or proximity – matters much for economic processes. Because of economies of scale and scope and associated agglomeration economies, there is a strong tendency towards polarisation, for example between a gateway city and its periphery. Economic geographers have criticised Krugman's theory and the *World Development Report* for their oversimplification and because they ignore locally and temporarily bounded context factors (e.g. Martin and Sunley 1996, Rodríguez-Pose 2010). I therefore use the three Ds as a starting point and then examine how they relate to the specific local context of Cape Town.

Altogether, the first research question covers the reasons of the local embeddedness of key segments of a commodity chain. I consulted websites of major transnational companies and the Oil & Gas Directory, which is an online directory of service providers established by the South African Oil & Gas Alliance (SAOGA), to get an overview of the activities related to the oil and gas sector in Cape Town. Narrative interviews with businesspeople and politicians from the city are a key source of information, in particular for contextualising density.[43] I bring the information derived from these interviews

[43] The purpose of narrative interviews is to capture the perspective of an interviewee on a specific issue rather than to gain objective information. A researcher who uses narrative interviews is interested in the logical connections of goals, problems and strategies that exist according to the interviewee. These can be expected to guide the interviewee's behaviour (Schütze 1983).

together with indexes that help me to cross-check arguments made by my interviewees. The Liner Shipping Connectivity Index and the Logistics Performance Index are used to assess Cape Town's role as a transport hub. I operationalise institutional quality with the rankings from the *Doing Business Reports* and the Worldwide Governance Indicators.

The second research question allows me to shed light on the interaction of Cape Town and its periphery. Naturally given obstacles hamper transport in Sub-Saharan Africa considerably. Man-made structures in geographical space that are meant to overcome these obstacles – for example rail and road corridors – vary in their sophistication. I complement desk studies on rail and road infrastructure as well as flight and maritime connections with information from the aforementioned interviews. I also refer to publications by international organisationsin this regard. There is more that separates Cape Town – or gateway cities in general – from places in its periphery than costly and time-consuming transport. I elaborate on regional economic integration, concentrating on how market access is eased for companies based in Cape Town. Beyond that, language barriers hamper South African investment in Mozambique for example. My interviews furthermore revealed that corruption, insufficient law enforcement and the lack of skilled people constitute major obstacles for Capetonian firms that want to expand into Sub-Saharan Africa.

2.1 Density: the oil and gas sector in Cape Town

Anadarko, Chevron, Eni, Petro SA, Sasol, Total and Tullow Oil are some of the important transnational oil and gas companies in Cape Town. Cape Town not only hosts advanced business/service functions of these companies, for example Sasol's transport fuels research centre, which focusses on engine and exhaust emission testing.[44]Providers of advanced producer services – Ernst & Young, Deloitte and KPMG – have offices in Cape Town whose responsibilities are not limited to South Africa. The aforementioned oil & gas directory reveals that Cape Town also offers various other services to the oil and gas sector, ranging from air charter and other logistics to offshore engineering to travel agencies that handle visa issues for employees from

[44] The reason for this locational choice is – according to my personal communication of a manager of Sasol (2015) – that the international standard altitude for engine testing is at sea level. Sasolburg in Gauteng, where Sasol's main offices are located, lies about 1,500 metres above the sea level.

overseas.[45]Cape Town hosts important international conferences such as the Oil & Gas Africa Conference and the 21st Africa Oil Week, both held in 2014. At these conferences leading managers of transnational companies meet South African politicians and experts on the oil and gas sector. Domestic and foreign firms present services that they would like to provide to oil and gas companies.

Cape Town is furthermore important for processing crude oil and raw gas, as demonstrated by Chevron's refinery in the suburb of Milnerton. The refinery reaches an output of 110,000 barrels per day, making Cape Town one of Chevron's three global supply hubs. South Africa's national strategic oil reserve of 10.5 million barrels is also stored in Milnerton (and managed by Petro SA). In 2003 the authorities of the City of Cape Town and the Western Cape Province established the Cape Oil and Gas Supply Initiative (COGSI). COGSI has now been lifted to the national scale and rebranded SAOGA, which is a public-private partnership dedicated to promoting the mid- and upstream sectors.[46] SAOGA's board of directors includes some of the biggest players in the sector, ranging from engineering and exploration to processing. SAOGA pursues a national strategy of developing all of South Africa's ports, building oil and gas terminals and nearby refineries. In spite of the shift to the national level, Cape Town plays the most important role for the oil and gas industry in South Africa.

There are several reasons for the outstanding role of Cape Town. First of all, Cape Town benefits from its geographic proximity to all Sub-Saharan offshore oil and gas fields. Other cities that seek to attract transnational companies such as Dubai (United Arab Emirates) and Lagos (Nigeria) reach either the east or the west coast of the sub-continent. Given that very large tankers cannot pass through the Suez Canal, they have to take the route via Cape Town on their way from the Persian Gulf to Europe and North America. 32 per cent of the oil exports from West Africa and 24 per cent of the oil exports from the Middle East are transported around the Cape of the Good Hope (Wesgro2012). Being

---

[45] The complete list of companies is available at www.saoga.org.za/directory.

[46] The oil and gas industry is usually divided into three sectors: down-, mid- and upstream. The upstream sector includes searching for oil and gas fields, drilling of exploratory wells, and subsequently drilling and operating these wells. The midstream sector involves transport, storage and wholesale marketing of crude or purified/refined products. The downstream sector comprises refining of crude oil and processing and purifying of raw gas as well as marketing and distribution of products derived from oil and gas.

located at a major sea lane obviously boosts Cape Town's attractiveness. As Figure 8 further below shows, an executive from SAOGA (2014) referred to these locational advantages when discussing Cape Town's role as an oil and gas hub. He put them into a broader frame, arguing that Cape Town has historically had an active and globally interlinked port due to its location. This gave the initial impulse for the concentration of the down- and midstream sectors as well as related industries and services in the city. The interviewee added that Cape Town's good transport infrastructure –its regional connectivity – provides access to Sub-Saharan markets (more on this later).

Cape Town's importance is boosted by the development of Saldanha Bay, located 120 kilometres north of the city. Whereas the potential of Cape Town's own harbour is restricted by draught limits, Saldanha Bay is a natural deep-sea port, used for iron ore exports since the mid-1970s. In 2013 the Saldanha Bay Industrial Development Zone (SBIDZ) was launched as a cluster for oil and gas services as well as marine repair. It is meant to supply the whole of Sub-Saharan Africa. Focus activities include rig and marine vessel maintenance and repair, equipment fabrication and repair, and specialist oil and gas logistics. The SBIDZ is being developed as a free port incentive: investors do not pay value added tax or import/export duties for goods landing at or leaving from the terminals. South Africa's National Ports Authority advances three infrastructure projects so as to support the SBIDZ: an oil and gas offshore supply base, a dedicated oil and gas repair terminal and a new terminal quay to support ship repair and oil and gas repair activities. Using these new facilities and the aforementioned special administrative arrangements, the SBIDZ is in the process of establishing a 'one-stop-shop' for the oil and gas services industry. This way it aims to reduce administrative delays, red tape and regulatory hurdles.[47]A major milestone for the SBIDZ was an investment by MAN Ferrostaal in 2006. The company has built fabrication and repair facilities for drilling platforms and oil tankers in Saldanha Bay. MAN Ferrostaal has also opened a refurbishment centre in the port of Cape Town.

[47] This and further information is available online at www.saldanhaindustrial.co.za and www.sbidz.co.za.

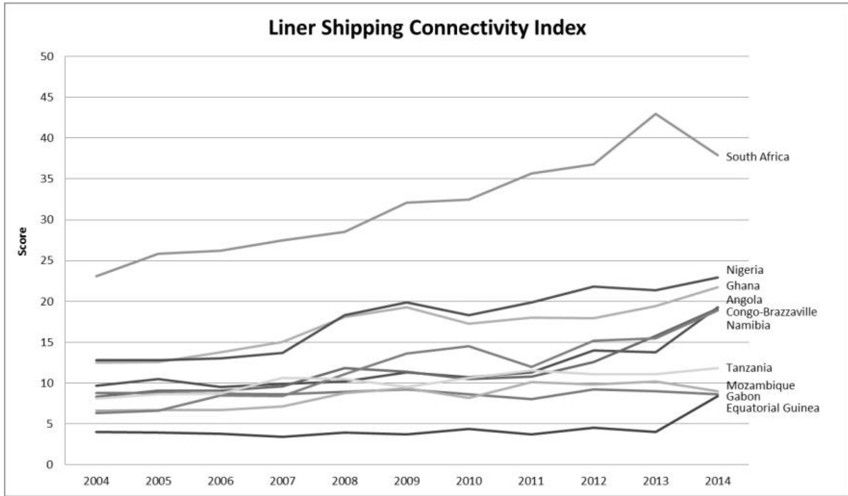
According to my interviewee from SAOGA, the SBIDZ and the port there compensate for the advantage that Ngqura, which is also a natural deep-sea harbour, and the Coega Development Zone near Port Elizabeth hold vis-à-vis Cape Town. Building a 300,000-barrels per day refinery at Coega, with the Chinese giant Sinopec as the main investor, has been discussed since 2007 but the so called Project Mthombo is stuck; mainly because it appears to be cheaper to import refined oil and because most of South Africa's consumers are in Gauteng, meaning that a 1,200-kilometres pipeline would have to be built to supply them from Coega (Business Day 2014). The SBIDZ conversely received a boost when President Jacob Zuma declared in August 2015 that his government would spend ZAR 9.2 billion on the hub (Times Live 2015).

Cape Town's sophistication in maritime transport– compared to present and future oil and gas-exporting countries in Sub-Saharan Africa – is confirmed by the Liner Shipping Connectivity Index.[48] The Liner Shipping Connectivity Index is aggregated on the national level. Hence some caution is needed when interpreting it with regard to Cape Town's performance. Given that Cape Town is South Africa's second-largest container port after Durban, it is reasonable to assume that the Liner Shipping Connectivity Index reflects Cape Town's connectivity to a large extent.

---

48 The Liner Shipping Connectivity Index comprises five components of the maritime transport sector: number of ships, their container-carrying capacity, maximum vessel size, number of services and number of companies that deploy container ships in a country's ports. The value for the best-performing country in 2004 is set at 100. All other values are relative to it.

Figure 1: Liner Shipping Connectivity Index



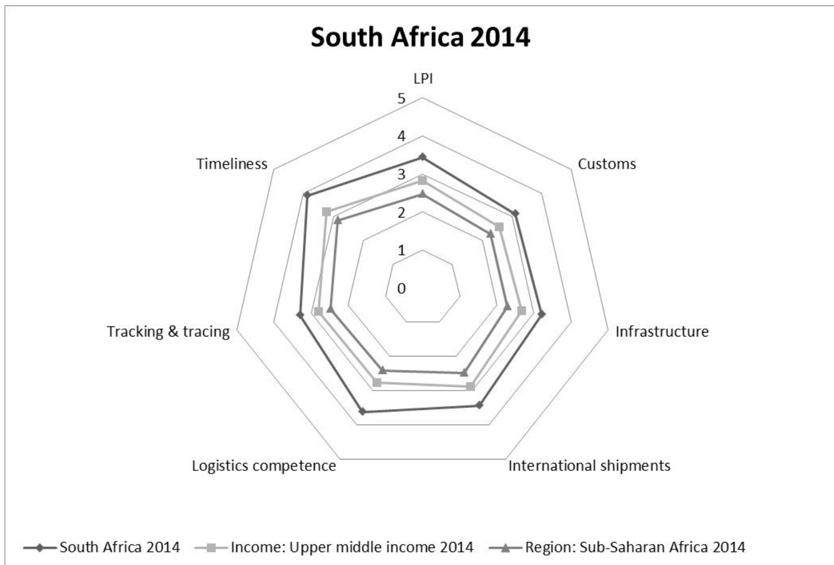
Source: United Nations Conference on Trade and Development 2015.

Cape Town also offers a better business environment for logistics than the Sub-Saharan average according to the Logistics Performance Index.[49] This means that anyone who wants to do logistics in Sub-Saharan Africa should consider Cape Town – or at least a place in South Africa – a preferential location. South Africa outperforms the average upper middle income country on the logistics performance index. In other words, South Africa possesses a comparative advantage in terms of logistics, compared to countries at the same development level.

---

[49] The Logistics Performance Index is based on a worldwide survey of operators such as express carriers and freight forwarders. They provide information on the logistics friendliness of the countries in which they operate and those they trade with. The index takes a value between 0 (worst) and 5 (best). It is composed of six sub-categories with values in the same range. The sub-categories are customs, infrastructure, international shipments, logistics competence, timeliness, and tracking and tracing.
Given that the interviewees usually come from the major cities of the respective country, their assessment rather reflects the logistics performance of these cities than the logistics performance of the country as a whole. This somewhat reduces the problem that the Logistics Performance Index is aggregated on the South African level but interpreted with regard to Cape Town in this paper.

Figure 2: Logistics Performance Index



Source: World Bank 2014.

The aforementioned interviewee from SAOGA added that the growing regional demand, including the demand in South Africa, boosts the downstream oil and gas sector in the city. For example Petro SA seeks to connect the Ibhubesiand Kudu Gas Fields at the Namibian–South African border to a gas-to-liquids plant in Mossel Bay, a town about 380 kilometres east of Cape Town, and to a power station in Cape Town (Times of Africa 2015). A report by South Africa's Department of Minerals and Energy (2005) suggests that Namibia and the Western Cape Province could also be connected by pipeline to Gauteng. An alternative favoured by the Namibian authorities is constructing a fired power station in Oranjemund, near the Kudu Gas Field. About 300 megawatts of electricity from that plant would be sold to South Africa (The Namibian 2014). This exemplifies that there is an endogenous dynamic in the oil and gas sector, which also affects the SBIDZ.

An official presentation used by SAOGA (2014) furthermore highlights that Sub-Saharan Africa lacks refining capacity, in particular considering that exploration in the region has speeded up lately. There are some major refineries

in West Africa, which are being upgraded, but East and Southern Africa run short of such key facilities, with Angola and South Africa being the two exceptions.

There is obviously a connection between the down-, mid- and upstream sectors. The commodity chain of oil and gas is producer-driven, meaning that the transnational companies decide how to organise it. Several interviewees pointed out that they are in Cape Town because their ‘anchor clients’ or ‘all of our main clients’ are there (Managers of a basic equipment and services provider 2014, Public officer of a natural-gas explorer and developer 2014). If companies process, store and market oil and gas in Cape Town, they are likely to coordinate their exploration from the city too. Access to Sub-Saharan Africa is another key factor that matters to all three sectors. Some restrictions have to be made regarding this assessment of my interviewee from SAOGA though (see next section). Beyond that, the interviewee mentioned some factors that are particularly relevant – or perhaps exclusively relevant – for the upstream sector. Sub-Saharan Africa is a frontier region for oil and gas. South Africa’s own domestic offshore resources as well as the deposits of shale gas in the Karoo, a semi-arid region eastwards of Cape Town, boost the attractiveness of the city. Many resources remain to be explored; the costs of their exploitation still need to be assessed. Presently the extremely low oil and gas prices are of course a strong disincentive to according projects.

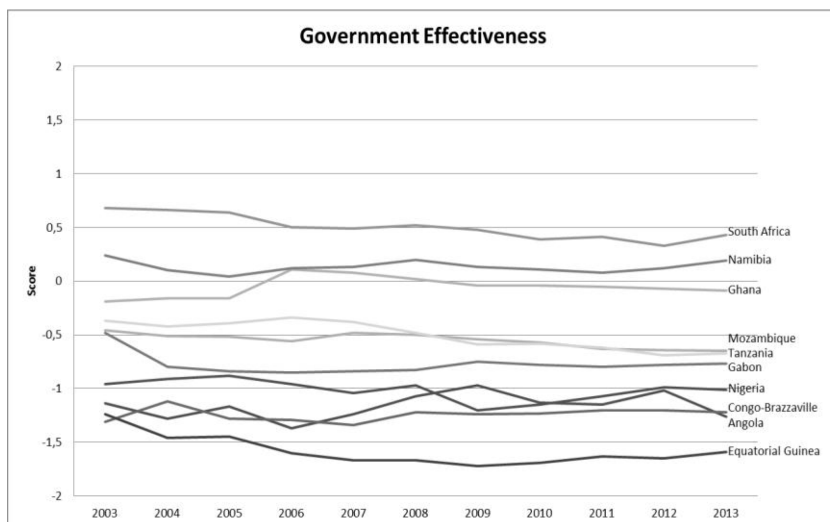
Cape Town moreover possesses human capital unmatched by other places in Sub-Saharan Africa except for Gauteng. The city is home to several institutions of higher education: the universities of Cape Town, Stellenbosch and the Western Cape as well as the Cape Peninsula University of Technology. The MBA programme offered by the University of Cape Town is amongst the global top 100 according to the *Financial Times* (2015), whose ranking is otherwise exclusive to European, Far Eastern and North American MBA programmes. Geological expertise in Cape Town is much more sophisticated than elsewhere in Sub-Saharan Africa. An executive from Wesgro (2014), which is the investment and trade promotion agency of the Western Cape Province, added that South Africa possesses engineering expertise that is unique in Sub-Saharan Africa, and highly necessary to explore offshore resources in disparate places.

Concerning engineering expertise my interviewee from SAOGA however admitted that Johannesburg outcompetes Cape Town. The interviewee from Wesgro pointed out that South Africa's largest city also has a much larger and better linked airport (more on this later). The fact that most offshore exploration is presently going on in East Africa hints at a competitive advantage of Durban, which hosts the largest container port of Sub-Saharan Africa and is home to a car manufacturing hub with associated services that could be transferred to the oil and gas sector. Already today 60 per cent of South Africa's refining capacity – and the country's largest refineries with a maximum output of 165,000 and 135,000 barrels per day respectively – is located in Durban, also because the city is connected to Gauteng by pipeline. Whereas Ngqura/Port Elizabeth competes with Cape Town on the downstream sector only, Durban is a potential challenger regarding the down- and upstream sector. Ngqura/Port Elizabeth and Durban may soon benefit from a yet-to-be specified multi-purpose development corridor that will stretch from Port Elizabeth to East London to Durban to Mozambique's capital Maputo (Department of Transport 2010).

Thinking about other location advantages, my interviewee from SAOGA mentioned the sophisticated legal and tax framework that all South African cities offer to transnational companies. The Worldwide Governance Indicators confirm this assessment.[50]During the last 10 years of recording, South Africa outperformed all present and future oil and gas-exporting countries in the Sub-Saharan region regarding government effectiveness and regulatory quality. Control of corruption and rule of law are similar or slightly better in Ghana and Namibia.

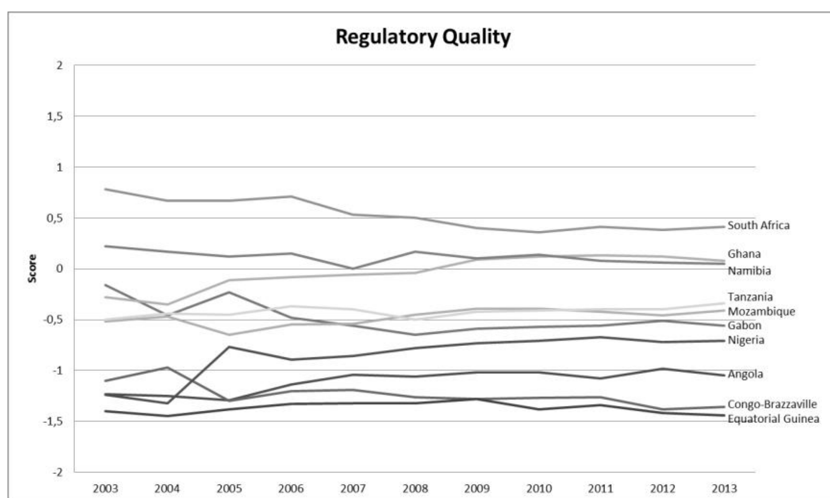
[50] The Worldwide Governance Indicators asses the institutional quality of 215 countries, providing information on six dimensions: control of corruption, government effectiveness, political stability and absence of violence, regulatory quality, rule of law, and voice and accountability. The values that these dimensions take are based on the views of citizen, enterprise and expert survey respondents. They are derived from 32 individual data sources produced by a variety of partners of the World Bank.

Figure 3: Worldwide Governance Indicators: Government effectiveness



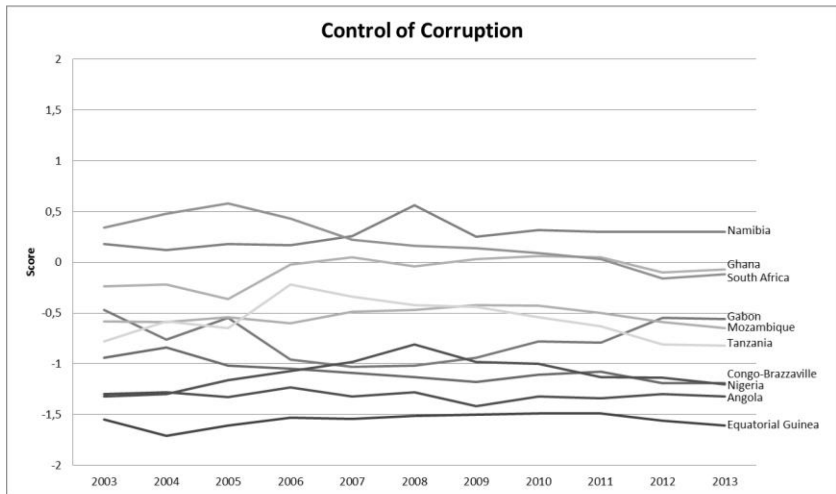
Source: World Bank 2015a

Figure 4: Worldwide Governance Indicators: Regulatory quality



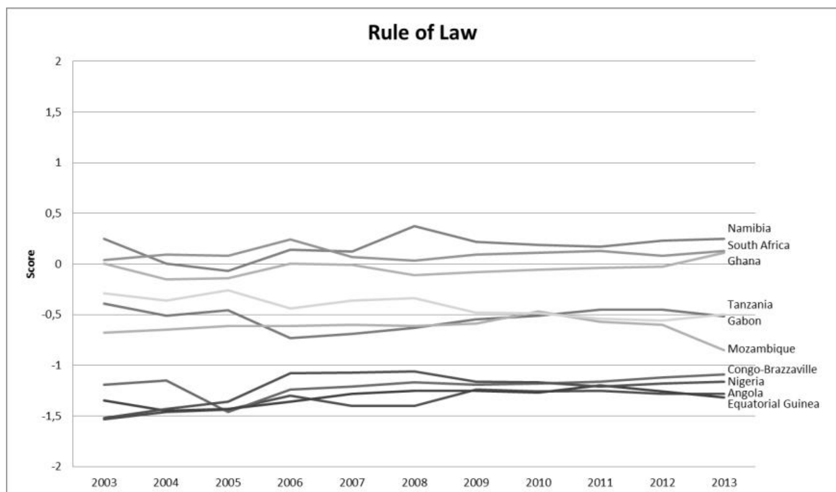
Source: World Bank 2015a.

Figure 5: Worldwide Governance Indicators: Control of corruption



Source: World Bank 2015a.

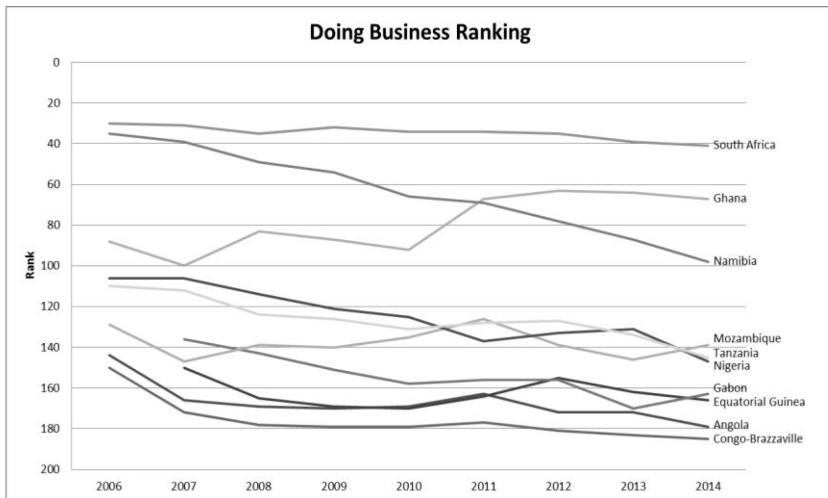
Figure 6: Worldwide Governance Indicators: Rule of law



Source: World Bank 2015a.

The *Doing Business Reports* moreover suggest that the conditions in Cape Town are also favourable to the potential local partners of transnational companies.[51]Small and medium businesses that work together with transnational companies in the oil and gas sector will rather develop in South Africa than anywhere else in the region. One of my interviewees reasoned that the city of Cape Town and the Western Cape Province – both ruled by the liberal, pro-business Democratic Alliance – provide a better and more reliable business environment than South Africa in general and the country's other provinces, which are all governed by the African National Congress (Manager of an offshore repair company 2014). Unfortunately there are no quantitative indicators to cross-check these disparities within South Africa.

Figure 7: Doing Business ranking



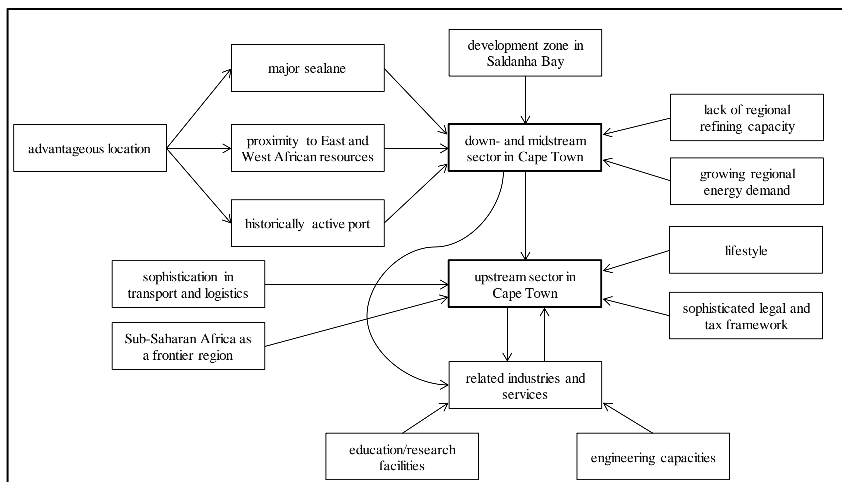
Source: World Bank 2015b.

51 The *Doing Business Reports* present quantitative indicators on business regulations and the protection of property rights that can be compared across 189 countries. These indicators tell how difficult it is to open and run a small to medium-sized business when complying with relevant regulations: closing a business, dealing with construction permits, employing workers, enforcing contracts, getting an electricity connection, getting credit, protecting investors, registering property, taxes and trading across borders.

A location advantage of Cape Town that was mentioned in almost every interview but does not fit into the analytical frame described in the previous section is lifestyle. Several interviewees pointed out that Cape Town offers excellent free time activities. It has a pleasant Mediterranean climate, good public security and high-quality education facilities (in addition to the already mentioned universities). An interviewee familiar with the internal practices of transnational oil and gas companies argued that 'if you offer European or North American managers to go to Cape Town, they will do it for even less money than they presently earn' (Managers of a basic equipment and services provider 2014). Transnational companies would hardly be able to convince their well-paid employees to live with their families in other places in Sub-Saharan Africa for several years and manage a project there. These places are either insecure (e.g. Kenya and Nigeria) and/or lack the conveniences of a Western upper-class lifestyle (e.g. Mozambique and Namibia).This assessment is confirmed by indexes that compare the quality of life in cities: Cape Town is the best-performing Sub-Saharan city in Mercer's *Quality of Living Ranking* (2012),[52] being ranked 89th on a worldwide scale and thus a few positions in front of Johannesburg, Tel Aviv (Israel) and Zagreb (Croatia). Cities in Sub-Saharan countries that possess oil and gas resources – Windhoek in Namibia (rank 123), Maputo (165), Banjul in the Gambia (173), Yaoundé in Cameroon (182), Dar es Salaam in Tanzania (187), Luanda (191), Abuja in Nigeria (205) and Brazzaville in the Republic of the Congo (215) – perform much worse.

[52] Mercer evaluates living conditions according to 39 factors, grouped in 10 categories: consumer goods, economic environment (e.g. banking services), health and sanitation (e.g. air pollution and medical services), housing, natural environment, political and social environment (e.g. crime and law enforcement), public services and transportation, recreation (e.g. sports and leisure facilities), schools and education, and socio-cultural environment (e.g. limitations on personal freedom).

Figure 8: Reasons of density



Source: Executive from SAOGA 2014.

2.2 Distance: Cape Town, the Sub-Saharan periphery and transport infrastructure

As noted, the oil and gas industry can be split into down-, mid- and upstream activities. These involve five consecutive work processes: exploration, extraction, purifying/refining, distribution and marketing. Distribution includes transport by pipeline, rail, road or ship and storage. At first glance some activities of this commodity chain cannot be relocated according to the preferences of transnational companies: the exploration and production of oil and gas – the upstream sector – is determined by physio-geographical conditions; consumption depends on the availability of markets. Hence the downstream sector is locationally flexible only as long as one excludes final consumption. The remainder of the downstream sector and the midstream sector are highly flexible regarding their location. Firms can freely decide where to store oil and gas and where to refine/purify it.

At a second glance there is locational flexibility in the upstream sector because the experts who assess the economic viability of oil and gas fields and the

companies that drill wells and operate them are not usually based at the places where the resources are found. Experts process information and/or provide knowledge about these places. Drilling companies send crews there to install platforms or rigs and maintain them from time to time. There is even some locational flexibility regarding final consumption because enterprises such as Chevron or Total decide which markets to supply. In other words, companies from every part of the oil and gas commodity chain have to choose suitable locations for their business. As I have shown in the previous section, there are many arguments that speak for Cape Town as a location. Yet Cape Town will only be a gateway city that transmits development impulses to the periphery– instead of fostering polarisation by bundling all activities of the oil and gas sector – if some sections of the commodity chain are relocated to the periphery.

As stated in the conceptual section of this paper, it is plausible to expect distance and division to have a major impact on the relations of Cape Town with places of oil and gas extraction in its periphery, and thus on development impulses. Distance is indicated by the availability and quality of transport infrastructure. Cape Town hosts South Africa's second-largest airport, which is used by 600,000 to 800,000 passengers a month. 15 international airlines offer routes from/to Cape Town. Managers of transnational companies can reach Cape Town directly, coming from major business cities in Europe and at least some in the Middle and Far East. Cape Town does not offer any direct flights to the Americas and Australia. China and Japan –the most important oil and gas importers in East Asia – are not directly connected to Cape Town either. The regional flight network is limited to a few destinations in the western part of Southern Africa, Addis Ababa and Mauritius; the latter because of tourism. The existing and emerging oil and gas producing sites in East and West Africa cannot be reached directly.

The executive from Wesgro (2014)I interviewed accordingly argued that air transport was 'a big problem' for Cape Town.[53] He said his organisation had been in negotiations on additional flight connections with national authorities

[53] Some caution is required regarding this pessimistic assessment. Air transport to offshore platforms is carried out by helicopters. Transnational oil and gas companies do not depend on scheduled flight services. They can hire private jets for their top executives. The larger service providers from Cape Town also charter aircrafts on demand in order to transport equipment and staff. Hence what really matters to the oil and gas sector is the availability of infrastructure, which is of high sophistication in Cape Town.

and South African Airways; but at present Cape Town remains insufficiently linked. O.R. Tambo International Airport in Johannesburg – with 1.4 to 1.7 million passengers a month – is considerably larger than Cape Town's airport and better linked on the global and regional scales (Draper and Scholvin 2012).

Map1: International flight connections of Cape Town

Source: Author's own draft based on data compiled from the websites of airlines that offer flights from/to Cape Town.

Note: The flights from/to Istanbul and Singapore make a stopover in Johannesburg. Passengers continue travelling with the same aircraft. Air France, Condor, Edelweiss Air and Lufthansa offer seasonal direct flights that connect Cape Town with Frankfurt, Paris, Munich and Zurich. They are not included in this map.

The regional rail and road network reflects historical conditions. During the colonial era, there were numerous small gateways in Africa south of the equator. The Belgian, British, French, German and Portuguese conquests started at bays that offered protection from ocean currents and storms or at least places that allowed unloading of goods. The colonial powers then built railway lines from these ports into the hinterland to export agricultural and mining products and exert territorial control. Integration on the national or even on the regional scale was not an objective. In particular Angola and Mozambique became highly fragmented countries. On the other hand, the British colonies in Southern Africa, including Namibia after World War I, were connected

relatively well to South Africa; primarily along a trajectory that is today part of the North–South Corridor. Rhodesia and Transvaal also linked to Beira and Lourenço Marques/Maputo respectively.

These corridors however became prime targets for raids by the South African army and its local proxies during the Mozambican civil war; so did the Benguela Line from the Angolan port of Lobito to the Congolese–Zambian Copperbelt. During the struggle against the South African apartheid regime, only the corridors from Zambia to Dar es Salaam and from Zimbabwe to Beira enabled the Front Line States to bypass South Africa and reach the world markets. South Africa reinforced its grip on the region by making the neighbouring countries dependent on its transport infrastructure (Gibb 1991, Gleave 1992, Price 1984, Smith 1988). What is more, transport by rail was considered superior to transport by road in the colonial and immediate post-colonial years. Given that time was not essential for exporting resources, railway lines were built on modest technical standards. Until today transport by rail remains extremely slow in the entire region.

In addition to the colonial legacy, physio-geographical conditions have a strong impact on transport infrastructure in Africa south of the equator. The Great Escarpment, a region that features tremendous changes in elevation, sharply separates the narrow coastal strip from the interior plateaux. Therefore only a few ports – those that are well connected beyond the Great Escarpment – interlink the region globally. In the interior of Southern Africa, there are no severe physical barriers to transport except for the temporarily flooded Okavango Delta and the rivers Cunene and Zambezi.

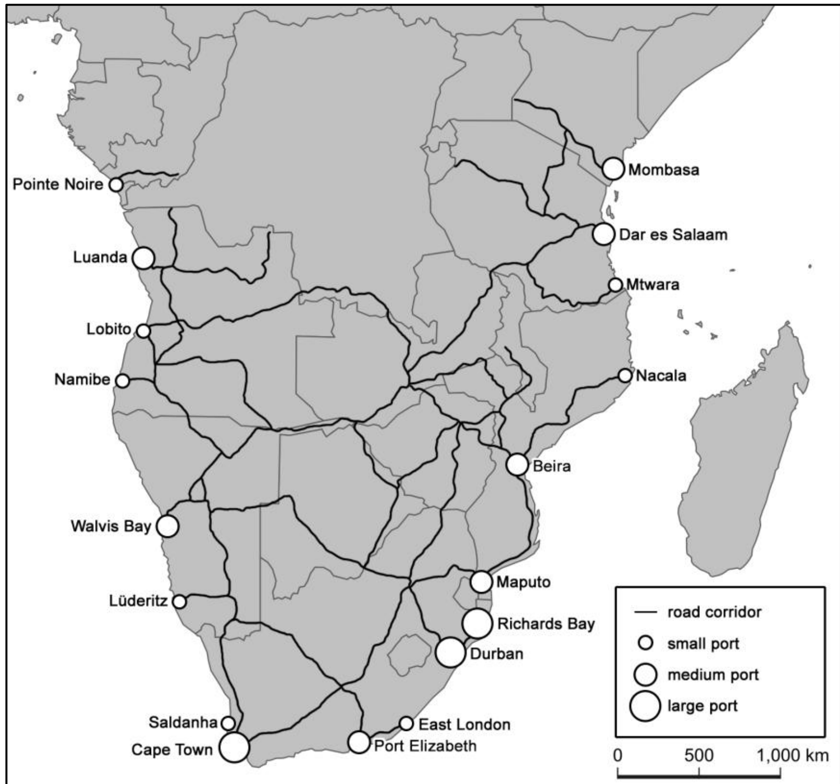
East Africa is cut off from Southern Africa by the East African Rift Valley, where areas at the sea level tie up with areas of an altitude of 2 000 metres on a horizontal distance of 40 to 60 kilometres. The difficult terrain that the Tanzania–Zambia Railway (TAZARA) passes from Dar es Salaam to Kapiri Mposhi (Zambia) necessitates 22 tunnels, 300 bridges and almost 2 200 culverts. Landslides along the Rift Valley frequently lead to closures of the railway line. TAZARA also suffers from underinvestment: many locomotives can hardly take the steep route because their engines are too weak (Scholvin 2014).

Central Africa is separated from Southern Africa by a wide boundary: the Congo Basin. Shifting sandbanks of the extended river network hamper river transport there. Heavy rains wash away transport infrastructure, including bridges. The dense vegetation quickly overgrows any corridor cut through it, as demonstrated by the railway line from Kolwezi (DR Congo) to the Angolan border, which has virtually been swallowed by the rainforest (Scholvin 2014).

Today there are several trans-regional corridors in East and Southern Africa, sometimes also called highways.[54]The Trans-Caprivi, Trans-Cunene and Trans-Kalahari Corridors connect the port of Walvis Bay (Namibia) to Angola, Botswana, South Africa and Zambia respectively. Cape Town is connected to these corridors by the Trans-Orange Corridor. In Gauteng the Trans-Kalahari Corridor ties up with the Maputo Corridor to Mozambique's capital. Both of them, as well as the Trans-Caprivi Corridor, connect with the two branches of the North–South Corridor, which goes from the port of Durban via Botswana, Malawi, Zambia and Zimbabwe to the Congolese–Zambian Copperbelt and Dar es Salaam. Beira and Nacala are linked to Malawi, Zambia and Zimbabwe by the Beira and Nacala Corridors respectively. The Central Corridor in Tanzania goes from Dar es Salaam to the Great Lakes Region. The Northern Corridor in Kenya connects the port of Mombasa to Uganda and ends in Burundi and Rwanda.

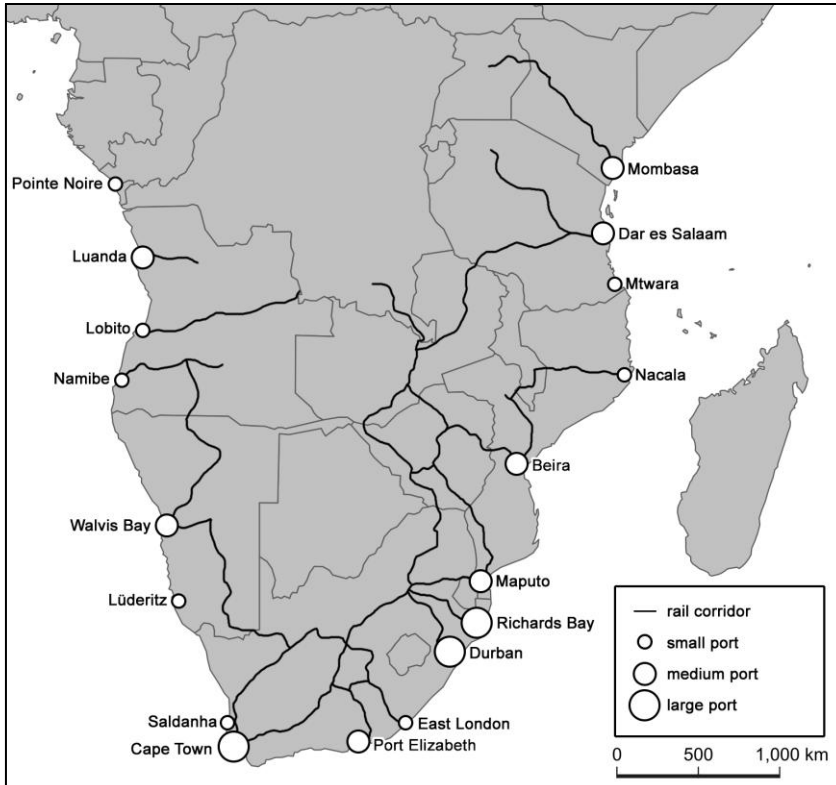
[54] In Sub-Saharan Africa the term highway refers to dual carriageways. The surface layer is usually tarmac, sometimes gravel. There are also unpaved sections of so called highways in some regional countries that become impassable dirt roads during the rainy season.

Map 2: Road corridors in Africa south of the equator



Source: Author’s own draft based on Foster 2008 and SADC 2012.

Map 3: Rail corridors in Africa south of the equator



Source: Author's own draft based on SADC 2012.

The state of the roads and few railway lines that constitute these transport corridors varies considerably. In 2001 it was estimated that half of the paved main road network in the Southern African Development Community (SADC) region was in good condition, with the remainder classified as fair or poor. Botswana, Lesotho and Namibia achieved particularly good standards, and about two-thirds of South African and Zimbabwean roads were in good condition. In Malawi, Swaziland and Tanzania slightly more than half of the roads were in good condition. The proportion was somewhat lower in Zambia. Road maintenance had been neglected in Angola and Mozambique, where some 90 per cent were in fair or poor condition (SADC 2012). More recent

data suggests that more than half of the main road network in the DR Congo is in poor condition (Gwilliam 2011).

The regional railway systems are not functioning as they should in virtually all respects, from high accident and failure rates, high costs and low volumes, to financial losses and thus unsustainable operations. The main reason for this is a lack of investment. The income generated by most railway operators is first spent on fuel and salaries, with inadequate funds left for maintenance of equipment and infrastructure. Beyond South Africa the availability of locomotives constitutes a major problem. Railway tracks, often being from the pre-independence era, are too light for even moderate axle loads currently operated; so are many bridges. A few years ago 69 per cent of Angola's railway network was inoperable. This figure reached 91 per cent in Uganda (Gwilliam 2011). What is more, railway lines suffer from their poor integration with port infrastructure (Foster and Briceño-Garmendia 2010). Corridors with anchor projects such as coal extraction in central Mozambique are an exception from this pattern. The aforementioned Benguela Line and TAZARA have seen some considerable upgrades recently because of Chinese loans (Scholvin and Strüver 2013).

These positive exceptions do not however generate any effects for Cape Town. Railway tracks connect Cape Town to Namibia and, via Zambia and Zimbabwe, to the offshore mining areas of Mozambique and Tanzania. Given their poor state, these connections are only theoretical ones (TradeMark Southern Africa 2011). Cape Town moreover suffers from the fact that alternative routes into the regional periphery are few, which means that problems at a single section can block an entire corridor: for example the frequent mudslides on the way from the Congolese–Zambian Copperbelt to Dar es Salaam or the armed conflict between the ruling Mozambique Liberation Front (Frente de Libertação de Moçambique, Frelimo) and the oppositional Mozambican National Resistance (Resistência Nacional Moçambicana, Renamo) in Sofala and Tete Provinces, which host the corridors from Beira to Zimbabwe and the coal mines of central Mozambique respectively.

Furthermore border controls slow down transport tremendously. Botswana and Namibia possess one-stop border posts that take 20 minutes for lorries; the Lebombo–Ressano Garcia border post on the route from Johannesburg to

Maputo is equally efficient. Yet transport from Windhoek to Lubango in southern Angola can take up to 15 days because of border controls, involving corruption, and insufficient roads in Angola (Scholvin 2014). At Kasumbalesa, at the Congolese–Zambian border, 500 lorries tie up every day, transporting almost all exports and imports of the southern DR Congo. About eight years ago lorries waited 39 hours at the main border crossing of Zambia and Zimbabwe – which is Chirundu– if they went north and 11 hours if southbound. Delays at Beitbridge on the border of South Africa and Zimbabwe were on average 34 hours for traffic northwards and 11 hours for traffic southwards. Goods transported along the entire North–South Corridor spent about one third of their total transport time waiting at borders (Curtis 2009). Taken together delays at Beitbridge and Chirundu equalled a 25 per cent surcharge on transport costs (Teravaninthorn and Raballand 2008).

Matters have improved. The Chirundu crossing now has a fast lane. It takes lorries under special treatment not more than five hours to be cleared. Vehicles arriving overnight or early in the morning are usually cleared within the same or the following day. International organisations point out that more progress has not materialised because of bureaucratic obstacles and problems in applying technologically sophisticated customs procedures (OECD and WTO 2012).The poor state of border crossings is probably best exemplified by Kazungula, which links Botswana and Zambia on an alternative to the Beitbridge–Chirundu route. The Zambezi River near Kazungulahas to be crossed by ferry. About 30 lorries pass through Kazungula every day and are slowed down considerably. Building a bridge across the Zambezi is scheduled but depends on financing by foreign donors. The rationality of such an expansive construction project is doubtful because of the low traffic volume.

Different integration schemes aim to overcome the historical and physio-graphical forces that tear Africa south of the equator apart. A few years ago the Development Bank of Southern Africa supported so called 'spatial develop-ment initiatives' in order to rehabilitate transport infrastructure and thus attract foreign investment (Scholvin 2014). Presently the sub-committee for trade infrastructure of the Tripartite Free Trade Area (TFTA), which is to merge the Common Market for Eastern and Southern Africa (Comesa), the East African Community (EAC) and SADC, concentrates on the North–South Corridor. First steps to ease transport along this major route and beyond have been undertaken by the potential TFTA members. A special programme for

monitoring, reporting and removing non-tariff barriers has been set up.[55]Common axle load limits, which are necessary to prevent road damage due to overload, have been agreed. They remain to be applied though. Carrier's licenses are mutually recognised, theoretically permitting a vehicle with a license valid for one country in the TFTA to operate in all countries. This system is not operational yet. Experts also propose that the TFTA countries harmonise customs procedures and legislation – for example on re-exportation – so as to make processing of documentation quicker (Disenyana 2009).

The Programme for Infrastructure Development (PIDA) of the African Union and SADC's Regional Infrastructure Development Master Plan (RIDMP) serves as a general framework for rehabilitating transport infrastructure. The RIDMP lists 208 projects in the transport sector, including 23 aviation projects, 18 border post projects, 64 maritime/ports projects, 31 rail projects and 72 road projects. It also specifies action directed at enabling policies and the regulatory environment such as the identification of priorities for regional transport development and the creation of an institutional and legal framework for the multilateral management of trans-regional corridors. PIDA seeks to improve inter-urban road corridors, which are to form the African Regional Transport Integration Network. This way transport costs are to be reduced, especially for the landlocked countries.

Caution is needed when assessing these ambitious objectives. The idea of a trans-African highway network was first formulated in the 1970s. The status of the concept was reviewed in 2003, finding that many of the roads exist as elements of the respective national networks but almost half of them are in poor condition. It was estimated that completing the entire network would cost more than USD 4 billion (Gwilliam 2011).

PIDA and the RIDMP identify the Beira and Nacala Corridors, the Central Corridor, the North–South Corridor and the Southern African Hub Port and Rail Programme as critical. Most of the RIDMP projects are centred on the vicinity of Dar es Salaam in the Central Corridor. Oil and gas do not play a special role. The plan is instead focussed on future output in the agricultural sector (especially in the region around Lake Albert) and coal and metal mining (in central Mozambique and the eastern DR Congo). PIDA suggests the

[55] The system operates via a website: www.tradebarriers.org.

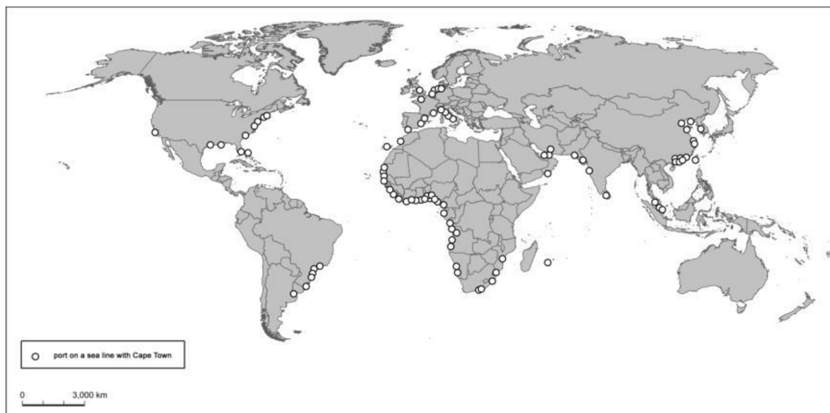
expansion of the natural gas pipeline that connects South Africa and Mozambique already today. The consumption of Mozambique's resources is likely to remain limited to Gauteng but Capetonian construction companies and service providers may benefit from such a boost to Mozambique's natural gas sector. Following PIDA highways from Cape Town via Namibia to Angola will be upgraded by 2040. The upgrading of the Trans-Orange Corridor is already scheduled for 2020.

As explained above, maritime transport is crucial for Cape Town as a gateway city. The Southern Africa Hub Port and Rail Programme matters in this regard as it aims to develop a master plan for regional port capacity for the SADC countries. It will coordinate short-term port expansion plans for Beira, Durban, Angola's capital Luanda, Maputo, Nacala and Walvis Bay. Its goal is sufficient port capacity for the SADC countries so that they will increase their trade (both regional and overseas). There are many more ports in East and Southern Africa than the ones just mentioned but most of them are poorly equipped, have low productivity and are not prepared for the rapidly unfolding changes in global shipping and trade patterns. Container traffic is, with the exception of South Africa, still at an early stage of system development (Gwilliam 2011).Materials handling capabilities in general and related infrastructure are insufficient; so are the number of berths, berth size and draught. Freight is often held up at customs for periods as long as two months, rendering many logistic chains ineffective and running at a loss (SADC 2012).

The port of Cape Town is one of the few positive exceptions in Sub-Saharan Africa. It reaches an efficiency for container transport comparable to Antwerp (Belgium) and Port Klang (Malaysia) (Merk and Dang 2012).In 2006 average dwell time in Cape Town was six days; less than in Dar es Salaam (7 days), Lagos (22), Luanda (12), Maputo (22) and Walvis Bay (8). Durban and Mombasa outperformed Cape Town with a dwell time of four and five days respectively. Average container moves per hour were 36 in Cape Town, making operations there quicker than in the other regional ports except for Cameroon's port of Douala (40 moves), Durban (45), Mombasa (60) and Tema in Ghana (40). The costs of importing a twenty-foot equivalent container through Cape Town were USD 121; less than in Dar es Salaam (USD 275), Lagos (USD 155), Luanda (USD 320) and Maputo (USD 155), amongst others, but more than in Mombasa (USD 90) and Walvis Bay (USD 110) and as much as in Durban (African Development Bank 2010).

The direct regional and global connections of the port of Cape Town confirm this mostly positive assessment.[56] Cape Town is well linked to harbours in Europe, the Far East and North America. There are also relatively good connections to emerging economies, in particular Brazil and India. Whereas numerous ports in Western Africa can be reached directly from Cape Town, transhipments are needed to East Africa.

Map 4: Direct connections of the port of Cape Town



Source: Author's own draft based on data compiled from the websites of shipping companies that operate at Cape Town.

Note: No data could be obtained from GAL, Hamburg Süd and MACS, which also operate at Cape Town.

[56] Similar to flight connections, the direct sea lanes counted for Map 4do not provide a complete picture because transnational oil and gas firms rely on non-scheduled services. The Unicorn tanker fleet, for example, operates two medium range tankers that distribute products at all ports from Richards Bay to Walvis Bay. This is not a fixed port rotation service, meaning that it does not appear as a sea lane on the company's website (Grindrod Press Officer 2016).

2.3 Division: barriers that separate Cape Town from its periphery

In addition to distance, division has a major impact on the relations of Cape Town with places of oil and gas extraction in its periphery. Regional economic integration has long been a strategic objective for Africa. However the market of the continent remains highly fragmented, with tariff barriers being partly eased at the level of sub-regional communities but not at the continental level. There has been considerable success in removing tariffs in Eastern and Southern Africa, where the EAC has implemented a customs union and 85 percent of trade in most of SADC is duty free (Brenton and Isik 2012).

The most advanced and also the smallest economic community to which South Africa belongs is the Southern African Customs Unions (SACU). SACU consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. Private companies can operate relatively freely across the entire SACU region. They benefit from the absence of detailed border controls and customs duties on intra-SACU trade. SACU's member states may however apply for 'infant industry protection', blocking intra-SACU trade in specific sectors for a limited period of time. Lesotho, Namibia, South Africa and Swaziland also form a currency union, with their respective national currency having a fixed exchange rate of 1:1. The South African Rand is accepted as a legal tender in Lesotho, Namibia and Swaziland.

SACU is an intergovernmental organisation, meaning that it does not have an authority above the member states. Supranational bodies, envisaged in an agreement signed in 2002 (SACU 2002), have not yet materialised. In particular SACU's Tariff Board appears to be unacceptable to South Africa because the Tariff Board would set the common external tariff for all of SACU. The South African government has however frequently used tariff policy as a means of its industrialisation policy. At present South Africa practically determines SACU's tariff policy (Erasmus 2015b).Common regional policies on other issues, most importantly agriculture, industrial development and trade, which were also suggested in the 2002 agreement, remain elusive. A key reason for this standstill is that SACU's supreme decision making authority, the Council of Ministers, does not meet presently. Common policies, most

importantly a reform of the revenue sharing formula,[57] are not discussed and there are hence no steps taken towards closer integration.

SACU nonetheless matters to South Africa because it is seen as a guarantor of regional economic and political stability. Still it appears that South African politicians would not mind if SACU were transformed into a simple free trade area. Botswanan and Namibian politicians rather favour turning SACU into a common market (Bertelsmann-Scott 2010). Prior to SACU coming to a practical standstill, South African researchers also suggested that SACU, after harmonising its trade facilitation measures and reforming the revenue sharing mechanism, should serve as an engine of deepening economic integration within SADC (Draper, Halleson and Alves 2007).

Beyond SACU, there is SADC, whose member countries have been trading on preferential terms since 2000 and formally launched a free trade area in August 2008. This free trade area includes all SADC countries except for Angola, Madagascar, Malawi and the Seychelles. Angola, which is SADC's second-largest economy, has not even agreed on the conditions under which it will enter the free trade area. Amongst the participating countries 85 per cent of merchandise trade flows are now duty-free. Most of the other 15 per cent are scheduled to be liberalised too. These comprise products considered sensitive by the participating states (e.g. dairy products, motor vehicles and textiles). Ambitions for SADC were much higher in the 1990s: it should have become a free trade area by 2008, a customs union by 2010 and a common market by 2015. Whilst SADC's free trade area remains, as said, incomplete, a SADC customs union and common market are not in sight. Even tariff liberalisation has had a limited impact as overseas trade predominates. Non-tariff trade restrictions affect more than one fifth of the regional goods trade according to Gillson (2012).

In practice rules of origin, which tend to become tricky as soon as a good is manufactured and some of its components are imported, also cause serious

[57] Botswana, Lesotho, Namibia and Swaziland trade mainly with South Africa. Hence South Africa generates 90 per cent of the common tariff revenues, keeping only 20 per cent of them though. Whereas the other SACU members are wary of South Africa assuming a donor role, the emerging economy would like to have some sort of directory power of the revenue pool – using it for a common regional industrial policy for example (Bertelsmann-Scott 2010).

problems for intra-SADC trade. For products where rules of origin have been highly contentious or simply not agreed upon, preferential trade has been effectively prohibited (Naumann 2008). Further costs arise from the administrative requirements for certificates of origin, which can account for nearly half the value of the duty preference. The retailer Woolworths, for instance, does not use SADC preferences at all when sending regionally produced consignments of clothing and food to its franchise stores in SADC markets. Woolworths instead pays full tariffs because the process of administering rules-of-origin documentation is too costly. The company reports that prices in its franchise outlets in non-SACU SADC countries are 1.8 times higher than those in SACU because of higher expenditures associated with sending goods to these markets as well as the higher costs of doing business in them (Gillson 2012). The retailer Shoprite needs approximately 100 (single entry) import permits for all countries it operates in every week; this can rise up to 300 per week in peak periods. As a result of such requirements there can be up to 1,600 documents accompanying a lorry sent by Shoprite across SADC borders (World Bank 2011).

With regard to the oil and gas sector, a closer integration of Angola into SADC would boost Cape Town's role as a gateway city. Angola's minister of planning, Ana Dias Lourenço, however said a few days prior to the formal launching of the free trade area in 2008 that her country had only recently emerged from a prolonged period of civil war, which had destroyed much of Angola's infrastructure and left the country with little productive industry. Given that Angola was in a phase of rebuilding and re-launching its domestic production capacities, it could not immediately participate in the free trade, the minister argued (Redvers 2013). In other words, the Angolan government claims to be wary of opening up the borders to its neighbours for fear of an ensuing flood of duty-free imports damaging its economic development.

Redvers (2013) shows that there is some truth to these arguments but what probably matters more is that regional free trade is against the interests of the so called 'empresários de confiança' – that is, business people who have close personal links to the government, military and ruling party. At least with regard to SADC, protectionist interests dominate although these have negative effects on the availability of products on the Angolan market; their presumably positive effects on national development are doubtful. Moreover there is a bias in Angola's position, comparing its reluctance to allow cheap SADC goods

into the domestic market, on the one hand, and the open access granted to Brazilian, Chinese and Portuguese products, on the other. Beyond these political considerations Redvers also argues that Angola does not have many incentives to foster regional integration. South Africa accounts for 2 to 6 per cent of Angola's foreign trade. The second-most important SADC trading partner is Namibia with a share of about 0,2 per cent of Angola's imports and even less of its exports.

In addition to incomplete sub-regional economic integration, overlapping membership in different sub-regional communities hampers regional trade. Since the sub-regional economic communities have been expanding, most Sub-Saharan countries now participate in more than one integration scheme. Adhering to different integration schemes entails first of all applying different trade rules to different trading partners. Practically every set of regulations that varies from one sub-regional community to another causes extra-costs for companies that operate in different Sub-Saharan markets. Brenton and Isik (2012) point out, for example, that Comesa and SADC have very different sets of rules of origin. In order to overcome the problem of overlapping membership, the TFTA was launched in 2008. It is to merge Comesa, the EAC and SADC. After the summit a task force prepared a draft agreement and a draft roadmap towards realising the TFTA. These address tariff liberalisation and rules of origin as well as numerous non-tariff barriers (e.g. intellectual property rights, phyto-sanitary measures and technical standards).[58]

Three years later the second TFTA summit dealt with three key issue areas: market integration, industrial development and the upgrading of regional infrastructure. The implementation of according measures may follow a variable geometry, meaning that some member states will probably integrate more rapidly than others. So far there has been a focus on infrastructure and trade in goods, the so called first phase of the integration process. In June 2015 the TFTA countries officially entered the second phase of the integration process by agreeing to negotiate on a protocol on trade in services and protocols on intellectual property rights and trade-related matters such as competition policy and cross-border investment. Of course it remains to be

[58] The essential legal texts and policy documents produced by the TFTA members are available online at http://www.tralac.org/resources/by-region/comesa-eac-sadc-tripartite-fta.html.

seen whether agreements on these protocols, which are still to be drafted, will be reached. Until today the TFTA states also still have to agree on tariff liberalisation schedules, tariff remedies such as anti-dumping measures and common rules of origin, meaning milestones from the first phase (Erasmus 2015a).

There are further considerable challenges ahead for the TFTA. Most importantly, South Africa has not yet signed the draft agreement. It would not be possible to maintain SACU if some of its members joined the TFTA. The commitment to the TFTA of the secretariats of Comesa, the EAC and SADC, whose representatives constitute the TFTA task force, is unclear. It is also uncertain how members will be made to comply with TFTA regulations. If the TFTA dispute settlement body takes up its activities, it will remain to be seen whether the member states respect its decisions. Sanctions against a non-compliant member state would have to be taken by consent, meaning that the non-compliant member state would have to agree on them (Erasmus 2015a). Given all these obstacles, Erasmus concludes that negotiations on the TFTA have become 'a rather lean exercise for concluding a few bilateral market access deals' (2014: 5-6).

Nevertheless by the middle of this year negotiations for a continental free trade area are to be launched officially, dealing with trade in goods and services. Industrial development through regional commodity chains is explicitly mentioned as an objective of continental free trade by the *Draft Objectives and Guiding Principles for Negotiating the Continental Free Trade Area (CFTA)*. Scenarios modelled by Jensen and Sandrey (2015) suggest that such a continental free trade area would generate considerably more benefits for almost all African countries than sub-regional integration, including via the TFTA. The quick realisation of the CFTA is of course even more unrealistic than progress as scheduled with the TFTA. What is therefore probably more interesting is that Jensen and Sandrey show that the reduction of non-tariff barriers, especially transport time, would have an even stronger positive impact than mere trade liberalisation. Easing tariff barriers matters but does not constitute a sufficient programme towards facilitating development through regional trade.

I discussed the effects of division, especially as a result of non-tariff barriers, on Cape Town, its regional periphery and the oil and gas sector with

representatives of a rather large company that processes crude oil and raw gas and two small companies that provide services to transnational companies. These interviews revealed three major non-tariff barriers between Cape Town and its periphery. The first one is language barriers. The management and staff of Capetonian companies speak Afrikaans and English fluently. Transnational enterprises that have offices in Cape Town use English as their business language. English is an official language or at least widely spoken in 20 Sub-Saharan countries. Yet in some countries that possess considerable oil and gas resources –Angola, Congo-Brazzaville, Equatorial Guinea, Gabon and Mozambique – investors have to speak French, Portuguese or Spanish with local businesspeople. Communication with potential employees is even more difficult because many of them do not speak a European language at all.

My interviewees pointed out that Angola and Mozambique are particularly problematic regarding language barriers. One should not underestimate these barriers as they not only hamper oral and written communication with local businesspeople and employees. Legislation and all kinds of public information material are often not available in English. Communication with public authorities, which has to be exact due to legal concerns of potential investors, cannot be conducted in English either.

Table 1: European languages spoken in Sub-Saharan countries

Country	European languages	Comments
Angola	Portuguese (and French in Cabinda Province)	large share of Portuguese speakers
Cameroon	French and English	more than 80 per cent of the population speak French
Chad	French	Chadian Arabic – not French – is used as a lingua franca
Congo-Brazzaville	French	30 per cent of the population speak French
Congo-Kinshasa	French	10 per cent of the population is fluent in French, another 30 per cent speak rudimentary French
Equatorial Guinea	Spanish, French and Portuguese	65 per cent of the population speak Spanish
Gabon	French	80 per cent of the population speak French
Ghana	English	English is used as a lingua franca
Guinea	French	15 to 20 per cent of the population speak French
Kenya	English	English is used as a lingua franca
Mozambique	Portuguese	25 to 30 per cent of the population speak Portuguese
Namibia	Afrikaans and English	Afrikaans and English are used as linguae francae
Nigeria	English	English is widely spoken in urban areas
South Africa	Afrikaans and English	Afrikaans and English are used as linguae francae
South Sudan	English	English is spoken by the educated population
Tanzania	English	English is used as a lingua franca
Uganda	English	English is used as the official language

Source: Author's own compilation.

The second cause of division is corruption. One of my interviewees, who had worked in Aberdeen (Scotland) during the North Sea oil boom in the late 1970s, said that corruption was so bad in most Sub-Saharan countries that foreign companies would not stand a chance without a local partner. My interviewee acknowledged that personal contacts were not unimportant in Aberdeen in the 1970s and 1980s but they were not the only way to participate in the oil boom (Managers of a basic equipment and services provider 2014).

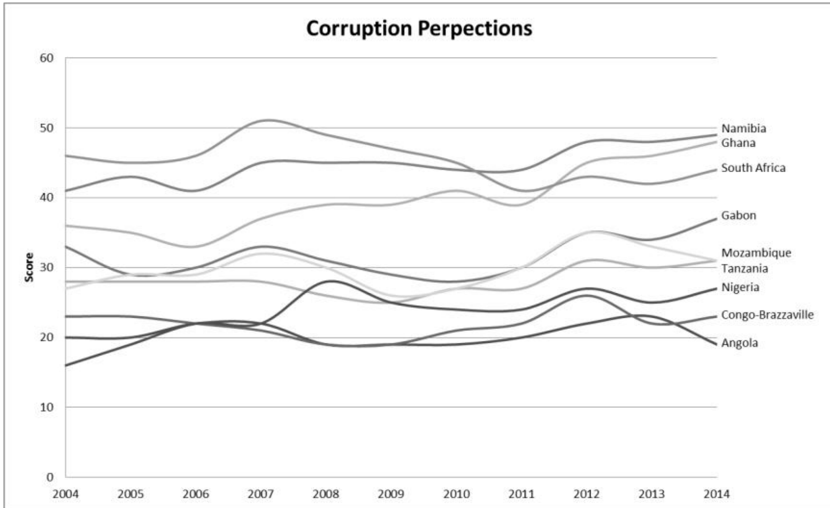
What my interviewee did not explain in detail is that these personal contacts are a common way to channel bribes: the partner of a Capetonian firm uses some of the money that he/she receives from that firm to pay someone he/she knows at the public authorities in his/her home country so that that licences for the Capetonian firm are approved quickly (or at all).As an alternative someone from the public authorities in the target country of the investment may participate in a joint venture, bringing in nothing but his/her contacts that ease market access and smooth day-to-day operations for the Capetonian firm.

The Corruption Perceptions Index confirms that corruption is a serious problem in Sub-Saharan Africa, except for Ghana, Namibia and South Africa.[59] This assessment is confirmed by the Worldwide Governance Indicators (see Figure 5, further above).

---

[59] Transparency International's Corruption Perceptions Index ranks countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys. The index currently ranks 177 countries on a scale from 100 (very clean) to 0 (highly corrupt).

Figure 9: Corruption Perceptions Index for Sub-Saharan countries



Source:

Transparency International 2015.

Note: Equatorial Guinea is not ranked on the Corruption Perceptions Index.

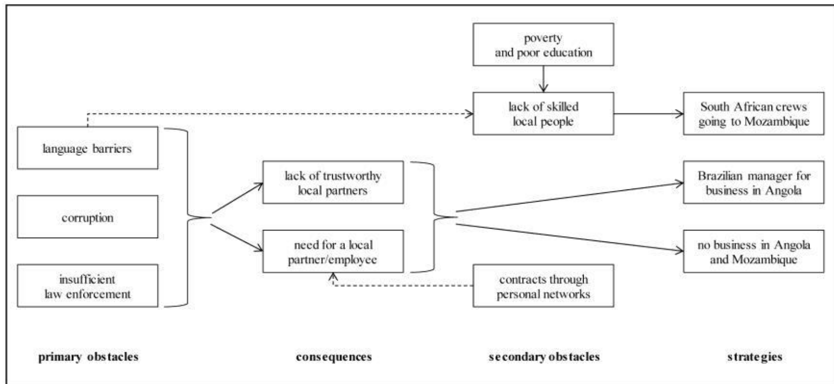
The third cause of division is related to corruption: insufficient law enforcement. My interviewees argued that if their companies suffer from corruption, if customers do not pay their bills or if local employees literally run off with the company's money, the company will have practically no chances of settling the matter through legal means. The Worldwide Governance Indicators confirm these concerns (see Figure 6, further above).[60] One interviewee added that this risk is boosted by the fact that companies involved in the oil and gas sector usually work with equipment worth several million US Dollars (Managers of a basic equipment and services provider 2014).

Figure 10 brings these three primary obstacles together with secondary obstacles and strategies identified by my interviewees. All interviewees said that as a consequence of language barriers, corruption and insufficient law enforcement, they need employees or partners in most Sub-Saharan countries.

[60] The Worldwide Government Indicators do not limit the concept of 'rule of law' to actions taken by the government, including also how secure businesspeople feel about their property. This way the Indicators capture exactly what my interviewees talked about.

The three factors of division however make it practically impossible to find trustworthy local employees or partners. Potential employees or partners do not speak English properly. The risk of them being corrupt and/or stealing the company's money is high, also because the company would not have efficient legal means against them. Thinking about other obstacles, the manager of an offshore repair company (2014) said that there is also a severe lack of skilled local people, even for manual jobs, because of poverty and poor education in the entire region.

Figure 10: Factors related to division



Source: Interviews with the manager of an oil and gas processing company 2014, the managers of a basic equipment and services provider 2014 and the manager of an offshore repair company 2014.

The three companies whose experiences I have summarised in the previous paragraphs have opted for very different strategies in order to cope with division. The rather large downstream company hired a Brazilian manager for their operations in Angola. My interviewee from that company stressed that Angola was a highly attractive market for them. His Brazilian colleague, who travels to Cape Town several times a month, is apparently a native Portuguese speaker. According to my interviewee, the experience that the Brazilian has gained with corruption and inefficient law enforcement whilst working in the oil and gas industry in his home country makes him adept at handling these problems in Angola (Manager of an oil and gas processing company 2014). This means that in this particular case Cape Town generates impulses for development in Angola. These are somewhat limited because of division

however, as demonstrated by the fact that Angolans are not employed at the management level.

The Capetonian firm that repairs offshore oil and gas facilities has recently carried out several jobs in northern Mozambique. For these jobs they flew in South African repair crews who normally work at the company's facilities in the port of Cape Town. The South Africans stayed in northern Mozambique for a few weeks, finished their work and returned to Cape Town. The equipment they needed was mostly flown in because the company did not want to risk the unpredictable delays at the border crossings from South Africa via Zimbabwe to Mozambique. Purchasing or renting this equipment in northern Mozambique was not an option (Manager of an offshore repair company 2014). In one sentence, impulses for development in northern Mozambique are almost non-existent.

The firm that provides equipment for the upstream sector best exemplifies that division hampers impulses for development. That firm failed to find local employees or partners in Angola and Mozambique, and has therefore not entered these markets. They work in Cape Town and in Walvis Bay. Explaining why they are able to run an office in Namibia, my interviewees pointed out that the Namibian and the South African legal system are almost identical, which results from the fact that Namibia was occupied by South Africa for 75 years and treated as South Africa's fifth province by the apartheid regime. Afrikaans and English are widely spoken business languages in Namibia and there is a strong presence of South African companies in Namibia (Managers of a basic equipment and services provider 2014).The non-stop flight connection from Cape Town to Walvis Bay operates twice a day (compareMap1, further above). Transport by road and by ship from Cape Town is also easy, as explained above.

3. Final considerations

This paper has shown that Cape Town offers a suitable business environment for transnational companies in the oil and gas sector. The city, including the industrial development zone in Saldanha Bay, hosts numerous industrial suppliers and service providers that cooperate with transnational giants such as Chevron and Shell. This variety of local partners cannot be found in the present and future oil and gas-exporting countries of Sub-Saharan Africa. Several

indexes highlight Cape Town's sophistication regarding logistics performance, maritime connectivity, control of corruption, government effectiveness, regulatory quality and rule of law (in regional comparison). Data gathered on flight connections and sea lanes shows that Cape Town is well interlinked, albeit it is not the only hub port in the region and there are shortcomings regarding flight connections to the Americas, the Far East and, on a regional scale, beyond Angola and Namibia. In addition to these factors, Cape Town's high quality of life attracts transnational companies from the upstream sector. The city also appears to benefit from its historical role as a major harbour, being located at one of the busiest sea lanes worldwide. Because of these location advantages, Cape Town serves as a gateway city for Sub-Saharan Africa in the oil and gas sector.

The impulses that the city generates for development in its periphery however vary considerably from one Sub-Saharan country to another. They are hampered by incomplete regional economic integration. The TFTA might soon ease economic interaction. Yet its success remains to be seen and the Central and West African oil and gas-exporting countries as well as South Sudan do not participate in the TFTA. Poor transport infrastructure – distance, in the terminology of the World Bank – and corruption, insufficient law enforcement and language barriers, or division, are further obstacles to any development impulses that Cape Town might generate. My interviews revealed that Capetonian firms refrain from investing in countries marked by a high division from South Africa, in particular Angola and Mozambique. If they decide to invest there, division will still limit development impulses because the investors hardly interact with the local economy.

The focus on Cape Town that marks this paper causes a certain risk to overlook or underestimate alternative gateway cities. Johannesburg is the most important challenger to Cape Town. ExxonMobil produces aviation fuels and fuels used in mineral mining there. The company's exploration for natural gas in South Africa's territorial waters is also coordinated from Johannesburg. BP has recently moved its regional headquarters, which is responsible for marketing in Mozambique and South Africa, to South Africa's largest city. BP's refining activities for these markets take place in Durban. Its activities in Angola – exploration and production– are managed in Angola (BP Group Press Officer 2015). The expansion of the Russian giant Gazprom into Africa also relies on Johannesburg as indicated by the decision of Gazprom bank, Russia's largest

lender, to open an office in Johannesburg in 2014. As explained above, Durban and Ngqura/Port Elizabeth also challenge Cape Town. They do so rather in terms of logistics and transport as well as processing; not so much as potential locations of corporate headquarters.

Furthermore there are non-South Africa cities that may challenge Cape Town. The chief executive of the South African Association of Ship Operators, Peter Besnard, has recently criticised 'the deterioration of critical [port] infrastructure' in South Africa and argued that 'South Africa's ports are steadily losing their reputation of being the best in Africa, as ports in East and West Africa embark on major maritime investment programmes' (Mail & Guardian 2015). One reason for this is that the dredging requested by some South African ports at the beginning of this century was not carried out because the vast budget of the National Ports Authority was (and still is) constrained by the gearing on the balance sheet of the statal freight company Transnet. Therefore some South African ports cannot receive the newest deeper draught container vessels.

One should also bear in mind that this paper only assesses Cape Town's role for the oil and gas sector. When thinking about places that serve as overall economic hubs or general gateways in Sub-Saharan Africa, Johannesburg plays a much more important role than Cape Town. This is demonstrated by flight connections – as suggested above –and by the relevance of land-based transport corridors. The freight volume the North–South Corridor (587 billion mega tonnes per year), the Lebombo Corridor (435 billion), the Maputo Corridor (398 billion) and the Trans-Kalahari Corridor (382 billion), which all interlink Gauteng regionally, is much higher than the freight volume of the Trans-Orange Corridor (89 billion) that links the Northern and Western Cape Provinces to Namibia (SADC 2012).[61] For maritime transport, Cape Town is not a necessary gateway to Sub-Saharan Africa. Maersk connects West African ports directly to Europe; so do CMA CGM and Cosco. Evergreen and MOL bypass the whole of Southern Africa on the way from West Africa to East and Southeast Asia. Maersk also links East Africa, and Mozambique as well, directly to China, India and Malaysia. CMA CGM and MOL offer direct routes

[61] The relatively low relevance of the Trans-Orange Corridor is also stressed by the fact that it is not always mentioned in official SADC documents that deal with the region's transport infrastructure.

from Beira, Maputo and Nacala via Tamatave (Madagascar) to Port Klang and Singapore respectively. CMA CGM and DAL run feeder services for Beira, Maputo and Quelimane(Mozambique) whose hub port is Durban.

Seeing Cape Town as a gateway city moreover reflects liberal convictions of what objectives in economic policy should be. I have shown in this paper that Cape Town possesses considerable advantages as a gateway to Sub-Saharan Africa for the oil and gas sector. Promoting the city accordingly has high chances of being successful. This does not however mean that boosting Cape Town as a gateway for the oil and gas sector is necessarily sound from a meta-perspective. Extractive industries and the processing of minerals are associated with numerous environmental and socio-economic problems; the latter having forcefully been exposed by the Marikana incident in August 2012. Hosting the national strategic oil reserve and a large refinery in Milnerton, close to the city centre, comes along with certain hazards. Considering man-made climate change, one should also call into question whether fossil fuels are the right way ahead. This applies in particular to the exploitation of shale gas in the Karoo, which would most likely have serious impacts on the environment (Fig and Scholvin 2015). In other words, the discussion of Cape Town as a gateway city for the oil and gas sector should move beyond assessing the impact of the three Ds and address the broader environmental and socio-economic consequences of such a strategy.

References

African Development Bank. 2010. 'African Development Report 2010: Ports, Logistics and Trade in Africa'. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African%20Development%20Report%202010.pdf (6 September 2016).

African Union. 2013. 'Draft Objectives and Guiding Principles for Negotiating the Continental Free Trade Area (CFTA)'. http://www.au.int/en/sites/default/files/newsevents/workingdocuments/14541-wd-ti12192_e_original.pdf (28 February 2016).

African Union and African Development Bank. 2012. 'Programme for Infrastructure Development in Africa: Interconnecting, Integrating and Transforming a Continent'. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/PIDA%20note%20English%20for%20web%200208.pdf (4 December 2015).

Alderson, Arthur S. and Jason Beckfield. 2004. 'Power and Position in the World City System'. *American Journal of Sociology* 109.4: 811–51.

Alderson, Arthur S. and Jason Beckfield. 2012. 'Corporate Networks of World Cities'. In *International Handbook of Globalization and World Cities*, edited by Ben Derudder et al., 126–34. Cheltenham: Edward Elgar.

Bangar, Rashimi and Dinesh Kumar. 2013. 'Can China and India Be Growth Drivers for Developing Asia?'.*European Journal of Development Research* 25.3: 367–84.

Beaverstock, Jonathan V. et al. 1999. 'A Roster of World Cities'. *Cities* 16.6: 445–58.

Bertelsmann-Scott, Talitha. 2010. 'SACU – One Hundred Not Out: What Future for the Customs Union?'.*SAIIA Occasional Paper* 68.

BP Group Press Officer. 2015. Written correspondence with the author. Johannesburg, 12 February.

Brenton, Paul and GözdeIsik. 2012. 'Linking African Markets: Removing Barriers to Intra-Africa Trade'. In *De-fragmenting Africa: Deepening Regional Trade Integration in Goods and Services*, edited by Paul Brenton and GözdeIsik, 1–22. Washington D.C.: World Bank.

Business Day. 2014. 'No Movement on Coega Refinery a Year Later'. http://www.bdlive.co.za/business/energy/2014/07/24/no-movement-on-coega-refinery-a-year-later (18 November 2015).

Cai, Jiangming and Victor F. Sit. 2003. 'Measuring World City Formation: The Case of Shanghai'. *Annals of Regional Science* 37.3: 435–46.

Curtis, Barney. 2009. 'The Chirundu Border Post: Detailed Monitoring of Transit Times'. *Sub-Saharan Africa Transport Policy Program Discussion Paper* 10.

Department of Minerals and Energy [of South Africa]. 2005. 'Gas Infra-Structure Plan'. http://www.energy.gov.za/files/media/explained/statistics_gas_infrastructure_2005.pdf (18 November 2015).

Department of Transport [of South Africa]. 2010. 'National Transport Master Plan: Executive Summary'. http://www.itssa.org/wp-content/uploads/2012/10/11_10-NATMAP-2050.pdf (22 October 2015).

Disenyana, Tsidiso. 2009. 'Towards an EAC, COMESA and SADC Free Trade Area'. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/2009%20AEC-%20Towards%20an%20EAC%20COMESA%20and%20SADC%20Free%20Trade%20Area%20Issues%20and%20Challenges.pdf (7 January 2016).

Draper, Peter, Durrell Halleson and Philip Alves. 2007. 'From Spaghetti to Cannelloni?: SACU, Regional Integration and the Overlap Issue in Southern Africa'. *SAIIA Trade Policy Report* 15.

Draper, Peter and Sören Scholvin. 2012. 'The Economic Gateway to Africa?: Geography, Strategy and South Africa's Regional Economic Relations'. *SAIIA Occasional Paper* 121.

Erasmus, Gerhard. 2014. ‘A New Road to Regional Integration’. *TRALAC Trade Brief* 4/2014.

Erasmus, Gerhard, 2015a. ‘The Tripartite Free Trade Agreement: Results of Phase One of the Negotiations’. *TRALAC Working Paper* 4/2015.

Erasmus, Gerhard. 2015b. ‘What Future Scenarios for the Southern African Customs Union’. *TRALAC Working Paper* 6/2015.

Executive from SAOGA .2014. Personal interview conducted by the author. Cape Town, 4 March.

Executive from Wesgro .2014. Personal interview conducted by the author. Cape Town, 6 March.

Fig, David and Sören Scholvin. 2015. ‘Fracking the Karoo: The Barriers to Shale Gas Extraction in South Africa Based on Experiences from Europe and the US’. In *A New Scramble for Africa?: The Rush for Energy Resources in Sub-Saharan Africa*, edited by Sören Scholvin, 131–47. Farnham: Ashgate.

Financial Times. 2015. ‘Global MBA Ranking’. http://rankings.ft.com/businessschoolrankings/global-mba-ranking-2015 (15 October 2015).

Foster, Vivien. 2008. ‘Overhauling the Engine of Growth: Infrastructure in Africa’. http://siteresources.worldbank.org/INTAFRICA/Resources/AICD_exec_summ_9-30-08a.pdf (7 December 2015).

Foster, Vivien and Cecilia Briceño-Garmendia. 2010. *Africa’s Infrastructure: A Time for Transformation*. Washington D.C.: World Bank.

Friedmann, John. 1986. ‘The World City Hypothesis’. *Development and Change* 17.1: 69–83.

Friedmann, John and Goetz Wolff. 1982. ‘World City Formation: An Agenda for Research and Action’. *International Journal of Urban and Regional Research* 6.3: 309–44.

Gereffi, Gary and Miguel Korzeniewicz. 1994. *Commodity Chains and Global Capitalism*. Westport: Praeger.

Gibb, Richard A. 1991. 'Imposing Dependence: South Africa's Manipulation of Regional Railways'. *Transport Reviews* 11.1: 19–39.

Gillson, Ian. 2012. 'Deepening Regional Integration to Eliminate the Fragmented Goods Market in Southern Africa'. In *De-fragmenting Africa: Deepening Regional Trade Integration in Goods and Services*, edited by Paul Brenton and GözdeIsik, 89–97. Washington D.C.: World Bank.

Gleave, Michael B. 1992. 'The Dar es Salaam Transport Corridor: An Appraisal'. *African Affairs* 363: 249–267.

Globalisation and World Cities Research Network.2009a. 'The World According to GaWC 2000'.http://www.lboro.ac.uk/gawc/world2000t.html (27 July 2015).

Globalisation and World Cities Research Network.2009b. 'The World According to GaWC 2004'.http://www.lboro.ac.uk/gawc/world2004t.html (27 July 2015).

Globalisation and World Cities Research Network. 2010. 'The World According to GaWC 2008'.http://www.lboro.ac.uk/gawc/world2008t.html (27 July 2015).

Globalisation and World Cities Research Network. 2011. 'The World According to GaWC 2010'.http://www.lboro.ac.uk/gawc/world2010t.html (27 July 2015).

Globalisation and World Cities Research Network. 2014. 'The World According to GaWC 2012'.http://www.lboro.ac.uk/gawc/world2012t.html (27 July 2015).

Grindrod Press Officer. 2016. Written correspondence with the author. Durban, 7 January.

Grubesic, Tony H. and Timothy C. Matisziw. 2012. 'World Cities and Airline Networks'. In *International Handbook of Globalization and World Cities*, edited by Ben Derudder et al., 97–116. Cheltenham: Edward Elgar.

Gu, Jing. 2009. 'China's Private Enterprises in Africa and the Implications for African Development'. *European Journal of Development Research* 21.4: 570–87.

Gwilliam, Ken. 2011. *Africa's Transport Infrastructure: Mainstreaming Maintenance and Management*. Washington D.C.: World Bank.

Hesse, Markus. 2010. 'Cities, Material Flows and the Geography of Spatial Interaction: Urban Places in the System of Chains'. In *Commodity Chains and World Cities*, edited by Ben Derudder and Frank Witlox, 91–110. Oxford: Wiley-Blackwell.

Humphrey, John and Hubert Schmitz. 2008. 'China: Growth Engine or Obstacle for Asian Developing Economies?'. *Zeitschrift für Wirtschaftsgeographie* 52.1: 50–66.

Jacobs, Wouter et al. 2010.'Integrating World Cities into Production Networks: The Case of Port Cities'. In *Commodity Chains and World Cities*, edited by Ben Derudder and Frank Witlox, 111–35. Oxford: Wiley-Blackwell.

Jenkins, Rhys and Enrique Dussel Peters. 2007. 'The Impact of China on Latin America and the Caribbean'. *IDS Working Paper* 281.

Jensen, Hans G. and Ron Sandrey. 2015. *The Continental Free Trade Area: A GTAP Assessment*. Stellenbosch: TRALAC.

Kaplinsky, Raphael et al. 2007. 'The Impact of China on Sub-Saharan Africa'.*IDS Working Paper* 291.

Knox, Paul L. and Peter J. Taylor.1995. *World Cities in a World-System*. Cambridge: Cambridge University Press.

Krugman, Paul. 1991a. *Geography and Trade*. Cambridge: MIT Press.

Krugman, Paul. 1991b. 'Increasing Returns and Economic Geography'. *Journal of Political Economy*99.3: 483–99.

Krugman, Paul. 1992. A Dynamic Spatial Model. *NBER Working Paper* 4219.
Lederman, Daniel et al. 2007a. ‘Specialization and Adjustment During the Growth of China and India: The Latin American Experience’. *World Bank Policy Research Paper* 4318.

Lederman, Daniel et al. 2007b. ‘The Growth of China and India in World Trade: Opportunity or Threat for Latin America and the Caribbean?’.*World Bank Policy Research Paper* 4320.

Mail & Guardian. 2015. ‘Investment Still Needed in Transport Infrastructure’. http://mg.co.za/article/2015-07-17-investment-still-needed-in-transport-infrastructure (28 July 2015).

Manager of an offshore repair company. 2014. Personal interview conducted by the author. Cape Town, 5 March.

Manager of an oil and gas processing company. 2014. Personal interview conducted by the author. Cape Town, 28 February.

Manager of Sasol. 2015. Email correspondence. 15 April.

Managers of a basic equipment and services provider. 2014. Personal interview conducted by the author. Cape Town, 26 February.

Martin, Ron and Peter Sunley. 1996. ‘Paul Krugman’s Geographical Economics and Its Implications for Regional Development Theory: A Critical Assessment’. *Economic Geography* 72.3: 259–92.

Mercer. 2012. ‘Quality of Living Ranking’. https://info.mercer.com/Quality-of-Living-Ranking-2015.html (15 October 2015).

Merk, Olaf and Thai T. Dang. 2012. ‘Efficiency of World Ports in Container and Bulk Cargo (Oil, Coal, Ores and Grain)’. *OECD Regional Development Working Papers* 9/2012.

Meyer, Susanne and Javier Revilla Diez. 2014. ‘One Country, Two Systems: How Regional Institutions Shape Governance Modes in the Greater Pearl River Delta, China’. *Papers in Regional Science* 94.4: 891–900

Meyer, Susanne, Daniel Schiller and Javier Revilla Diez. 2012. 'The Localization of Electronics Manufacturing in the Greater Pearl River Delta, China: Do Global Implants Put Down Local Roots?'.*Applied Geography* 32.1: 119–29.
Naumann, Eckart. 2008. *Intra-SADC and SADC-EU Rules of Origin: Reflections on Recent Developments and Prospects for Change*. Stellenbosch: TRALAC.

OECD and WTO. 2012. 'Chirundu One-Stop Border Post: A Regional Trade Facilitation Programme'. http://www.oecd.org/aidfortrade/47750237.pdf (1 November 2015).

Porter, Michael E. 1990. *The Competitive Advantage of Nations*. London: Macmillan.

Porter, Michael E. 1996. 'Competitive Advantage, Agglomeration Economies, and Regional Policy'. *International Regional Science Review* 19.1: 85–94.

Porter, Michael E. 1998. 'Clusters and the New Economics of Competition'.https://hbr.org/1998/11/clusters-and-the-new-economics-of-competition (3 December 2015).

Porter, Michael E. 2000. 'Location, Competition, and Economic Development: Local Clusters in a Global Economy'. *Economic Development Quarterly* 14.1: 15–34.

Price, Robert, M. 1984. 'Pretoria's Southern African Strategy'. *African Affairs* 330: 11–32.

Public officer of a natural-gas explorer and developer. 2014. Written correspondence with the author. Cape Town, 28 February.
Redvers, Louise. 2013. 'Angola, the Reluctant SADC Trader'. *SAIIA Occasional Paper* 152.

Rodríguez-Pose, Andrés. 2010. 'Economic Geographers and the Limelight: The Reaction to the 2009 World Development Report'. *Economic Geography* 86.4: 361–70.

Rossi, Eliana C., Jonothan V. Beaverstock and Peter J. Taylor. 2007. ‘Transaction Links through Cities: “Decision Cities” and “Service Cities”’. *Geoforum* 38.4: 628–42.

Rossi, Eliana C. and Peter J. Taylor. 2005. ‘Banking Networks Across Brazilian Cities: Interlocking Cities Within and Beyond Brazil’. *Cities* 22.5: 381–93.

SACU.2002. ‘2002 Southern African Customs Union (SACU) Agreement’. http://www.sacu.int/show.php?id=566 (26 February 2016).

SADC. 1996. ‘Protocol on Trade in the Southern African Development Community (SADC) Region’. http://www.sadc.int/files/4613/5292/8370/Protocol_on_Trade1996.pdf (8 March 2016).

SADC. 2012. ‘Regional Infrastructure Development Master Plan’. http://www.sadc.int/files/9313/5293/3536/Regional_Infrastructure_Development_Master_Plan_Transport_Sector_Plan.pdf (20 November 2015).

SAOGA. 2014. ‘Serving the Interests of Industry and Members in the Upstream and Midstream Oil & Gas Sectors’. unpublished presentation provided to the author.

Sassen, Saskia. 2001a. *The Global City*. Princeton: Princeton University Press.

Sassen, Saskia. 2001b. ‘Cities in the Global Economy’. In: *Handbook of Urban Studies*, edited by Ronan Paddison, 256–72, London: Sage.

Scholvin, Sören. 2014. *The Geopolitics of Regional Power: Geography, Economics and Politics in Southern Africa*. Farnham: Ashgate.

Scholvin, Sören and Georg Strüver. 2013. ‘Tying the Region Together or Tearing It Apart?: China and Transport Infrastructure Projects in the SADC Region’. In *Monitoring Regional Integration in Southern Africa 2012*, edited by André du Pisani et al., 175–93. Stellenbosch: TRALAC.

Scholvin, Sören and Andrés Malamud. 2014. 'Is There a Geoeconomic Node in South America?: Geography, Politics and Brazil's Role in Regional Economic Integration'. *ICS Working Paper* 2/2014.

Schütze, Fritz. 1983. 'Biographieforschung und narratives Interview'. *Neue Praxis* 13.3: 283–93.

Smith, José. 1988. 'The Beira Corridor Project'. *Geography* 73.3: 258–261.

Taylor, Peter J. et al. 2002a. 'Measurement of the World City Network'. *Urban Studies* 39.13: 2367–76.

Taylor, Peter J. et al. 2002b. 'Exploratory Analysis of the World City Network'.*Urban Studies* 39.13: 2377–94.

Teravaninthorn, Supee and Gaël Raballand. 2008. 'Transport Prices and Costs in Africa: A Review of the Main International Corridors'. *AICD Working Paper* 14.

The Namibian. 2014. 'Chinese Firm Preferred Bidder for Kudu Gas Power Station'. http://www.namibian.com.na/index.php?id=128240&page=archive-read (18 November 2015).

Times of Africa. 2015. 'Oil and Gas Industry: The Best is Yet to Come'. http://www.thetimesofafrica.com/oil-and-gas-industry-best-yet-come (17 December 2015).

Times Live. 2015. 'Saldanha Bay Oil Terminal to Get R9.2 Billion Upgrade: Zuma'. http://www.timeslive.co.za/local/2015/08/13/Saldanha-Bay-oil-terminal-to-get-R9.2-billion-upgrade-Zuma (17 December 2015).

Transparency International. 2015. 'Corruption Perceptions Index'. http://www.transparency.org/research/cpi/overview (16 October 2015).

TradeMark Southern Africa. 2011. 'Infrastructure Components of the North–South Corridor'. http://www.trademarksa.org/sites/default/files/publications/Report%20%7C%20Infrastructure%20Components%20of%20the%20North-South%20Corridor.pdf (20 November 2015).

United Nations Conference on Trade and Development. 2015. 'Liner Shipping Connectivity Index'.

http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=92 (21 October 2015).

Wall, Ronald S. and Bert van der Knaap. 2012. 'Centrality, Hierarchy and Heterarchy of Worldwide Corporate Networks'. In *International Handbook of Globalization and World Cities*, edited by Ben Derudder et al., 209–29. Cheltenham: Edward Elgar.

Wesgro. 2012. 'Coal, Oil and Gas: Sector Fact Sheet'. http://wesgro.co.za/publications/publication/2012-coal-oil-gas (23 October 2015).

World Bank. 2009. 'World Development Report: Reshaping Economic Geography'. http://documents.worldbank.org/curated/en/730971468139804495/pdf/437380REVISED01BLIC1097808213760720.pdf (6 September 2016).

World Bank. 2011. 'Harnessing Regional Integration for Trade and Growth in Southern Africa'.http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1239120299171/5998577-1254498644362/6461208-1300202947570/SA_Regional_Integration.pdf(6 September 2016).

World Bank. 2014. 'Logistics Performance Index: Country Score Card South Africa'. http://lpi.worldbank.org/international/scorecard/radar/254/C/ZAF/2014/R/SSA/2014/I/UMC/2014#chartarea (21 October 2015).

World Bank.2015a. 'Worldwide Governance Indicators'.http://info.worldbank.org/governance/wgi/index.aspx#reports (21 October 2015).

World Bank. 2015b. 'Doing Business: Historical Data Sets and Trends Data'. http://www.doingbusiness.org/custom-query (21 October 2015).

Chapter 7

An analysis of Lesotho's clothing exports to the United States

Ron Sandrey

1. Introduction

In recent papers tralac has written extensively on Lesotho and trade related issues. Sandrey 2015 confirmed that manufacturing and in particular the textiles and clothing sector is the main contributor to the growth of Lesotho's formal Gross Domestic Product (GDP), but this sector is stagnating in the face of competition from low-cost Asian producers and rising labour costs. Access to the US market under the Africa Growth and Opportunity Act (AGOA) means that Lesotho is vulnerable to increased competitive pressures from Asia and other developing countries. Lesotho's exports to the world show that the three top destinations of the US (apparel under tariff preferences AGOA), Belgium (diamonds) and South Africa were taking over 96% of the total exports in 2014. Imports are dominated by South Africa with a share of around 85%, with much of the balance being sourced from China and Chinese Taipei (Taiwan), and as total imports were significantly above total exports, Lesotho had a negative trade balance.

Competition for Lesotho's apparel exports to the US is mostly from China and some other Asian and Latin American economies. These Asian economies (but not the Latin Americans) face a tariff disadvantage in their trade with Lesotho and other African exporters of 14.4% in the HS 61 Chapter trade and a lower 10.8% tariff in HS 61, the other main apparel chapter. Sandrey found that during 2014 Lesotho was the 26th most important supplier of HS 61 to the US and the 32nd main supplier of HS 62 (apparel) to the US market. In particular, for HS 61, Cambodia exports more to the US than the whole of Africa, and Cambodia pays the tariff.

South Africa has, in recent years, adopted protectionist measures in the form of quotas on Chinese imports and increased tariffs to the WTO bound rate of 45%, but this has done little to revive the South African clothing sector. What has been more significant has been the performance of the smaller BLNS countries of Lesotho, in particular, and Swaziland as they react to preferential access into the increasingly protected South African market. Immanuel and Sandrey (2016) assessed the trade profile of the wider textile and clothing (TC) sector in the BLNS countries over the last six years. They found that for exports outside of the SACU market it is only on the US market that SACU export attention is focussed, and even here the contribution is now pre-dominately from Lesotho under the tariff preferences of the Africa Growth and Opportunity Act (AGOA). Despite South African endeavours to protect its global clothing market its imports have been stable in recent years, while those for both Lesotho and Swaziland are increasing. China is the main supplier to South Africa, with intra-SACU imports stable at around one quarter of the total South African imports in recent years.

Exports from Lesotho were primarily to the US under AGOA preferences, with these exports to the US consistently around $300 million or above in recent years. Exports to South Africa have been increasing to be around $100 million and trade to other destinations is minimal. Fully finished clothing in the HS 61 and 62 clothing Chapters completely dominate exports.

2. Objectives for this paper

The objective for this current paper is to extend the review of tralac's clothing analysis in recent times to concentrate in detail upon Lesotho's export performance in the US market. The most recent data since 2010 when intra-SACU data became more reliable clearly indicates the importance of the US market to Lesotho. Import trade data for the US is available over the longer period of 2001 to 2015 inclusive, and we shall use this data to assess the profile and performance of Lesotho. Specifically, we will just examine the HS 61 and 62 clothing lines and largely ignore the textile trade in their respective Chapters and the assorted clothing articles in the 'grab bag' of HS 63 as this is not important for Lesotho. Our analysis will emphasise the tariff preferences that Lesotho and several other developing countries and countries with FTA-related preferences into the US enjoy over non-preferential access (generally Asian) suppliers.

We have chosen the US market as it is the main global market for the generally middle to low end product that Lesotho manufactures, although we recognise that Lesotho is very conscious of trying to move more into at least some higher-end products for markets such as the EU. To provide a comprehensive analysis of the US market we will examine the leading exports at the more disaggregated HS 4 line level to assess where Lesotho may be performing better in this US market, and conversely where Lesotho is losing market shares by showing who is displacing Lesotho.

In presenting this paper we generally use abbreviated and truncated time periods starting from 2001 and generally showing at least the last two years in the main section of the paper. Data is expressed in US dollars, either thousands, millions or billions as indicated, and % shares are also used to give a clearer picture of relative marked performances and their changes. We also introduce Index values and tariff rates as supplied by the ITC at different times in the paper.

3. Lesotho – the general trade profile in recent years

In this section we extend the previous analysis by reproducing the data presented in Immanuel and Sandrey on the trade performance of Lesotho's textile and clothing sector in more detail, and again using a combination of direct and mirror data as similarly sourced from the International Trade Commission (ITC) and expressed in US$'s. We define textiles and clothing (TC) as the broader sector of trade chapters of HS 57 (carpets), HS 58 (fabric), HS 59 (also fabric), HS 60 (knitted or crocheted fabric), HS 61 and 62 (the main clothing chapters) and HS 63 (various items including worn clothing), while prior to this point we have used just the clothing-specific HS 61, 62 and 63 Chapters. The data clearly re-emphasises that the US market is crucial for Lesotho, as other than neighbouring South Africa it is effectively the only TC export destination. Within the broader TC sector fully manufactured clothing in HS categories 61 and 62 similarly make up the major part of the exports. A set of tables for Lesotho's overall trade profile is shown below, with some commentary beneath the relevant tables, and although both direct and mirror data is used there is no attempt to reconcile their differences.

Table 1: Lesotho's textile & clothing exports by product. $1,000

HS	Product Label	2010	2011	2012	2013	2014	Total
61	Apparel, knit or crochet	96,407	217,129	215,888	65,248	242,011	836,683
62	Apparel, not knit/crochet	86,162	212,706	161,714	63,193	153,562	677,337
63	Worn clothing	5,988	4,039	411	222	1,105	11,765
60	Knitted/crochet fabric	110	54	43	347	761	1,315
58	Special fabric	222	338	140	840	236	1,776
59	Impregnated fabric	0	5	3	7	22	37
57	Carpets	0	0	0	2	5	7
Total		188,889	434,271	378,199	129,859	397,702	1,528,920

Source. ITC database

- Exports of HS 61 and 62, the two main manufactured clothing Chapters, dominate the exports.
- There have been modest exports of used clothing and related products.
- Exports of fabric have been minimal, except perhaps in the latest 2014 year.

Table 2: Export markets for Lesotho's TC products. Direct data, $1,000

Importers	2009	2010	2011	2012	2013	Total	% Share
World	365,832	188,889	434,271	378,199	129,859	1,497,050	
USA	197,276	106,421	313,071	297,042	55,934	969,744	64.8
South Africa	73,123	72,054	66,039	68,328	70,744	350,288	23.4
Canada	90,297	7,477	43,057	5,327	1,225	147,383	9.8
Mexico	60	9	302	831	533	1,735	0.1
European Union	1,601	509	2,547	2,195	436	7,288	0.5
Australia	478	577	2,593	2,106	338	6,092	0.4
Total	362,835	187,047	427,609	375,829	129,210	1,482,530	

Source. ITC Database

- The direct data as reported by Lesotho clearly shows the USA as the dominant market (the year 2013 appears to be a data anomaly as the mirror data from US sources reports imports into the US as $331 million).
- South Africa is next, taking consistent exports of around $70 million for an overall share of 23.4%, and note that this share is not increasing.

Table 3: Export markets for Lesotho's TC products. Mirror data, $1,000

Importers	2011	2012	2013	2014	2015	Total	% shares
Total	396,026	382,265	409,232	397,702	421,117	2,006,342	
USA	315,349	300,933	321,332	290,309	310,410	1,538,333	76.7%
South Africa	61,038	63,819	73,992	95,241	102,125	396,215	19.7%
Canada	11,252	8,114	6,663	4,844	5,218	36,091	1.8%
Australia	2,059	2,235	2,321	2,272	1,677	10,564	0.5%
Mexico	1,476	1,934	2,279	877	755	7,321	0.4%
Zimbabwe	879	544	936	1,195	315	3,869	0.2%
European Union	1,588	2,131	674	232	276	4,901	0.2%

Source. ITC database

- There are major differences in the export data presented in the direct data (Table 2) and the mirror data in Table 3.
- The direct data is shown for the years 2009 to 2013 inclusive, while the mirror data is shown for the years 2011 to 2015. Thus, only the central years of 2011 to 2013 are comparable.
- For 2011 and 2012 the data has an acceptable match, whereas for 2013 the direct data differs significantly from the mirror data as reported by trading partner imports.
- Only the South African data reconciles between the two tables, and overall the 2013 direct data is just below one third of the partner mirror data.
- Given that the mirror data is consistent there is a strong case to accept t he mirror data as perhaps more closely representing the profiles.

4. Lesotho's longer term global profile

We start this longer term global export profile of the broad clothing sector (HS 61, 62 and 63) by introducing Table 4. Here the data is expressed in $ billions in the second row, while the top row shows the selected years of 2001, 2007 and from 2013 to 2015 inclusive. Below that we show the percentage shares of the US imports in these products. We have generally aggregated the EU into one supplier (and note that this data includes intra-EU data), although we recognise that there is a risk in doing this as while the EU is generally thought of as an exporter of high quality fashion clothing there are less developed countries in the expanded EU that may be in competition to Lesotho. Also note in this and other tables that while the main suppliers are shown the tables generally always have several suppliers below the major ones omitted to allow us to show Lesotho in these tables[62]. For instance, in Table 4 South Africa is actually the 58th largest global supplier during 2015, while Lesotho is the 64th (counting the EU as individual countries). This latter statistic puts Lesotho firmly in perspective.

Overall clothing global exports increased from $204 billion in 2001 to $539 billion in 2014 before declining to $519 billion in 2015[63]. Table 4 clearly shows the dramatic rise of Chinese exports over this period: from a 17.7% share in 2001 to a consistent 37.8% share in 2013 to a 36.5% share in 2015. It may be too early to tell if this three-year data indicates a plateau of Chinese dominance though. Others shown to have lost shares are the top-placed EU and Hong Kong, although we emphasise that there may well be a strong correlation between the decline of Hong Kong and the rise of China as manufacturing processes are linked in these two closely linked sources. The other major country to decline is the US, while Bangladesh, Vietnam, India and Cambodia all increased, as did Egypt, the only African exporter to do so. Finally, the bottom line shows that Kenya, while a late starter, is now up with Lesotho.

62 At times we use the rank of the exporter to the US market to emphasise this.

63 We note that 2015 trade data may be incomplete as some countries may not have reported to the ITC by early May of 2015, thus revisions are possible.

Table 4: Global exporters of HS 61, 62 and 63, the broad clothing sector. $ billion & % shares

Exporters	2001	2007	2013	2014	2015
World $ billion	204	383	508	539	519
% shares of global exports					
EU	29.8%	28.6%	25.0%	25.4%	23.5%
China	17.7%	32.0%	37.8%	37.5%	36.5%
Bangladesh	2.08%	2.54%	5.45%	5.55%	5.99%
Vietnam	0.97%	2.00%	3.53%	3.90%	4.71%
India	3.01%	3.06%	4.02%	3.92%	4.19%
Hong Kong	11.04%	7.22%	4.15%	3.66%	3.42%
Turkey	3.60%	4.07%	3.38%	3.43%	3.23%
Indonesia	2.25%	1.53%	1.52%	1.42%	1.98%
Cambodia	0.56%	0.70%	1.00%	0.99%	1.79%
Pakistan	0.00%	1.67%	1.51%	1.54%	1.73%
USA	3.67%	1.31%	1.42%	1.40%	1.44%
Poland	1.11%	0.82%	0.94%	1.02%	1.09%
Egypt	0.17%	0.08%	0.33%	0.30%	0.38%
South Africa	0.13%	0.04%	0.12%	0.11%	0.11%
Lesotho	0.07%	0.02%	0.03%	0.08%	0.08%
Kenya	0.01%	0.07%	0.06%	0.08%	0.08%

Source. ITC

Next the comparable global data for clothing imports is shown in Table 5. We have shown in the second line the aggregate values in $ billions for these imports over the selected years, and underneath that we have shown the ratio of global imports over global exports. Note that this data in line 3 increases from 93% in 2001 indicating that imports were 7% less than exports by value to 113% in both 2013 and 2014. This figures is, in aggregate, close to where we would expect it to be as imports generally but not always include transport and related costs of getting clothing to markets.

The EU as a single market consistently dominates, although again note we have aggregated the EU data here and intra-EU data would be included. Of interest to later analysis is that the US has declined significantly in global import shares, and perhaps this may have longer term implications for Lesotho. Conversely, South Africa is increasing, and this perhaps conversely bodes well for Lesotho with its duty-free access to that market. Others to decline in

relative shares are Japan and Hong Kong, while those in the middle segment of the table generally increase.

Table 5: Global importers of clothing, HS 61, 62 and 63. $ billion & % shares

Importers	2001	2007	2013	2014	2015
World $ billion	219	368	449	477	471
Imp / Exp	93%	104%	113%	113%	110%
EU	38.5%	45.1%	41.8%	43.3%	40.1%
USA	30.1%	24.5%	21.7%	20.9%	22.1%
Japan	9.0%	6.8%	7.9%	6.9%	6.4%
Hong Kong	7.1%	5.0%	3.5%	3.2%	3.0%
United Arab Emirates	0.0%	0.7%	1.4%	1.5%	2.5%
Canada	1.9%	2.2%	2.3%	2.2%	2.2%
Korea, Republic of	0.7%	1.2%	1.7%	1.8%	1.9%
Australia	0.8%	1.2%	1.6%	1.5%	1.6%
China	0.6%	0.5%	1.2%	1.3%	1.4%
Switzerland	1.5%	1.4%	1.4%	1.3%	1.2%
South Africa	0.1%	0.3%	0.5%	0.4%	0.4%

Source. ITC

4.1 Lesotho exports – the details and in perspective

Total (all products) exports from Lesotho are given in Table 6. This is direct data, and only available to 2013. We do not have much confidence in this data, but it is provided as the ITC reports it from Lesotho, and differs from the ITC mirror data shown in Table 8.

Table 6: Total global exports from Lesotho. Direct data,$ million

Importers	2001	2003	2007	2009	2011	2012	2013
World $ million	280	479	122	628	770	678	355
South Africa	149	390	79	366	434	377	129
USA	57	302	20	87	140	110	42
Canada	8	3	9	35	65	78	21
Mexico	4	0	17	78	56	33	5
United Kingdom	5	0	5	27	36	44	11
Australia	4	1	12	21	21	33	19
Tanzania	6	79	9	62	53	33	7
Sierra Leone	3	0	4	39	14	15	4

Source. ITC

Global exports of clothing from Lesotho over the last few years are shown in Table 7 by firstly aggregate and then the detailed HS 4 clothing lines. The first two lines below the dates show that a significant portion of these exports are indeed clothing – $421 million out of a total of $933 million during 2015. We note a significant decline during 2013 that Lesotho authorities report is explained by technical hitches. We also note that from mirror data (mostly to Belgium in Table 8) exports of diamonds from Lesotho are reported as being $408 million and $316 million for 2014 and 2015 respectively from very low levels in previous years. This is a cautionary tale to spell out using Lesotho data, and that is why we use US import data for our detailed analysis. Table 7 lists the major clothing lines, and we will explore these sequentially in the US market.

Table 7: Global clothing exports from Lesotho. Mirror data, $ million

Code	Product label	2001	2003	2007	2011	2012	2013	2014	2015
	All products	280	479	122	770	678	355	1,015	933
	Clothing	149	390	79	434	377	129	406	421
6203	Men's suits, jackets, trousers etc	57	302	20	140	110	42	123	111
6104	Women's suits, dresses, skirt etc	8	3	9	65	78	21	77	93
6110	Jerseys, pullovers	4	0	17	56	33	5	53	47
6105	Men's shirts	5	0	5	36	44	11	38	45
6109	T-shirts etc	4	1	12	21	33	19	36	34
6204	Women's suits etc	6	79	9	53	33	7	26	32
6103	Men's suits etc knit/crochet	3	0	4	14	15	4	13	20
6205	Men's shirts	2	0	0	3	2	5	3	5
6112	Track suits, ski suits swimwear	30	0	0	1	0	0	2	2

Source. ITC

Table 8 showing mirror data of Lesotho's exports adds to the overall confusion surrounding Lesotho's exports through consistent exports of diamonds to Belgium. Tracing back through the ITC data we find that Belgium until 2014 reported imports of diamonds from Lesotho that were significantly above what the ITC gave as Lesotho's global diamond exports. Since this paper is only peripherally interested in this issue we will leave it unresolved! Note that the data is only from 2010, as it was only from that data that reliable intra-SACU trade data became available. The three top destinations are of similar values and completely dominate the table. Exports to South Africa are an eclectic mix, while exports to Belgium are all diamonds and exports to the US are virtually all clothing.

Table 8: Lesotho's total global exports by country. Mirror data, $ million

Importers	2010	2011	2012	2013	2014	2015
Total	800	1055	925	920	1015	933
USA	312	395	321	361	373	344
Belgium	181	334	281	244	326	280
South Africa	264	269	261	238	254	268
China	5	7	5	13	12	12
Canada	16	12	9	7	6	5

Source. ITC

4.2. The US imports of HS 61 (Articles of apparel, accessories, knit or crochet) market

The US import market for HS 61 is shown in Table 9, where following the wider HS 61, 62 and 63 aggregations discussed earlier China dominates with a market share that rose from 2001 and declined and perhaps plateaued from 2014. Next are the familiar Asian and Latin American markets, with Lesotho a minor player with a market share that has declined from the higher rates in the middle periods.

Table 9: US imports of HS 61. $ million

Exporters	2001	2005	2009	2012	2014	2015
World	27,910	34,852	34,668	42,598	46,627	48,514
China	8.5%	20.0%	34.4%	36.5%	35.9%	34.9%
Vietnam	0.1%	3.4%	8.7%	10.1%	12.0%	13.2%
Indonesia	2.3%	2.6%	6.4%	6.9%	5.9%	5.7%
Honduras	6.3%	5.9%	5.0%	5.2%	4.7%	4.8%
Cambodia	1.5%	2.7%	3.9%	4.4%	4.2%	4.0%
El Salvador	4.3%	4.0%	3.3%	3.8%	3.6%	3.6%
India	1.9%	2.9%	3.8%	3.1%	3.4%	3.5%
Bangladesh	1.8%	1.8%	2.6%	2.5%	2.7%	3.1%
Mexico	12.1%	6.9%	3.7%	3.1%	2.9%	2.7%
Lesotho	0.4%	0.7%	0.5%	0.5%	0.4%	0.4%

Source. ITC

This same data is reproduced in Table 10 using trade indicators. The familiar % shares are in column 2, while in columns 3 and 4 are the % changes in import values between 2011–2015 and 2014–2015 respectively expressed in % changes per annum. Column 5 shows the rank in the relevant country as a global exporter, and here there is little correlation between the US and global rankings (except that China is always number one). Finally, on the far right hand side we introduce the average tariff for HS 61 imports into the US as given by the ITC. This clearly shows the countries that have an advantage of 14.4% in their free access, and highlights that the leading suppliers are dominating the market despite having to pay these tariffs of 14.4%. We note here that should the signed Trans-Pacific Partnership Agreement be ratified Vietnam will eventually join the duty-free group and moreover have an advantage in rules of origin (ROO, a subject not touched upon in this paper). This must be of concern to Lesotho and others given the dramatic rise of Vietnam as shown in Table 8 and highlighted in Table 10, a rise in the face of 14.4% tariffs.

Table 10: US imports of HS 61. Trade indicators

Exporters	US %	Change 2011-2015 %	Change 2014-2015 %	Rank in world	US Tariff (%)
World	100	3	4		
China	34.9	2	1	1	14.4
Vietnam	13.2	13	14	3	14.4
Indonesia	5.7	-2	-1	10	14.4
Honduras	4.8	0	6	16	0
Cambodia	4	1	0	9	14.4
El Salvador	3.6	3	4	22	0
India	3.5	4	8	6	14.4
Bangladesh	3.1	8	21	2	14.4
Mexico	2.7	-2	-5	24	0
Lesotho	0.4	4	5	56	0
South Africa	0	5	24	58	0

Source. ITC

Another way of highlighting the changes in US import shares is given in Table 11 where the data is expressed in Index form. The values for 2014 are normalised to be 100, and this clearly shows the changes in imports. For information profiles for Lesotho and fellow African Egypt are at the bottom of the table. Import values for 2015 in $ million are given on the right hand side.

Table 11: Index of US imports of HS 61

Index values, 2014=100							
Exporters	**2001**	**2005**	**2009**	**2012**	**2014**	**2015**	2015$m
World	60	75	74	91	100	104	48,514
China	14	42	71	93	100	101	16,929
Vietnam	0	21	54	77	100	114	6,389
Indonesia	24	33	80	106	100	99	2,752
Honduras	80	94	79	100	100	106	2,319
Cambodia	22	48	69	95	100	100	1,958
El Salvador	72	83	68	98	100	104	1,728
India	35	64	83	83	100	108	1,690
Bangladesh	41	51	72	86	100	121	1,506
Mexico	249	178	95	98	100	95	1,294
Sri Lanka	44	63	55	79	100	118	1,177
Guatemala	81	115	85	86	100	107	1,167
Nicaragua	9	30	60	88	100	97	1,068
Pakistan	67	99	97	101	100	95	967
Jordan	15	89	66	79	100	114	964
Thailand	138	133	104	95	100	104	787
Haiti	30	57	64	88	100	110	719
Philippines	111	132	89	96	100	102	678
Peru	60	129	97	99	100	92	556
Dominican Rep	183	205	80	79	100	110	481
Egypt	37	47	84	96	100	107	424
Italy	115	91	60	84	100	92	403
Malaysia	119	127	85	84	100	103	374
Taipei	417	290	137	114	100	93	252
Korea	475	330	110	88	100	101	236
Lesotho	60	123	86	97	100	105	211
Turkey	330	250	64	91	100	117	208
Canada	387	292	93	95	100	98	205
Kenya	0	42	53	65	100	93	176

Source. ITC

4.3. The US imports of HS 62 (Articles of apparel, accessories, not knit or crochet) market

The total monetary values of these imports and the respective market shares for selected years are given in Table 12, with again a rapid rise from both China and Vietnam highlighted. Cambodia is not as prominent here as it was in HS 61 imports.

Table 12: US imports of HS 62.Selected years, $ million &% shares

Exporters	2001	2005	2009	2012	2014	2015
World	32,911	39,302	32,127	38,089	39,100	40,575
China	13.2%	27.6%	41.8%	40.2%	38.2%	37.8%
Vietnam	0.1%	4.2%	6.9%	7.8%	10.0%	11.0%
Bangladesh	4.7%	4.6%	8.1%	9.1%	9.3%	9.7%
Mexico	14.3%	9.8%	6.9%	6.7%	6.5%	6.0%
Indonesia	5.1%	5.4%	5.6%	5.8%	5.8%	5.9%
India	4.1%	5.8%	5.4%	5.1%	5.2%	5.4%
Sri Lanka	3.4%	2.9%	2.2%	2.1%	2.3%	2.4%
Cambodia	1.7%	2.2%	1.9%	2.0%	1.6%	1.5%
Lesotho	0.31%	0.41%	0.36%	0.30%	0.25%	0.25%

Source. ITC

Index values are shown for these US imports in Table 13, where the pattern is again for 2014 equalling 100 and $ million values for 2015 shown on the right hand column. We have included extra African supplier at the bottom of the Table to show that Lesotho faces competition from more than just Asian and Latin American suppliers.

Table 13: US imports of HS 62 by source &$ million

Index values where 2014 = 1000								
Exporters	2001	2005	2009	2012	2013	2014	2015	$mill
World	84	101	82	97	101	100	104	40,575
China	29	73	90	102	104	100	103	15,347
Vietnam	1	42	56	76	88	100	114	4,470
Bangladesh	42	49	72	95	105	100	109	3,945
Mexico	186	153	88	101	99	100	96	2,419
Indonesia	75	95	80	98	103	100	107	2,404
India	67	112	86	95	97	100	107	2,180
Italy	97	107	70	87	92	100	94	1,032
Sri Lanka	128	128	82	89	96	100	110	970
Cambodia	88	141	98	125	116	100	100	615
Pakistan	60	68	75	100	105	100	106	569
Honduras	136	127	80	96	100	100	93	497
Philippines	257	216	96	115	109	100	99	473
Egypt	57	62	98	115	108	100	100	457
Nicaragua	67	91	58	94	93	100	99	435
Canada	206	182	79	86	91	100	104	391
Dominican Republic	458	302	85	98	95	100	102	326
Jordan	21	119	73	106	113	100	98	312
Guatemala	262	210	72	115	115	100	103	306
Thailand	265	277	152	128	109	100	90	303
Turkey	206	220	63	98	95	100	109	271
El Salvador	167	99	69	92	101	100	97	269
Kenya	34	102	51	70	75	100	101	205
Mauritius	95	53	50	74	87	100	98	200
Lesotho	105	163	118	118	115	100	101	100
Botswana	24	156	68	88	64	100	119	6
Tanzania	0	39	0	2	5	100	205	3
Swaziland	32	352	234	153	105	100	12	2
South Africa	14,082	4,879	189	214	70	100	289	1

Source. ITC

Trade indicators for the main US imports of HS 62 are shown in Table 14, with the format being the same as used in Table 10 for imports of HS 61. With the exception of Mexico all the main sources face a duty of 10.8%, and again should the TPP trade agreement come into force Vietnam will have tariff and

possible ROO advantages over many competitors. Lesotho has a world rank of 69 as an exporter of Chapter 62 clothing.

Table 14: Trade indicators for US imports of HS 62

Exporters	2015 US %	2011-2015 % change p.a.	2014-2015 %, change p.a.	Rank world exports	US Tariff (%)
China	37.8	-1	3	1	10.8
Vietnam	11.0	12	14	3	10.8
Bangladesh	9.7	3	9	2	10.8
Mexico	6.0	-1	-4	19	0
Indonesia	5.9	1	7	11	10.8
India	5.4	2	7	5	10.8
Italy	2.5	4	-6	4	10.8
Sri Lanka	2.4	6	10	24	10.8
Cambodia	1.5	-7	0	16	10.8
Pakistan	1.4	3	6	15	10.8
Honduras	1.2	1	-7	37	0
Philippines	1.2	-3	-1	38	10.8
Egypt	1.1	-4	0	30	10.8
Lesotho	0.2	-9	1	69	0

Source. ITC

5. US imports from Lesotho at the HS 4 level

Table 15shows US imports from Lesotho by $ millions on the left hand side and % shares of the US imports on the right hand side for the top 10 imports. Data is given at the HS 4 level, with product descriptions provided underneath the table. The top six import lines at this level make up most of the imports for 2015, while the seventh line of HS 6103 was important in earlier years. In Table 15 it can be seen that in some years for some lines the US market share has been at or above 1%, significantly above the overall averages discussed earlier.

Table 15

	US imports from Lesotho, $ million									Lesotho % share of US imports from world								
HS 4	2001	2003	2005	2007	2009	2011	2013	2014	2015	2001	2003	2005	2007	2009	2011	2013	2014	2015
6104	15	39	39	37	29	46	83	70	84	0.88%	1.82%	1.74%	1.12%	0.89%	0.99%	1.46%	1.12%	1.29%
6203	48	78	105	95	63	103	95	81	78	0.64%	0.97%	1.23%	1.11%	0.89%	1.20%	1.05%	0.91%	0.87%
6110	71	141	143	144	74	50	50	52	45	0.60%	1.13%	1.06%	0.96%	0.59%	0.33%	0.34%	0.34%	0.29%
6105	9	13	6	20	29	37	39	35	41	0.47%	0.69%	0.32%	0.77%	1.59%	1.62%	1.81%	1.61%	1.85%
6204	55	70	51	53	49	39	16	15	17	0.52%	0.60%	0.37%	0.40%	0.47%	0.34%	0.14%	0.14%	0.16%
6109	8	15	21	13	12	18	19	15	15	0.24%	0.42%	0.49%	0.31%	0.30%	0.33%	0.34%	0.27%	0.26%
6103	6	28	19	15	16	12	8	7	7	0.98%	3.36%	2.33%	1.66%	1.91%	1.03%	0.66%	0.46%	0.39%
6114	1	3	2	5	3	2	5	7	5	0.32%	0.47%	0.25%	0.48%	0.29%	0.14%	0.42%	0.62%	0.40%
6106	8	17	9	10	5	3	4	2	2	0.79%	1.35%	0.77%	0.75%	0.59%	0.28%	0.41%	0.25%	0.25%
6108	0	2	0	0	0	3	4	7	5	0.01%	0.11%	0.00%	0.00%	0.02%	0.11%	0.13%	0.21%	0.13%

Source. ITC

Where:

6104	Women's suits, dresses, skirt etc & short, knit/crochet
6203	Men's suits, jackets, trousers etc & shorts
6110	Jerseys, pullovers, cardigans, etc, knitted or crocheted
6105	Men's shirts, knitted or crocheted
6204	Women's suits, jackets, dresses skirts etc & shorts
6109	T-shirts, singlets and other vests, knitted or crocheted
6103	Men's suits, jackets, trousers etc & shorts, knit/ crochet
6114	Garments, knitted or crocheted, nes
6106	Women's blouses & shirts, knitted or crocheted
6108	Women's slips, panties, pyjamas, bathrobes etc, knitted/crocheted

It is instructive to examine the performance of Lesotho against the major competitors and African countries for the top seven HS 4 imports from Lesotho into the US during 2015. This examination shows that:

- For HS 6104, the main import during 2015, the familiar China and Vietnam are the first and second suppliers with Cambodia at number four and Lesotho and Kenya ranked at 13 and 15 respectively. Lesotho's increase has been steady over the period, while Kenya has grown from a zero base to be just behind Lesotho and ringing a warning bell to Lesotho.

- For HS 6203 Lesotho had a rank of 18 during 2015 and is showing consistent import values over the period. Bangladesh has replaced Vietnam in the second position, and is now challenging China itself for the top position and has slowly risen above the consistent Mexico even though Mexico has that tariff-free advantage.

- Lesotho slips down to 27th ranking in the importation of HS 6110, and is tightly grouped with fellow Africans of Egypt, Kenya and Morocco at that level. Imports from Lesotho have fallen significantly in value since the early years, while the other African's have increased.

- Both Lesotho and Kenya have a similar profile for HS 6105 with imports that are slowly and steadily increasing imports, while Egypt has plateaued. Vietnam has grown from very low levels in 2001 to now capture the top spot above China, while both India and Pakistan are both consistent suppliers over the period a little further back in the rankings.

- Lesotho is only the fourth placed African importer in HS 6204, as Egypt, Kenya and Morocco are all above Lesotho for 2015. Imports from Lesotho have declined recently after being steady through the early and middle years, and this is somewhat consistent with the other African suppliers.

- In HS 6109 Lesotho is at a rank of 27 for 2015, and at that level it is sandwiched between the two EAC countries of Tanzania and Kenya who both came from a standing start of zero imports. China is back to number one position, but the unusual feature is that the five positions above

Vietnam are all filled by Central American or Caribbean sources. Honduras is just below China while Mexico has slowly declined its import values.

- Finally, in HS 6103 Lesotho has slipped back (as has Madagascar), while again Kenya and Egypt are steadily improving to be well ahead of Lesotho. The Asian economies generally lead the imports, and for the first time we see an African source (Egypt in 8th position) close to the top group.

Overall, Lesotho's profile is mixed. There is a mixture of steadily improving, consistent imports and slowly declining profiles for the top seven import lines at this level. A feature that this analysis shows that Kenya is challenging Lesotho in many import lines.

References

Sandrey, R., 2015. *Lesotho – where to?* tralac Working Paper 27 November 2015.

Chapter 8

An Evaluation of the Effectiveness of Trade Protocol on Non-Tariff Barriers to Trade in the SADC Free Trade Area

Master Mushonga and Sylvanus Ikhide

1. Introduction

The adoption of the Southern African Development Community's Protocol on Trade in 2000 by member states which was aimed at creating an effective free intra-trade environment, had failed to reduce trade barriers which are threatening to reverse the gains made from tariff liberalisation. The protectionism in the form of non-tariff barriers (NTBs) constitutes the biggest factor affecting intra-trade in the region. The new economic environment, expected to emerge with the adoption of the Protocol on Trade (PoT) over a decade ago, has not taken place. Some of the commitments by member states to harmonise customs procedures, cooperation in customs matters and trade facilitation are yet to be achieved as the Protocol on Trade lacks the much needed legal force as some of its articles allow room for member states to derogate from their commitments. The main objective of the research study is to evaluate the effectiveness of the Protocol on Trade in the elimination of NTBs within the SADC Free Trade Area (FTA). In order to achieve this, the study analysed the trend of NTBs reported in the period 2008 to 2015, the cost of trading across member states' borders and the trend of intra-regional trade from 1996 to 2015.

The main study findings indicated that NTBs are on the increase with cumbersome customs procedures, technical barriers to trade, import permits and export bans, and poor infrastructure development proving to be more prevalent in the region. It seems the SADC PoT failed to reduce the cost of

trading across member states' borders since it came into force in 2000 with the cost of importing and exporting on the increase and the trade documentation remaining high. Again, the level of intra-regional trade as a percentage decreased from year 2000 to 2014 – an indication that might point to the failure of the Protocol on Trade to facilitate trade in the region through the elimination of NTBs. However, considerable potential for intra-regional trade seems to remain underexploited due to induced trade barriers, which are hampering the development of much needed regional value chains. The elimination of NTBs in the region will also stimulate competition, which is good to foster economic welfare by ensuring that all businesses can interact on a level playing field and by facilitating entry to markets while penalising and preventing anticompetitive behaviour, therefore correcting market failures.

The World Trade Organisation (WTO) and the Southern African Development Community (SADC) Protocol on Trade (PoT) have achieved great success in reducing trade tariffs, but the battle for market access within SADC has now shifted to the use of non-tariff barriers (NTBs) whose trade-distortive effect is similar to tariffs. SADC has been a free trade area (FTA) since 2008 (Makochekanwa, 2012:6) and its member states have reduced tariffs in intra-SADC trade over an agreed eight-year tariff phase-down period from 2000 when the SADC PoT came into effect. There has not been much progress in eliminating trade-restrictive NTBs, although the SADC PoT clearly recommends eliminating NTBs and refraining from imposing new ones (SADC, 1996:9). The elimination and reduction of NTBs should have been achieved in 2008 (Mutai, 2011:85) after being effected under the principle of asymmetry. SADC liberalisation under an asymmetric approach takes into account the ability of the economically stronger members, such as South Africa and its SACU partners, to liberalise faster compared to the economically more vulnerable members (Metzger, 2008:12). Regrettably, member states missed the deadline despite the increasing consensus among African policymakers that trade is a powerful engine for economic growth and development (Saurombe, 2012:102).

The SADC Trade Protocol that contains the framework of the SADC trade regime, having been signed in August 1996, only entered into force four years later, in 2000 after protracted negotiations. The delay in the Protocol's entry into force was perhaps the first sign of the region's lack of preparedness to undertake trade liberalisation (Mutai, 2011:84). NTBs within the SADC FTA

are mostly affecting the small to medium enterprises (SMEs), cross-border traders and the informal cross-border traders. However, well-established companies are also feeling the effects although they are better positioned to handle them to some extent. The main rationale for imposing NTBs is not to prevent trade but to make the cost of doing so prohibitive to cross-border traders within the SADC FTA. It is of great concern that such practice is working against the motive of trade liberalisation for the free movement of goods and persons across member states' borders. The result is low intra-SADC trade and profound poverty within the trading bloc.

While other trading blocs such as the European Union (EU) and the East African Community (EAC) decided to adopt a legally binding approach to address NTBs with sanctions to enforce compliance to enhance intra-regional trade, SADC has chosen flexibility through dialogue by establishing various committees as a way to address NTBs (Kirk, 2010:2). Regrettably, the process lacks a political will by governments of member states to reduce NTBs at national level. The World Bank (2011a) indicates that only 12 % of total trade in Southern Africa is interregional compared to 60 % interregional trade within the EU trading bloc, 40 % in North America and 30 % in Asia. In the EAC, trading among member states accounted for 26 % in 2009 (Mbekeani, 2013:12) while in the Economic Community for Western African States (ECOWAS) intra-regional trade was reported at 12 % in 2010 with efforts underway to increase intra-ECOWAS trade to 40 % by 2030 through the regional industrial policy (Uexkull, 2011). The low level of intra-SADC trade compared to other regional trade blocs may be attributable to NTBs that are prevalent in the region. Southeast Asia in the 1970s was at the same level of economic development as Southern Africa but through implementing effective economic and trade reforms to ensure free movement of goods and persons helped it to reduce poverty and propel its inclusive economic growth (Mills & Herbst, 2010).

This study attempts to evaluate the regulation of NTBs in SADC FTA and how that is affecting intra-regional trade. Some of the questions the study will attempt to answer in this work include the following: 1.What are the existing gaps in the regulation of NTBs under the WTO and SADC legal frameworks? 2. How effective is the SADC Protocol on Trade (PoT) in the elimination of NTBs? 3. To what extent has, the current SADC Trade Protocol hindered or facilitated intra-regional trade? Specifically, the research will identify the

NTBs hindering intra-SADC trade because of regulatory arbitrage gaps in the SADC Protocol on Trade and review the trend of NTB complaints reported in SADC FTA from year 2008 to 2013. In addition, we will attempt to determine the costs involved in trading across regional borders because of the existence of NTBs in the SADC FTA compared to other regional economic communities. Finally, suggest possible policy recommendations for the removal of NTBs to increase trade within the SADC FTA based on the research findings.

1.1 Regional trade integration in SADC

According to the WTO, Regional Trade Agreements (RTAs) have become increasingly prevalent since the early 1990s from 27 to 585 notifications in 2014. Of these RTAs, FTAs account for 90 %, while customs unions account for 10 %. This has in part been reflected in the failure to reach an agreement by member states in the current WTO Doha Round of negotiations (Fundira, 2010:115). In SADC, the SADC Treaty and the Protocol on Trade form the legal bedrock upon which issues of regional trade integration and trade liberalisation are based (Ndlovu, 2012). Regional economic integration remains a viable development strategy for the SADC bloc characterised by small economies and markets. Integration of these markets is understood to have the potential to facilitate efficiencies in production, and investment and trade, thus enabling economic development. SADC outside South African and Angolan economies is characterised by very small economies, which make regional trade integration a noble strategy to defragment the region into a larger and lucrative market through trade liberalisation.

Another complication in SADC is the fact that overlapping membership is widespread to the extent that most of the member states belong to more than one preferential trading arrangement, all at different stages of their integration agendas. This has led to conflicting trade regimes often cited as undermining the effective implementation of trade commitments. For example, the EAC is a customs union and its five members are bound by and have to defend their common external tariff (CET). This is not the case in SADC, which is still in the process of consolidating a free trade area. Common Market for Eastern and Southern Africa (COMESA) is more advanced but cannot be said to be a customs union yet. SACU also has to be mentioned as an important configuration as all its member states are all SADC member countries. This state of

affairs is apparently inspired by the brief that market access to several RTA will be beneficial. However, this is a flawed approach as it causes major legal complications, implementation burdens and even confusion (Erasmus, 2013b).

1.2 The formation and status of the SADC free trade area

The Protocol on Trade, having been adopted by SADC in 1996, was instrumental for the formation of the SADC free trade area, which was effectively launched in August 2008 when about 85 % of intra-SADC goods trade flows reached a duty-free status (Kalenga, 2012:5). Plummer, Cheong and Hamanaka (2010) defined an FTA as a commitment by signatory members to remove tariffs across member states while continuing to maintain independent tariff regimes on imports from outside countries (countries that are not members of the agreement). The SADC tariff phase-down on sensitive goods was to be achieved by 2012. Some products were regarded as sensitive because of their customs revenue sensitivities and the perceived competitive pressures on import-competing domestic industries and infant industry protection considerations. Such products include dairy products, motor vehicles, footwear, textiles and garments, and sugar, among others. SADC has reached a remarkable milestone in liberalising trade with most SADC member states, having reduced and eliminated tariffs and quotas under the Protocol on Trade (PoT) since 2000 when the Protocol's entry into force after being ratified by the required two-thirds majority of member states in 1996. The SADC FTA was notified to the WTO under GATT Article XXIV on 2 August 2004 (Kalenga, 2012:13). Seychelles, the DRC and Angola are not party to the free trade process (Negasi, 2009:20). However, the Protocol goes beyond this shallow integration to include issues, which also regulate the business environment such as customs and trade facilitation, product standards and technical regulations, and competition policy and services. It is in this deep integration[64] that much progress lags behind.

One of the main objectives of SADC FTA is to achieve development and economic growth, to alleviate poverty, and to enhance the standard and quality

---

[64] Deep integration is regarded as the strengthening of the contestability of markets for firms in partner economies through three main functions: protection of foreign firms and their interests; liberalisation of "behind-the-border" trade barriers; and harmonisation of domestic trade rules to enhance the efficiency of international production.

of life of the people of Southern Africa through regional integration. SADC only became an FTA as of January 2008, before that the region has been trading as a Preferential Trade Area (PTA) since its inception in 1980 (Makochekanwa, 2012). The formal free trade agreement was launched at a regional Heads of State Summit held in Johannesburg, South Africa, on 16 and 17 August 2008. The creation of an FTA in 2008, in principle, saw up to 85 % of intra-SADC trade flow duty free, with the remaining 15 % consisting of sensitive products to be completed by 2012 (Fadeyi, 2013:12). After 2012 countries like Zimbabwe, Tanzania and Malawi applied for the extension of the compliance period up to 2015.

2. Trade and Economic Liberalisation in SADC

SADC is giving much priority to the areas of trade and economic liberalisation as three protocols have been adopted within the trade, industry, finance and investment cluster. These protocols are the Protocol on Trade, the Protocol on Finance and Investment and the Protocol on Mining (Kalenga, 2012:5-6). Other Protocols focus on energy, transport and communication, health, tourism and so on. The advantage of having protocols to regulate each of these sectors is that definite responsibility is placed on member states and a binding legal obligation is created. The focus of the Protocol on Trade (PoT) is to liberalise trade in goods to establish an FTA in SADC to ensure efficient production within SADC reflecting the current and dynamic comparative advantages of member states. In addition, the PoT aims to contribute towards the improvement of the economic development, diversification and industrialisation of the region. SADC economies are small in terms of individual markets as measured in population and economy size (GDP) which support trade and economic liberalisation to create a larger market for free movement of goods and persons in a free trade area. With its large number of relatively small and isolated economies, including island states, the SADC's economic geography is challenging.

Of the 15 member countries, six are landlocked, six have populations below ten million people, ten have economies smaller than US$10 billion per annum, and several rely on transnational river basins for their water resources. SADC's landlocked countries face special challenges in competing in regional and global markets especially high trading costs usually attributed to inefficiencies in their domestic business environments, and the poor soft and hard

infrastructure of their neighbouring countries (Kalenga, 2012:7). Unlike other regional economic communities, SADC has five middle-income countries, with the economy of South Africa exerting the strongest influence on the region and serving as an economic anchor for the rest. Half a dozen of SADC's member states are large or potentially large economies such as Angola, the DRC, Mozambique, Tanzania, Zambia and Zimbabwe. Knitting these emerging economies more closely together and linking them to markets in South Africa would help to create a larger market and greater economic opportunities in the region (Ranganathan & Foster, 2011:2-3). However, the South African market cannot in terms of size be regarded as large, and, when the market of SADC is viewed in aggregate terms, its economy which is measured by GDP (US$655.1 billion in 2012) was significantly smaller than the GDP of Netherlands (US$796.3 billion in 2010), which in global terms is not large (McCarthy, 2014:5).

SADC has a great potential for becoming a lucrative regional market for its member states given its population size of above 280 million which consists of a growing middle class with over 60 % being aged below 30 years and a good regional average economic growth rate of 4.3 % (SADC, 2012). This presents an opportunity for SADC member states to increase trade among themselves, but doing so requires that NTBs and their root causes are identified and eliminated.

2.1 SADC institutional framework

The success of regional integration in the EU through a linear integration inspired SADC to follow the same approach. However, the EU's success could be largely explained by the existence of an effective legal and institutional framework that ensured that member states complied with their obligations. This is opposite in SADC as the current debate seems to signal that institutional integration which entails a reduction in national sovereignty remains a highly contested matter (Kalenga, 2012:4). Experience, especially in Europe, shows that regional integration is much more likely to be successful if one country serves as institutional leader and regional paymaster. European integration was successful largely because of France and Germany's willingness to serve this role. However, in Africa, most RECs lack this kind of leadership, and very few

countries are willing to serve as paymasters. Countries are also rarely willing to ratify important treaties or to persuade others to agree (Mwanza, 2010:69).

The SADC Treaty provided for a number of institutions to oversee, implement and coordinate the regional integration agenda such as the Secretariat, the Tribunal and the Parliamentary Forum. These institutions seem not to be properly empowered to drive the integration process thereby weakening their credibility. The SADC lacks a supranational authority to enforce decisions. As a result, implementation problems are left sorely to political organs such as the Summit of the Heads of States and the Council. This approach seems to be failing to accelerate integration. Prospects for a deeper regional integration in SADC as envisaged in the Regional Indicative Strategic Development Plan (RISDP) remain relatively bleak in the context of such legal and institutional constraints. The transformation from SADCC to SADC has seen membership growing from 9 to 15, increasing economic diversities and expanding regional economic imbalances. Another challenge to the bloc's deeper regional integration is the problem of overlapping membership of most members in other Regional Economic Communities (RECs) with similar deeper integration milestones.

2.2 SADC regulatory framework

It is widely acknowledged that better trade governance is key to achieve the developmental benefits of trade liberalisation as no trade can be conducted outside the realm of legal instruments. Erasmus (2013b) advised that trade agreements do not create more trade; they only offer opportunities. These opportunities can only materialise if tradable goods are produced and transported competitively and if there is compliance with applicable rules and requirements. Similarly, the SADC Treaty makes provision for the formulation of subsidiary legal instruments such as protocols giving specific mandates to various SADC institutions. According to Erasmus (2013a), SADC is a broader community in which the members have adopted protocols on about 26 different areas; ranging from gender issues and water utilisation to political cooperation.
One such protocol signed in 1996, is the SADC Protocol on Trade, which sets out the basis for regional trade integration – a key objective of economic liberation. The purpose of adopting the SADC PoT was to promote deeper economic cooperation and integration to help address production, infrastructure

and efficiency barriers to growth and development. This **development integration** approach was formalised in 2003 as the RISDP which articulates a clear approach for SADC integration through the establishment of a free trade area by 2008, a customs union in 2010, a common market in 2015, a monetary union in 2016, and an economic union with single currency in 2018. Some of these targets were over ambitious and unrealistic as the custom union is yet to be attained and the timeframes set for other integration stages are highly likely to be missed.

2.3 The Regulation of Trade under the SADC Protocol on Trade

The SADC PoT is a legal instrument for intra-regional trade liberalisation, which was adopted in 1996 with implementation starting in 2000. The PoT provides a framework for SADC's trade integration programme – a key objective of economic liberation as set out in the first statement of the SADC preamble. The purpose of the Protocol is to regulate trade among SADC member states, as well as with third party states at both the bilateral and the multilateral level (Saurombe, 2011:22-23). Annex VI of the SADC PoT establishes a trade dispute settlement mechanism between SADC members and it is modelled on the WTO dispute settlement mechanism. Reference to Annex VI as a dispute settlement alternative for SADC members dispels the fear and assumption that there will not be a dispute settlement mechanism in SADC as long as the Tribunal remains suspended (Erasmus, 2013b). The absence of a trade dispute settlement mechanism in SADC has rendered this forum redundant.

Since year 2000, when the SADC PoT was ratified, one of its objectives has been to act as a catalyst for enhancing intra-SADC trade. To date, however, despite an increase in trade among member states, the traditional developed trading partners still dominate trade with SADC countries due to NTBs, which are believed to be on the increase. This increase of NTBs is despite the emphasis by PoT for their removal and for member states to refrain from imposing new ones. The SADC PoT is considered a weak regulation for effective enforcement as it allows more free play due to some of its Article sections leaving room for derogation, perpetual protection of infant industries, anti-dumping duties and the non-existence of a dispute resolution mechanism in the region.

In order to fulfil the Protocol's objectives and commitments several institutional mechanisms have been established in terms of the Protocol's Article 31 (Ndlovu, 2012) such as the Committee of Ministers responsible for Trade (CMT), the Committee of Senior Officials, the Trade Negotiations Forum (TNF), and the Sector Coordinating Unit.

3. Non – Tariff Barriers Proliferation in SADC FTA

Many studies have shown that tariffs are not the only obstacle to intra-regional trade (Jensen and Yu, 2012; Viljoen, 2011; Brenton and Isik, 2012; Gillson, 2010). The proliferation of NTBs, many of which violate specific provisions of the SADC PoT, erodes the potential gains from the FTA. Many years ago, Hazlewood (1975) stressed'… integration is not simply a matter of lowering tariffs. The existence of tariffs is not the sole, or even the primary impediment to trade between countries of Africa. The main reason for the low levels of trade is found in the existence of excessive NTBs particularly in agricultural products which is linked to food security and poverty reduction'. According to a study done by the World Bank (2011b) SADC NTBs affect US$3.3 billion of regional trade, would cost around US$1.3 billion per year, which is equivalent to more than half the GDP of Lesotho. Regardless of the precise magnitude, these barriers increase costs faced by both consumers of final products and firms that source intermediate inputs from the region.

According to various sources of literature, NTBs most prevalent in SADC FTA are health, safety and environmental NTBs. The first group of barriers includes export bans, restrictive sanitary and phytosanitary requirements, and standards and conformance requirements. The second group consists of trade policy NTBs. These barriers include broader policy measures such as public export assistance, export taxes, import licences, import quotas, production subsidies, state trading and import monopolies, tax concessions, and trade remedy practices, for example anti-dumping, safeguards and countervailing measures. Thirdly, there are administrative NTBs. These barriers include: customs clearance delays; lack of transparency and consistency in customs procedures; overly bureaucratic and often arbitrary processing and documentation requirements for consignments; high freight and transport charges and, generally, services that are not user-friendly; and restrictive rules of origin (RoO). Lastly, there are poor infrastructure development barriers, including poor road networks, seaports and airports as well as excessive police controlled road-

blocks, which all hinder logistic performance. All these forms of NTBs are seen to be deeply rooted in the region. This shows how difficult it is going to be for market integration to succeed in SADC.

3.1 Defining the term 'non-tariff barriers'

Viljoen (2011:1) and Pearson (2011:5) citing SADC Trade Protocols, defined NTBs 'as any barriers to trade other than export and import duties'. This differs from the Eastern African Community (EAC) Trade Protocol, which has adopted a broader guideline to define NTBs as 'quantitative restrictions and specific limitations that act as obstacles to trade' (Okomu & Nyankori, 2010:10). However, for the purpose of this research study NTBs shall be defined as any measure other than tariffs by government or a private person that restricts trade flows. This definition is more appropriate because it covers a range of barriers from import bans, export taxes, lack of physical infrastructure, cumbersome documentation requirements, technical standards, sanitary and phytosanitary measures, government participation in trade, restrictive rules of origin, anti-dumping measures and excessive roadblocks that make movement of goods and persons difficult. NTBs are part of a very large family of policy measures affecting trade. These measures are Non-Trade Measures (NTMs) and some of them affect trade in a justifiable way, others do not. NTBs are those NTMs that cannot be justified (Jensen and Yu, 2012). The inter-changeable use of NTMs and NTBs brings confusion among readers, and requires clarity in theory. According to Charalambides (2013:10), an NTM becomes an NTB when:

a) it is not transparent
b) it is discriminatory
c) it is not based on internationally agreed standards or scientific evidence
d) there is an alternative, less trade distorting measure or approach that could be used to achieve the same policy objective
e) the measure is not proportional to the risk it tries to protect against.

According to Flatters (2001), NTBs work against the main objectives of trade liberalisation, which is to increase trade among member states and reduce poverty as they work against easier access to markets.

3.2 The rationale of regional integration and NTBs elimination

Brenton and Isik (2012) advised that lessons from successful regional integration experiences elsewhere in the world are that tackling tariffs is not enough to enhance trade, as countries must also aim to facilitate regional trade by addressing NTBs. In Southern Africa, borders have remained thick relative to other parts of the world and are acting as major obstacles to regional trade integration (Gillson, 2010:3). The major rationale for regional integration, in theory, is the belief that there is strength in numbers and in unity and that this strength can leapfrog the pace of economic development. The formation of an FTA in theory is regarded as a strategy for overcoming perceived weaknesses and development obstacles (Chingono & Nakana, 2009:397). FTA involves the elimination of tariffs and quotas on trade among member countries, which in theory is expected to lead to the rapid expansion of trade among members and economic growth (Iyoha, 2005:4).

4. How NTBs Are Regulated Under the SADC Trade on Protocol

As already mentioned, the SADC Protocol on Trade was signed by member states in 1996 but only came into effect four years later in 2000 – an indication that could mean member states were not prepared to implement it. In 2000, the SADC PoT was amended but failed to address some of the shortcomings of the 1996 Protocol, particularly on the rules of origin giving member states leeway on when to implement provisions of the Protocol. In drafting the PoT, member states envisaged that NTBs might be used as trade-restrictive measures to compensate for tariffs and other duty reductions in an FTA, therefore they find it fit to enact an instrument to eliminate those trade-distortive measures. The SADC PoT was envisaged as the most important instrument to regulate and increase regional trade by improving market access. The main objective of the Protocol as highlighted in Article 2 is 'to liberalise intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements, complemented by Protocols in other areas.' To date, it is liberalisation of trade in goods, and especially the phasing down of import duties on intra-SADC trade, that has been the primary focus of attention in the Trade Negotiation Forum (TNF) process. According to Flatter (2001), the negotiation process and the implementation of the Protocol have been met by a

wide variety of responses, ranging from hopes and fears to ignorance and apathy.

A research done by Saurombe (2009) found that soon after the PoT came into force, some member states revived dormant bilateral trade agreements or formed new ones – an indication that the PoT may not be attractive enough to improve market access in the SADC FTA. This is evidenced by the fact that, outside SACU, most intra-SADC trade takes place under either COMESA or bilateral trade agreements. To determine whether the SADC trade regime is a rules-based system or not, Erasmus (2011) found out that matters such as technical barriers to trade, NTBs, unfair trade practices, standards, transit, tariff classification or RoO, have not yet generated any disputes, whether by governments or other parties within SADC FTA because its legal arrangements are not perceived to constitute a binding and enforceable law which can be implemented before national and regional courts. Erasmus (2011) further mentioned that most SADC members have no domestic legal arrangements on trade remedies, and this is a weakness particularly on the elimination of NTBs as the PoT is based on moral suasion rather than being a rules-based system with appropriate sanctions. Hoekman, Mattoo and English (2002) observed that trade liberalisation must be accompanied by effective regulation to ensure that market failures are addressed and that social objectives are met. There is however much evidence to show that the SADC PoT has failed to eliminate NTBs due to some of its provisions which seem to give much space for negotiations, derogations and protection which raises more questions on its enforcement to eliminate NTBs in the FTA. Redvers (2013) citing Angola's Secretary of State for Industry, Kiala Gabriel, on the reason why Angola was not joining SADC FTA, supported this. Gabriel mentioned that, 'Since the entry into force of the FTA in 2008, the benefits arising are not visible and interregional trade has not grown as it would have been hoped. Some member states who did begin the implementation process are now seeking exemptions because they are not able to honour the commitments coming from the liberalisation of trade'. In addition, Jurgen Hoffmann, a trade advisor with the Namibian Agricultural Trade Forum highlighted that Angola's position had more to do with SADC's lack of enforcement.

4.1 Provisions for the elimination of NTBs under SADC PoT

The SADC PoT under Article 3 paragraph 1 section (b) mentioned that the removal of tariffs and NTBs is to be achieved within a period of eight years from 2000 when the PoT came into force. Then comes one of the most controversial provisions, paragraph 1 section (c) of the same Article, which gives an option to member countries to derogate from their obligations to eliminate tariffs and NTBs if they feel threatened by the removal of tariffs and NTBs by making an application to the Committee of Ministers responsible for trade matters (CMT) not to comply with Article 6 of the same Protocol. The criteria to be used by the CMT for such applications were not stated in the Protocol, casting doubts on the transparency of such a process. This makes Article 3 contradictory to Article 6, which requires member states to eliminate all forms of NTBs and to refrain from introducing new ones. What is rather disturbing is that Article 6 does not mention the penalties applicable to member states for imposing and not eliminating NTBs.

Erasmus (2013a) urged that Article 3 ‘needs to be fixed as the regional trade challenges being faced by traders is that the applicable law is vague as it deals with the elimination of barriers to intra-SADC trade but also provides for derogations from the applicable obligations’. This provision is critical for the functioning of the SADC FTA, in which substantially all trade must be liberalised. Erasmus (2013a) further mentioned that at the time of the adoption of the Protocol the parties were apparently not ready to agree to state the legal position and their obligations in clear and definite language. Since 2008 when the SADC FTA was launched, several derogations were granted under Article 3(c) (Iwanow, 2011). The legal principles in terms of which this has happened and the procedure for monitoring compliance are not known, resulting in the politically motivated and ad hoc derogations of Article 3 being employed (Ndlovu, 2012:195). Erasmus (2013a) urged the amendment of Article 3 as a matter of urgency as the current results are a rather serious flaw in how the system operates and how the applicable law is applied.

4.2 Rules of Origin regulation under SADC PoT

The RoO that were first agreed to by SADC and described in the original PoT were simple, general and consistent with the RTAs of other developing

countries such as COMESA and EAC. Initially, goods would qualify for SADC tariff preferences if they underwent a single change of tariff heading, contained a minimum of 35 % regional value-added materials or included non-SADC imported materials worth no more than 60 % of the value of the total inputs used. Agricultural and primary products would need to be wholly produced or obtained in the region. Some members then pressed for exceptions to these rules in attempts to increase domestic markets' protection, leading to changes in RoO in the amended Protocol in 2000, characterised by **made-to-measure** sector-specific rules that are far more restrictive with value-added requirements increased and multiple transformation rules introduced (Flatters & Kirk, 2003). The RoO for COMESA and EAC are generally similar as they are based on a general value-added rule of 35 % for local content (with some exceptions in the case of COMESA) or cost, insurance and a freight value rule of 60 % of ex-factory costs of imported materials (Kalenga, 2012:17). However, the current SADC RoO is going beyond this to cumber cases of transhipment from non-SADC countries. Rule 2 on direct consignment requires that goods be consigned directly from an exporter in a member state to a consignee in another member state and direct consignment rule is compulsory. All goods must adhere to Rule 2 and any one of the origin rules. Goods should be manufactured in a member state from non-originating materials, which have been sufficiently worked. This is product-specific working that confers the originating status.

The rules are now more restrictive and are being misused for the main purposes of restricting market access rather than as a tool to facilitate regional value chain development within SADC FTA (Brenton, Flatters, & Kalenga, 2005). The value-added criterion and application for the percentage of imported material under Rules 5 to 10 is cumbersome as it involves many administrative challenges to acquiring a certificate of origin. This is increasing the cost of doing business in the region with investors going to regions where manufacturing hubs can be scattered all over the region to attain low cost efficiencies. Southeast Asia is a typical example of a region, which managed to integrate highly successfully into the global manufacturing system where the production of components and subcomponents of almost all products were scattered across many countries according to peculiarities of local cost conditions.

4.3 Customs cooperation regulation within SADC

Article 12 and Annexure II of the Protocol governs the customs matters by simplification and harmonisation of customs laws and procedures to effectively contribute to the development of intra-SADC trade. Under Article 4 of Annexure II, member states agreed to adopt a system of valuing goods for customs purposes based on the principles of transparency, equity, uniformity and simplification of application in accordance with the WTO Valuation system. SADC members also agreed to simplify customs procedures in accordance with globally accepted standards as contained in the international instruments of organisations like the World Customs Organisation and the International Standards Organisation. The Protocol under Article 9 mentioned that member states should exchange information on matters relating to changes in customs legislation, procedures and duties and commodities subject to import and export restrictions. Member states also agreed to develop a single customs document as support of all customs procedures but evidence show that there is lack of customs cooperation among SADC member states with traders being frustrated at border posts with excessive documentation required or being informed of trade bans at borders.

4.4 Elimination of import duties

Paragraph 1 of Article 4 obliges member countries to reduce and eventually eliminate import duties in line with Article 3 on goods originating in the SADC region. Whereas paragraph 4 of the same Article also obliges member states not to raise import duties above those already there at the time of entry into force of the Protocol. This is rather confusing as the same Article is mandating reduction and elimination, while at the same time members can maintain existing import duties but cannot increase them from year 2000 levels.

4.5 Elimination of Quantitative Restrictions under SADC PoT

Articles 7 and 8 provide for the phasing out of quantitative restrictions (QR) on imports and exports originating in or destined for other SADC countries. The elimination of quantitative import restrictions in Article 7 is slightly more qualified. No new restrictions must be imposed, and existing restrictions are to be phased out according to timetables and arrangements agreed in the Trade

Negotiating Forum (TNF) process. However, a provision is also made in Article 7 for members to apply quotas on SADC-originating imports, as long as the tariffs under such quota systems are more favourable than the preferential rates agreed under the Protocol. Article 8 provides for the elimination of QRs on exports, on similar terms to the elimination of import QRs. For the reasons of the protection of public morals and maintenance of public order, protection of human, animal or plant life or health, Article 9 allows for the continued imposition of quantitative import and export restrictions (QRs). It is this Article 9 that member states evoke without any scientific evidence as required under Article 16 on SPS where measures should be based on international standards, harmonisation of policies and be guided by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (Flatters, 2001).

4.6 Protection of infant industries as a NTB under SADC PoT

Article 21 of PoT allows members to protect infant industries but does not define characteristics of an infant industry; 15 years after the PoT came into force some industries are still being treated as infants. The infant industry provision is potentially dangerous, as this is a deviation from the free trade objectives of the agreement (Flatters, 2001). The provision is subject to abuse by member states by protecting less innovative industries that are not able to survive without protection. Prioritising local products can lead to reduced quality and choice, resulting in consumers paying for the cost of inefficiency, distorting the local market. This Article is being used in SADC FTA as a measure of restricting access to markets rather than for nurturing vulnerable industries to have better compete after such a protection period. Such measures should be approved by the CMT and notified to the WTO, but in most instances they are just adopted without approval and notification, done by claiming unjustified dumping cases. The fact that the Protocol did not specify the characteristics of the infant industry, the period of such protection and of regular time period review by the CMT makes the Article a true NTB. GATT Article XVIII, Sections A and C, allows members that are in **early stages of development** to use trade barriers to protect domestic industry. Section B of Article XVIII affords developing countries flexibility in imposing trade measures to protect their balance of payments. Hoekman, Mattoo and English, 2002:150 highlighted that in coming up with an industrial policy for developing countries there are important qualifications to the infant industry

argument. First, the cost reduction over time should compensate for the higher costs during the protection period. Second, the provision should not be blanket to all firms in an industry and should be linked to performance by the recipient (for example, be linked to increased efficiency or cost reduction) and the assistance should be phased out over time. The SADC PoT did not specify the period of infant industry protection or any other conditions to force industries to develop.

4.7 Anti-dumping and safeguard regulation as NTB under SADC PoT

The anti-dumping provisions in Article 18 also reflect how poor the legal framework is because it lacks detailed information on how anti-dumping duties can be applied. Safeguard measures under Article 20 allows SADC members to apply for product safeguard measures only if it has been proven that such product coming into its country in huge quantities comparative to domestic production under such conditions could cause serious injury to the local industry that manufactures the same or directly competitive products irrespective of its origin in SADC. This is in conflict with Article 25 of the Protocol under Competition Policy, which obliges member states to implement measures that outlaw unfair business practices and promote competition. Although safeguard measures are provided for under the WTO, there is an increasing recognition that they can be and often are used as a form of masked protection to restrict regional market access (Flatters, 2001). Again, anti-dumping and safeguard measures are permitted with no limitations beyond those contained in the WTO rules. The maximum period for safeguards under the WTO Agreement on Safeguards Article 7 is that the period shall not exceed four years but SADC PoT's Article 20 paragraph 6 permits the maximum period of eight years.

5. Empirical Data Gathering

Throughout the study much emphasis was placed on the three variables – NTBs, cost of trading and intra-regional-trade, and as such, the chosen source of data and data gathering had to be sources of these variables. Given that the study sought to understand the effectiveness on the regulation of NTBs to trade within SADC makes both qualitative and quantitative research methods

suitable for the study. The study made use of desk research and/or secondary data from reputable and credible sources. The major shortcomings of this data gathering method are that the secondary data may not be suitable or sufficient for the study and issues of data quality, which is difficult to check when using secondary data (Greener, 2008). To minimise these shortcomings the best was to ensure the credibility and professionalism of the source institutions, rather than the data. A further step in assessing data quality was to critically evaluate the research methods used to collect the secondary data (Saunders et al., 2009; Greener, 2008; Babbie, 2013). Since the study was on SADC, the study made use of the SADC database, TradeMark Southern Africa (TMSA) (www.tradebarriers.org), an organisation dedicated to NTB reporting and monitoring in Southern Africa, UNCTAD, WTO and the World Bank. All these institutions have over the years proven to hold the highest value of professionalism and implement credible research methods to collect the data. TMSA was used to gather data on the prevalence of NTBs in SADC FTA, SADC trade statistics databases were used to gather value of trade between SADC and the world, and intra-SADC trade, whilst UNCTAD and WTO provide missing data from SADC trade statistics, and finally World Bank's Ease of Doing Business database provided cost of trading within SADC.

5.1 Secondary data on prevalence of NTBs in SADC FTA

The study sought to understand NTBs prevalent in the SADC FTA because of perceived regulatory gaps in the Trade Protocol. Secondary data on NTBs were from TradeMark Southern Africa, a DFID-financed programme, which implemented a web-based NTB reporting, monitoring and elimination mechanism (NTNMM) which incorporates concrete timelines for the removal of NTBs within COMESA, EAC and SADC. The mechanism enables stakeholders to report and monitor NTBs and to notify NTB national focal points to allow follow-up and for action to be taken. It enhances transparency and easy follow-up of reported and identified NTBs. Technically, the on-line reporting and monitoring system (www.tradebarriers.org) is a repository of all reported NTBs (in English, French and Portuguese) where traders can log their complaints on NTBs they encounter within the three trading blocs using their mobile phones. Once the NTB complaint is logged, it will appear instantly on the online website and TMSA will then handle the complaint in liaison with the relevant regional/member state agencies for resolution and finally notify the

complainant. TMSA has been doing vigorous awareness campaigns to cross-border trading businesses in all member states of COMESA, EAC and SADC since 2007. The main advantage of this source is that one can easily classify the complaints on different categories of NTBs, the trading bloc against complaints being raised and whether the complaint has been resolved or still outstanding. The data quality is considered to be credible given the research method of primary data gathering is from cross-border traders themselves, based on challenges they are experiencing.

There were, however, some limitations by using this platform, as not all traders in SADC might have been aware of this online NTB reporting mechanism, which might have caused it to not be a complete representation of the region. Although that is the case to the knowledge of the researcher, this is the only available public platform on NTBs reporting in Africa and the number of complaints reported on that platform indicates that traders are becoming aware of its existence and usefulness. For those reasons, the TMSA NTBs database was used as a reliable and credible source of secondary data for the achievement of objectives of the study.

5.2 Secondary data on cost of trading in SADC

In order to achieve objective number three on the difficulties and costs on trading across borders within the SADC FTA, data was gathered from the World Bank's Doing Business database. The information required was the number and types of documentation needed to export and import in SADC FTA compared to China-ASEAN Free Trade Agreement (ASEAN-China FTA) and the EU trade bloc. This was to gather evidence on the compliance of the SADC PoT Annexure III on 'Simplification and harmonisation of trade documentation and procedures'. Secondly, it was to gather the time involved in trading across borders on exports and imports and this is to approve or disapprove compliance with PoT Annexure II on 'customs cooperation within SADC'. Lastly, it was to gather information on the costs involved to import and export in the region and the documentation involved in comparison to other regional groupings like ASEAN-China FTA and the EU. The purpose of the comparative analysis was to understand the reasonableness of the cost of trading cross-borders within the SADC FTA.

The basis for choosing ASEAN-China FTA was that they are all free trade areas and that the two regions were at one point in time in the 1970s at the same level of development, but ASEAN-China FTA managed to outpace SADC due to a number of economic reforms including trade reforms. Therefore, this formed a good basis for a comparative analysis. The EU was chosen on the basis that it is a trading bloc which inspired SADC to follow their linear integration model on which SADC can learn from its experience on how to make regional trade integration a success.

5.3 Intra-SADC trade data gathering

To be able to answer the question regarding the extent to which the SADC Trade Protocol had affected or facilitated intra-SADC trade, there was a need to collect intra-SADC trade value in relation to total SADC FTA trade value to find an intra-regional trend. To have an unbiased understanding on the impact of the SADC PoT on intra-regional trade, the intra-SADC trade is calculated as a percentage of the total SADC trade. Data on trade statistics for the period 2000-2011 was gathered from the SADC secretariat website. Sandrey (2013) advised that trade data for SADC and Africa is mostly unreliable and very difficult to obtain. The SADC, WTO and UNCTAD databases from which data was obtained are regarded as credible institutions of good repute as they specialise in regional and international trade data compilation.

A trend analysis on the growth of trade from SADC to the world for the period 1996 to 2014 as well as the trend of intra-SADC trade for the same period was done to assess the improvement in intra-SADC trade as a proportion of total SADC trade. The percentage levels of intra-regional trade would be able to determine whether the SADC PoT has succeeded in increasing the share of intra-regional trade to total trade. The intra-SADC trade as a percentage per year was calculated by means of the following formula:

$$\frac{\text{Intra SADC trade}}{\text{Total SADC trade}} \times 100\%$$

In the above formula intra-SADC trade is defined as trade among SADC member states (i.e. import and export trade values). Total SADC trade is defined as the aggregate trade value between SADC member states and the world including value of trade among itself.

The reason why the research focused on the period 1996-2014 and not 2000-2014 when the Protocol came into force is that, the Protocol was signed in 1996, but only came into force in 2000. For this reason, the research aims to determine the intra-SADC trade (%) before the SADC trade protocol came into force and when it became effective so as to find out if the Protocol had an effect on increasing intra-regional trade percentage through NTBs elimination or not. If the proportion of intra-SADC trade to total SADC trade increased, then we assume that the Protocol helped the region to trade better with itself.

6. Empirical Research Findings

6.1 NTBS hindering trade in SADC FTA

The first stage of the analysis was to find NTBs being encountered by traders in the region in order to understand the most prevalent trade barriers. To achieve this objective, all NTB complaints reported on the TradeMark Southern Africa's trade barrier website from year 2008 to 2015were obtained. Table 1 below presents the NTB complaints registered and their composition. There were 539 registered complaints, which comprised of 461 already resolved complaints and 78 unresolved complaints. After sorting the data/complaints, those not related to the SADC FTA were removed – these were complaints for other trading blocs such as the EAC, COMESA and those outside the SADC FTA (Seychelles, DRC and Angola) as well as Madagascar, which is currently suspended. About 415complaints, which represent 77.2%, were against SADC FTA. This is a first indication that NTBs are more prevalent in SADC region compared to EAC and COMESA, which share 22.8% of registered complaints.

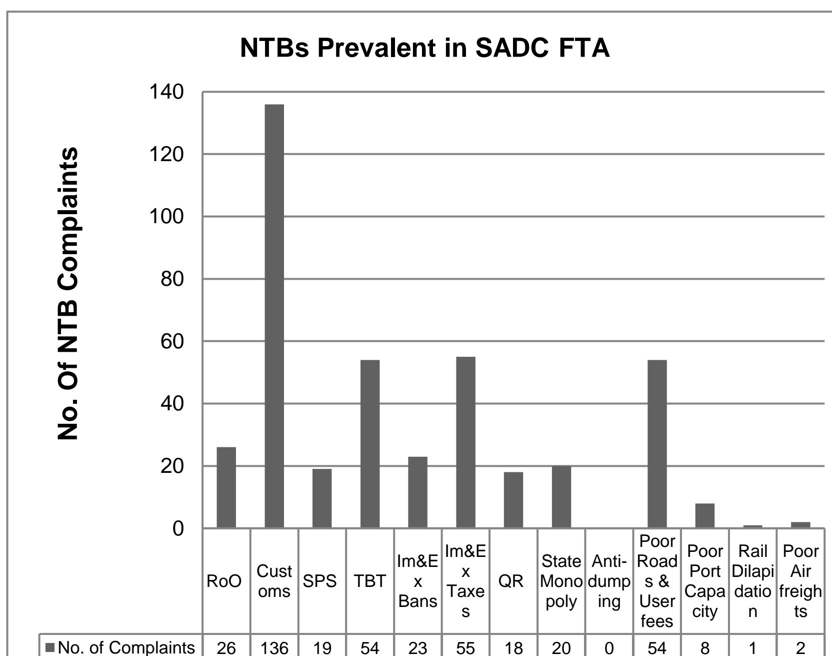
Table 1: Composition of NTB complaints registered

Description	Number
Total NTB complaints registered[65]	539
NTB complaints resolved[66]	461
NTB complaints unresolved[67]	78
NTB complaints against SADC FTA[68]	415

Source: TMSA website (Accessed 29 July 2016)

The complaints were further classified into different NTB types as previously discussed, to find the NTBs with the highest frequency of complaints being reported as hindering SADC trade. Figure1 below presents these findings.

Figure 1: Frequency of NTBs found in SADC FTA



---

65 These are total NTB complaints made by traders on the TMSA Non-Tariff Barriers Reporting, Monitoring and Eliminating Mechanism

66 These are NTBs that were reported and were resolved the intervention of TMSA

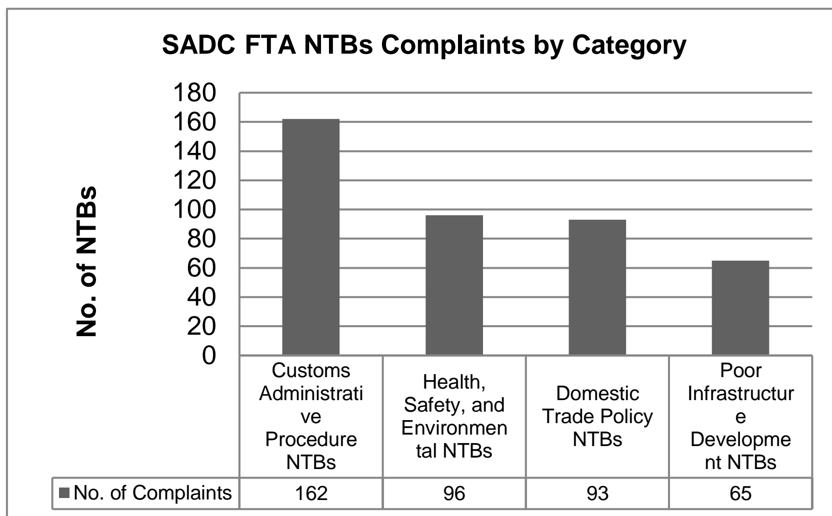
67 These are NTB complaints that were failed to be resolved

68 These are NTBs considered for the study against member states of SADCFTA

The research findings revealed that cumbersome customs procedures are the worst NTBs encountered by traders in the region, with 136 complaints registered up to year 2015 from year 2008, which represent 32% of total complaints. This was followed by imports licenses and export taxes (Im&Ex Taxes), technical barriers to trade (TBT), and poor road infrastructure and excessive road user charges with 55, 54 and 54 complaints respectively. On the TBT, complaints were relating to various technical vehicle specifications, the escorting of trucks in the country of transits and issues relating to VAT calculation disputes. The analysis indicates that no complaint was reported regarding anti-dumping, safeguards and countervailing measures. This was despite the fact that from literature such cases are rampant. Their absence might be due to fear of other peer member states to retaliate against dumping claims and the region instead decided to impose cumbersome import permit requirements to comply with.

On an aggregate basis, as per the four broad categories of NTBs, RoO, customs procedures and administrative requirements is the most prevalent NTBs affecting trade in the region accounting for 39% of total NTBs reported in SADC FTA followed by healthy, safety and environmental NTBs with 96 complaints, that is, 23 %. Domestic trade policy NTBs had 93 complaints (22%), whilst poor infrastructure development had 65 complaints (16%) registered against inefficient transport system because of a lack of sufficient infrastructure development to enable efficient intra-regional trade. Figure 2 below presents the distribution of NTBs by category.

Figure 2: NTBs frequency by broad categories

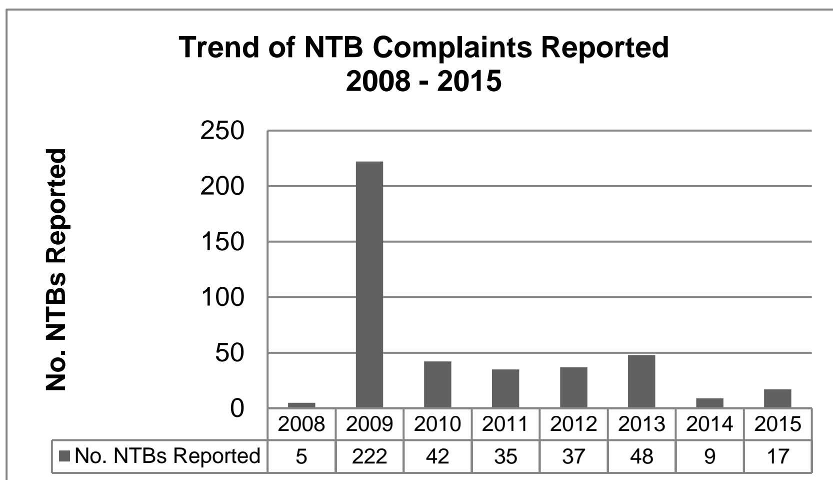


Overall, all four categories of NTB are highly prevalent in the SADC FTA; however, burdensome border procedures and excessive documentation requirements registered the highest complaints in the period under the study.

6.2 Trend analysis of NTB complaints registered

In order to have an understanding of whether NTBs in the SADC FTA region are on the increase or not, this study made use of a trend analysis from 2008 to 2016. The online NTBs Reporting and Monitoring Mechanism was launched in 2007 and there was a vigorous awareness campaign for traders to make use of the initiative in 2007 to 2009. Figure 3 below presents the trend of reported NTB complaints.

Figure 3: Trend of NTB complaints reported



The research findings above indicate that in 2008, only five complaints on NTBs were registered, but due to sustained public awareness, the reported cases jumped to 222 in 2009 – the highest in the period under the study. The NTB complaints then dropped to 42 in 2010 and to 35 in 2011, before increasing to 48 in 2014 – an indication that those NTB cases reported in 2009 might be reoccurring. To some extent this seem to support the literature, which says NTBs are on the increase in the SADC FTA and are considered to some extent to be the major hindrance to regional trade. The number of complaints dropped to nine in 2014 as there was confusion when TMSA, who were the Non-tariff Barrier Monitoring Mechanism (NTBMM), through its trade barriers website prematurely closed after the Department for International Development (DFID) withdraw funding and most traders thought the reporting platform was no longer functional. Upon realising that the NTBMM was still operational, traders have once again started to use the platform for reporting. In addition, as of July 2016, there were 35 long-standing complaints on the system for SADC FTA, of these, 23 complaints were reported between 2009 and 2013. The delay in resolving complaints by over 1,000 days seems to be affecting traders' confidence on the usefulness of the reporting platform to eliminate NTBs and some of them might have stopped reporting NTBs still encountered as they are taking too long to be resolved.

6.2 Cost of Trading Across Borders

6.2.1 Comparative analysis of SADC FTA to ASEAN-China FTA and EU

In order to understand the effectiveness of the SADC Protocol on Trade in reducing the costs of trading in the region and facilitating trade among member states, the study used data from the World Bank's Doing Business database which compiled data on trading across borders as from 2006 to 2015. The research findings were to answer the question on whether SADC PoT managed to reduce intra-regional trading costs through simplification and harmonisation of trade documentation and procedures as stipulated in the annexure III of the Protocol on Trade. The study highlighted the high cost of trading in the region because of the existence on NTBs such as inadequate infrastructure development, cumbersome border procedures and corruption at the borders and police controlled roadblocks[69]. The other aspect was the time involved in trading among member states because of NTBs in the region. The research findings are presented below in Table 2.

[69] The delays in crossing borders, excessive police-controlled roadblocks, and bribes will increase the transportation cost and time required to move goods which increases cost of cross border trading

Table 2: Movement of cost of trading across SADC FTA in the period 2006 to 2015

Member state	Documents to export (number)		Time to export (days)		Cost to export (US$ per container)		Documents to import (number)		Time to import (days)		Cost to import (US$ per container)	
	2006	**2015**	**2006**	**2015**	**2006**	**2015**	**2006**	**2015**	**2006**	**2015**	**2006**	**2015**
Botswana	6	6	33	27	2088	2905	7	6	43	35	2595	3710
Lesotho	8	7	44	31	1188	1795	8	7	49	33	1210	2045
Malawi	11	11	45	34	1623	2200	11	12	54	39	2500	2895
Mauritius	4	4	13	10	683	675	6	5	13	9	683	710
Mozambique	7	7	28	21	1055	1100	9	9	36	25	1185	1600
Namibia	8	8	25	24	1539	1650	7	7	20	20	1550	1805
South Africa	7	5	25	16	1087	1830	7	6	35	21	1195	2080
Swaziland	8	7	21	17	1798	1980	7	6	30	23	1820	2245
Tanzania	9	7	30	18	822	1090	17	11	51	26	917	1615
Zambia	7	7	53	51	2098	5165	9	8	59	53	2840	7060
Zimbabwe	7	7	52	53	1879	4265	9	8	67	71	2420	6160
Average	**7**	**7**	**34**	**27**	**1442**	**2241**	**9**	**8**	**42**	**32**	**1720**	**2902**

Source: World Bank's Ease of Doing Business database

In the 2015 ranking of ease of trading across borders, the SADC FTA average position was 134 out of 189 economies – an indication that it was somewhat difficult to trade in the region. The only economy ranked below 100 in the region was Mauritius at position 17 with the worst being Zimbabwe and Malawi at positions 180 and 179 respectively. On average, it requires seven export documents in the region, taking an average of 27 days to export and costing US$2 241 to export a 20-foot container in the SADC. Export documents range from four to eleven – an indication that the simplification and harmonisation of trade documentation and procedures are yet to be achieved within the region. The same also applies to the number of import documents averaging eight but ranging from five to twelve. It costs slightly above US$2 900 to import a 20-foot container in the region, taking on average 32 days.

To have a better understanding on where the region stands compared to similar trading blocks, we compare SADC to the EU trading bloc – one of the oldest

regional integration arrangements in the world, which inspired the SADC region to follow a similar liner regional integration model. Once again, on all indicators, to determine the cost of trading in the region in comparison to ASEAN-China FTA and the EU, the research findings revealed that it was very costly trading in SADC FTA due to the existence of NTBs in the region. Lack of simplification and harmonisation of trade documents and inadequate infrastructure development is making it costly to move goods in the region. It is surprising that the ASEAN-China FTA region was at the same level of development as Southern Africa in the 1970s before necessary trade reforms were undertaken in South East Asia and China.

Table 3: Comparative average cost of trading across SADC, ASEAN-China FTA and EU

Trading Bloc	2015 ranking	Documents to export (number)	Time to export (days)	Cost to export (US$ per container)	Documents to import (number)	Time to import (days)	Cost to import (US$ per container)
SADC FTA	134	7	27	2,241	8	32	2,902
EU	34	4	12	1,042	5	11	1,079
ASEAN-China FTA	63	6	18	732	7	18	772

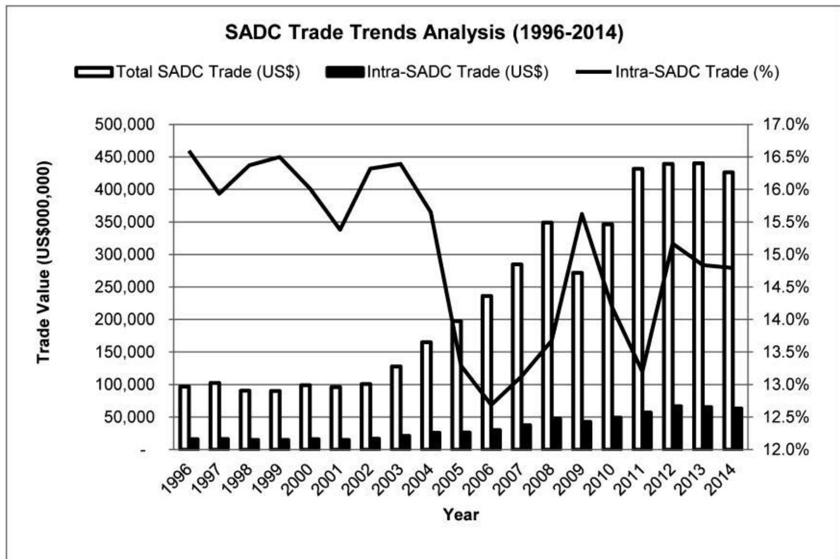
Source: World Bank's Ease of Doing Business database

The research findings shows that even though the SADC Protocol on Trade entered into force in 2000 with the aim of improving trade among member states, from the available data from year 2006 to 2015, there is no reduction in the costs of trading across borders in the region. The only reduction is on time to trade though still very high in comparison to other trading blocks.

6.3 Trend of intra-SADC trade

In order to establish whether the SADC PoT has hindered or facilitated intra-SADC trade, secondary trade data statistics were obtained from the SADC, WTO and UNCTAD databases for the period 1996 to 2014. The research findings are presented below in Figure 4 on the movement of the values of total SADC trade and intra-regional trade and most importantly, the percentage movement of intra-SADC trade over the period studied.

Figure 4: Trend analysis of intra-SADC trade



Source: SADC, WTO and UNCTAD trade data statistics

6.3.1 Intra-SADC trade in value terms

Figure 4 above shows that in relative terms trade among SADC member states started at US$16,1 billion before dropping to US$15,9 billion in 2000. Since 2000, intra-SADC trade recovered and posted a growth until 2009 when it dropped to US$42,5 billion from US$47,7 billion in 2008 – a decrease which could be due to the negative impact of the global financial crisis and food shortages. Trade flows managed to recover and continued on a growth path to 2014 when intra-regional trade value was at US$63 billion.

In relative terms, since the SADC PoT was implemented in 2000 to 2014, the findings showed that there was a 397 % increase in the value of intra-regional trade whilst the region total trade grew by 430%. The value of intra-regional trade had been on an upward trend since 2000, which was in agreement with the findings by the AfDB (2013). This growth rate was however33 % lower than the growth of the total SADC trade to the world as is shown in Figure 4 above. To obtain a better understanding, intra-regional trade percentages were calculated with the findings explained below.

6.3.2 Percentage movement of intra-SADC trade

This section brings closure to determining whether the SADC Protocol on Trade facilitated trade in the region by increasing the proportion of intra-regional trade on total SADC trade or if it hindered trade in the region due to its weakness to eliminate NTBs. The study results in Figure4 shows tht in 1996 SADC intra-regional trade was 16,6 % but from 1999, the level of intra-regional trade has been as low as 12,7 % before gaining momentum reaching 15 6 % in 2009. The increase in 2009 was as a result of the SADC total trade value dropping drastically due to a reduced aggregate demand of commodities due to the effects of the global financial crisis. Since then, the intra-SADC trade proportion has been on the low side closing in 2014 at 14,8 %.
The study findings show that before the SADC PoT in 1996 the level of intra-regional trade was 16,6 % and when the Protocol on Trade came into force it was 16 %. Over the years of study, it had failed to break the year 1999 level, closing in 2014 at 14,8 % – registering a drop of 1,8 % from 1996 in the share of intra-SADC trade to total trade. In summary, it seems Trade Protocol did not help increase the percentage of intra-regional trade in SADC.

7. Conclusion and Policy Recommendations

The prevalence of NTBs in the SADC FTA, and low intra-regional trade can be attributed to weak the Protocol on Trade to have a legal enforcement to effectively eliminate NTBs. Cumbersome custom procedures, import permit and export ban, technical barriers to trade, and poor infrastructure development NTBs are the most prevalent NTBs hindering the efficient movement of goods in the SADC FTA. Based on the four broad categories of NTBs, cumbersome customs procedures and administrative NTBs followed by healthy, safety and environmental NTBs which are believed to be imposed for the purposes of restricting trade as there are no scientific tests being done to warranty imposing them are the most prevalent in the region. Research findings on NTB trends showed that more trade-distortive measures were reported in 2009 and then dropped in 2010, but are showing an upward movement – an indication that NTBs might be on the increase. If one analyses the delays in resolving reported NTBs in some instances taking over 1,000 days, this might have reduced traders' confidence on the usefulness to the reporting mechanism to reduce trade barriers. The existence of NTBs in the region had made the cost of trading within the FTA high as compared to other trading blocs. Due to high

prevalence of NTBs, the proportion of intra-regional trade to total SADC trade as a percentage is lower than the pre-FTA era, meaning that the Protocol on Trade has not been able to stimulate trade among SADC member states due to its weakness to eliminate NTBs.

7.1 Policy implications

SADC might be missing billions of dollars in potential earnings from regional value chain development every year because of high trade barriers in the form of NTBs. From the research findings, it is proving that it is easier for SADC to trade with the rest of the world than with itself based on the percentage trend of intra-regional trade from 1996 to 2015. The situation has deprived the region of new sources of economic growth, new jobs and an opportunity to make important strides in reducing poverty through regional value chain initiatives, as is the case in Southeast Asia. Arrays of NTBs are making SADC FTA's borders **very thick**, relative to other parts of the world. Trade between SADC states currently stands below 15 % of the region's total trade. In comparison, 40 % of North America's trade is intra-regional and the rate soars to 63 % in Western Europe.

SADC countries have much to gain by encouraging open and competitive markets, particularly as a means to spur on sustainable economic growth and alleviate poverty. Yet in reality, many markets have low levels of competition due to unfavourable government policies, NTBs included, which restrict trade and much needed competition to improve efficiencies. According to the World Bank (2016), this lack of competition has drastic costs. Retail prices for 10 key consumer goods – white rice, white flour, butter and milk among them, are at least 24 % higher in African cities than in other main cities around the world. These higher prices affect all consumers, with the poor being hit the hardest due to the protection of inefficient business practices.

7.2 Priorities going forward

Policymakers have to move beyond simply signing agreements that reduce tariffs and rather move towards driving a more holistic process for deeper regional integration through NTB elimination to reduce the cost of trading across borders in the region. Going forward, priority needs to be given to

implementing simplified and harmonious trade documents and procedures (Annex II and III of the Protocol) thereby reducing customs delays brought about by complex customs procedures and excessive documentation requirements. The desired outcome would be to reduce trade documents, time to trade and cost of trading in the region. There is also a need to implement all the 78 harmonised SPS standards agreed to by member states to provide guidance and certainty on trading in agricultural commodities. This will unlock value and stimulate economic development as most African populations depend on agriculture as a source of livelihoods. Thirdly, there is a need to reform RoO to be less restrictive and to stimulate intra-regional trade through regional value chain production rather than to act as a trade barrier. In addition, there is need for investment in infrastructure development, particularly in the transport sector by using the Public-Private-Partnership models while government focuses on policy, planning and regulation to deliver an efficient infrastructure as envisaged in the SADC Regional Infrastructure Development Master Plan (SADC, 2012a). However, there is need to improve the bankability of infrastructure projects to attract private capital investment. The benefits are that certain risks can be transferred to the private sector, thus providing an incentive for infrastructure to be properly maintained, while, at the same time the cost of infrastructure is lowered.

7.3 Policy recommendations

Some of the interventions will not require significant financial resources or investments but rather a political will and prioritisation of implementation of the regional integration agenda. Others will require additional technical and financial support. This study makes recommendations on two broad areas, which are the need for effective rules-based trade regulations on NTBs and implementation of trade facilitation measures. A major weakness of SADC integration is the lack of compliance with commitments undertaken (Erasmus, 2014). This brings about questions regarding the rules-based nature of SADC regional integration. There is a lack of political will and commitment on the part of member states to eliminate NTBs. Above all, the SADC secretariat does not have the legal backing to ensure that countries fulfil their obligations, hence countries falter knowing that there will be no repercussions to their non-compliance to commitments under SADC agreements. This is despite the fact that trade regulation compliance is vital to ensure a transparent and predictable

environment for investment, production and trade, so that the positive development outcomes of regional integration are realised. In addition, an effective dispute settlement arrangement that provides checks and balances in a rules-based trade system is also essential so that non-compliance can be effectively challenged, making rights of importers and exporters contestable. Therefore, there is a need to ensure the SADC Tribunal provides a truly supreme platform for dispute settlement.

References

Babbie, E. 2013. *The practice of social research.* Wadsworth: Cengage Learning.
Brenton, P. & Isik, G. 2012. *De-fragmenting Africa: Deepening regional trade integration in goods and services.* Washington, DC: The World Bank.

Brenton, P., Flatters, F. & Kalenga, P. 2005. *Rules of origin and SADC: The case of change in the mid-term review of the Trade Protocol.* Working paper no. 83. Washington, DC: World Bank.

Charalambides, N. 2013. *What Shoprite and Woolworths can tell us about non-tariff barriers*? Occasional paper no. 148. Johannesburg: South African Institute of International Affairs (SAIIA).

Chingono, M. & Nakana, S. 2009. The challenges of regional integration in Southern Africa. *African Journal of Political Science and International Relations,* 3(10), 396-408.

Erasmus, G. 2014. *A New Road to Regional Integration?* Stellenbosch: Tralac Trade Brief S14TB10/2014.

Erasmus, G. 2013a. *Why Article 3 of the SADC Trade Protocol needs to be fixed.* [Online] Available: http://www.tralac.org/discussions/article/5323-why-article-3-of-the-sadc-trade-protocol-needs-to-be-fixed.html Accessed: 14 March 2014.

Erasmus, G. 2013b. *Governance, trade and statehood in Africa.* Tralac Working Paper No. S13WP04/2013. Stellenbosch: Tralac. [Online] Available: http://www.tralac.org/publications/article/4207-governance-trade-and-statehood-in-africa.html Accessed: 19 April 2014

Erasmus, G. 2011. Is the SADC trade regime a rules-based system? *SADC Law Journal,* **1**, 17-34.

Fadeyi, O.A. 2013. *Assessing the impact of SADC Free Trade Agreement on South Africa agricultural trade.* Unpublished research report. Bloemfontein: University of Free State.

Flatters, F. & Kirk, R. 2003. *Rules of Origin tools for development? Some lessons from SADC.* Washington, DC: USAID.

Flatters, F. 2001. *The SADC Trade Protocol: Impacts, issues and the way ahead.* Washington, DC: United States Agency for International Development (USAID).

Fundira, T. 2010. The state of regional trading agreements in Southern Africa: Options and considerations. In McCarthy, C., Cronjé, J., Denner, W., Fundira, T., Mwanza, W. & Bursvik, E. (eds.), *Supporting regional integration in East and Southern Africa: Review of select issues,* 115-220. Stellenbosch: Tralac.

Gillson, I. 2010. *Deepening regional integration to eliminate the fragmented goods market in southern Africa.* Africa Trade Policy Note No. 9. Washington, DC: World Bank.

Greener, S. 2008. *Business research methods.* London: Ventus Publishing ApS.
Hazlewood, A.D. 1975. *Economic integration: East African experience*. London: Heinemann.

Hoekman, B., Mattoo, A., & English, P. 2002. *Development, Trade, and the WTO: A Handbook*. Washington D.C: The World Bank.

Iwanow, T. 2011. *Impact of derogations from implementation of the SADC FTA obligations in intra-SADC trade.* Washington, DC: USAID.

Iyoha, M.A. 2005. *Enhancing Africa's trade: from marginalization to an export-led approach to development.* Economic Research Working Paper No. 77. Tunis: African Development Bank. [Online] Available: www.afdb.org/fileadmin/uploads/afdb/.../00401820-EN-ERWP-77.PDF Accessed: 19 June 2014.

Kalenga, P. 2012. *Regional integration in SADC: Retreating or forging ahead?* Working Paper No. D12WP08/2013. Stellenbosch: Tralac.

Kirk, R. 2010. *Addressing trade restrictive non-tariff measures on goods trade in the East African community.* [Online] Available: http://documents.worldbank.org/curated/en/2010/08/13894510/addressing-trade-restrictive-non-tariff-measures-goods-trade-east-african-community Accessed: 12 June 2014.

Makochekanwa, A. 2012. *Impacts of regional trade agreements on trade in agrifood products: Evidence from Eastern and Southern Africa*. Gaborone: USAID Southern Africa Trade Hub.

Mbekeani, K.K. 2013. *Intra-regional trade in Southern Africa: Structure performance and challenges.* Regional integration paper no. 2. Tunis: African Development Bank Group.

McCarthy, C. 2014. *Industrial policy in Southern African regional integration and development.* Working Paper No. S14WP02/2014. Stellenbosch: Tralac.

Metzger, M. 2008. *Regional cooperation and integration in sub-Saharan Africa.* Discussion Paper No. 189. [Online] Available: http://unctad.org/en/Docs/osgdp20084_en.pdf Accessed: 28 June 2014.

Mills, G. & Herbst, J. 2010. *Africa's third liberation: The new search for prosperity and jobs.* Johannesburg: Penguin Books.

Mutai, H.K. 2011. Regional trade integration strategies under SADC and the EAC: A comparative analysis. *SADC Journal of Law,* **1**, 81-97.

Mwanza, W. 2010. Africa's continental integration agenda: suggestion for African countries and regions. In McCarthy, C., Cronjé, J., Denner, W., Fundira, T., Mwanza, W. & Bursvik, E. (eds.), *Supporting regional integration in East and Southern Africa – Review of Select Issues,* 50-76. Stellenbosch: Tralac.

Ndlovu, P.N. 2012. The state of trade liberalization in goods in SADC. *SADC Law Journal,* **2**(2), 187-204.

Negasi, M.Y. 2009. *The effects of regional economic integration in Africa:* The case of SADC. Muldersdrift: TIPS.

Pearson, M. 2011. *Trade facilitation in the COMESA-EAC-SADC Tripartite Free Trade area.* Pretoria: TradeMark SA.

Plummer, M. G., Cheong, D., & Hamanaka, S. 2013. *Methodology for Impact Assessment for Free Trade Agreements.* Mandaluyong City: Asia Development Bank.

Ranganathan, R. & Foster, V. 2011. *The SADC's infrastructure: A regional perspective.* Washington, DC: The World Bank.

Redvers, L. 2013. *Angola, the Reluctant SADC Trader*. Johannesburg: South African Institute of International Affairs Occasional Paper No. 152.

Sandrey, R. 2013. *An analysis of the SADC Free Trade Area.* Trade brief no. D13TB01/2013. Stellenbosch: Tralac.

Saunders, M., Lewis, P. & Thornhill, A. 2009. *Research methods for business students*. 5th edition. London: Pearson Education Limited.

Saurombe, A. 2012. *A study of regional integration in SADC.* Unpublished doctoral thesis. Potchefstroom: North West University.

Saurombe, A. 2011. The Southern African Development Community trade legal instruments compliance with certain criteria of GATT Article XXIV. *PER,* **14**(4), 286-318.

Saurombe, A. 2009. Regional integration agenda for SADC: Caught in the winds of change - Problems and prospects. *Journal of International Commercial Law and Technology,* **4**(2), 100-106.

Southern African Development Community (SADC) Secretariat. 2012. *SADC Selected Indicates 2012.* Gaborone: SADC.

South African Development Community (SADC). 2012a. *Regional Infrastructure Development Master Plan.* Gaborone: SADC.

South African Development Community (SADC). 2012b. *Industrial Development Policy Framework.* Gaborone: Southern African Development Community.

South African Development Community (SADC). 2003. *Regional Indicative Strategic Development Programme.* Gaborone: SADC.

Southern African Development Community (SADC). 1996. *Protocol on Trade of 1996*. [Online] Available: http://www.sadc.int/documents-publications/show/Protocol_on_Trade1996.pdf Accessed: 18 May 2013.

Southern African Development Community (SADC). 1992. *SADC Treaty*. [Online] Available: http://www.sadc.int/documents-publications/sadc-treaty/ Accessed 25 May 2013.

Uexkull, E.V. 2011. *Regional trade and employment in ECOWAS.* Geneva: International Labour Organisation.

Viljoen, W. 2011. *Non-tariff barriers affecting trade in the COMESA-EAC-SADC Tripartite Free Trade Agreement.* Working Paper No. N11WP07/2011. Stellenbosch: Tralac.

World Bank. 2013. *Doing Business Report.* Washington, DC: The World Bank.
World Bank. 2011a. *Africa can feed Africa: Removing barriers to trade in food staples.* Washington DC: The World Bank.

World Bank. 2011b. *Harnessing regional integration for trade and growth in Southern Africa.* Washington, DC: The World Bank.

World Bank. 2016. *Breaking Down Barriers: Unlocking Africa's Potential through Vigorous Competition Policy*. Washington, DC: World Bank Group.

Chapter 9

What has SACU been designed for, what has it delivered, and where is it heading?

Gerhard Erasmus

1. Introduction

In many ways the Southern African Customs Union (SACU) is a unique arrangement. Unlike Africa's post-colonial Regional Economic Communities (RECs) its roots go back to colonial times.[70] It was, from the outset, established as a customs union (CU) and did not grow through the different stages typical of the linear approach followed as part of the REC integration model.[71] SACU is, in addition, a customs as well as an excise union. Its unique revenue-sharing arrangement differs from how CUs normally divide customs revenue,[72] while the SACU Revenue Pool has generated a steady income stream to the BLNS countries[73].

South Africa is the region's economic powerhouse and its administrative hub. After apartheid came to an end the political consensus was that SACU too had to be transformed.[74] Rather far-reaching changes were envisaged, democratic procedures were promised, and a new legal framework was considered necessary. A new SACU Agreement was negotiated, signed in 2002 and entered into force in 2004.

---

[70] SACU dates back to the formation of the Union of South Africa in 1910. See McCarthy (2006).

[71] Moving from free trade areas to customs unions, common markets and, eventually, monetary unions at dates which are normally announced in advance.

[72] Customs revenue is not earmarked for the country of destination but shared on the basis of a formula based on the value of intra-SACU trade. See Article 34 and Annex A.

[73] Botswana, Lesotho, Namibia and Swaziland.

[74] The first democratic election in South Africa took place in April 1994.

The text of this new SACU Agreement suggested a novel approach and a new modus operandi among the five member states.[75] New institutions were established with hints that supranational powers could be exercised; it also contained undertakings about common policies and joint action. This renegotiated agreement was adopted in the aftermath of the establishment of the World Trade Organisation (WTO)[76] and the members expressed their support for their own rules-based trade dispensation. They believed ’that a dispute settlement mechanism will provide a mutually acceptable solution to problems that may rise (sic) between member states’.[77] SACU wanted to take account of ’the results of the Uruguay Round of Multilateral Trade Negotiations on global trade liberalisation”, while ’recognising the obligations of member states in terms of existing regional trade arrangements and bilateral trade agreements’. This restructuring coincided with other modifications in existing regional structures. The Southern African Development Community (SADC) underwent important changes when South Africa became a member in 1994,for example the adoption of new rules of origin and tariff schedules for the SADC Free Trade Area (FTA).

This chapter takes a look at how the 2002 SACU Agreement has been implemented and where the organisation presently stands. Did it live up to the promise ’to create effective, transparent and democratic institutions which will ensure equitable trade benefits to member states’?[78] Has SACU advanced integration of its members into the global, continental, and regional economies? What does its future hold and what is South Africa’s role in this regard?

2. SACU’s roots

A discussion of SACU requires an understanding of its regional and historical context. History and geography shaped the destinies of the former British colonies in southern Africa; from early times they had to cooperate and integrate their customs and commercial arrangements. SACU’s roots go back a long time and its present functioning is still influenced by its founding history.

[75] Botswana, Lesotho, Namibia, South Africa and Swaziland.
[76] The WTO agreements entered into force on 1 January 1995.
[77] See 2002 SACU Agreement, Preamble.
[78] Article 2, on the objectives of the new SACU.

Colin McCarthy has written up this story on more than on occasion and this part of the chapter borrows directly from one of his papers (McCarthy 2013).
The South African Customs Union Convention, an initiative of the British colonial administration, was adopted in 1906.This agreement created a customs territory consisting of the Cape Colony, Orange River Colony, Transvaal, Natal, Southern Rhodesia, North-Western Rhodesia, Basutoland, the Bechuanaland Protectorate and Swaziland. All these territories, with the exception of the Cape and Natal, were landlocked and thus depended on the harbours of the Cape and Natal for external trade and the importation of essential goods. Customs arrangements were a prerequisite for commerce in the region. When the Union of South Africa was formed in 1910 four of the British colonies (the Cape Colony, Natal, the Orange Free State and the Transvaal) were joined together. The other British controlled territories remained outside the Union but required formal ties with the new state entity in order to conduct commerce and trade. According to McCarthy (2006) the formation of the Union required a major realignment of customs affairs. He writes as follows:
On 1 July 1910 two customs agreements came into operation. An agreement was concluded between the Union, Southern Rhodesia and North-western Rhodesia providing for the remittance of duties collected on goods in transit to the importing territory, subject to a 5% collection charge. A second agreement established the Southern African Customs Union… between the Union of South Africa and the territories of Basutoland, Swaziland and the Bechuanaland Protectorate. The colonial heritage of SACU is clearly reflected in the fact that Lord Gladstone was the only signatory of the agreement, signing four times in his capacity as Governor-General of the Union of South Africa and as High Commissioner of the other three members, referred to as the High Commission Territories.

This arrangement was followed by the 1910 SACU Agreement. It provided for a duty-free flow of goods between the parties. The Common External Tariff (CET) was a basic ad valorem rate of 15%. The revenue generated was administered by South Africa and distributed among the members on the basis of fixed percentage shares determined by an estimate of the customs and excise duty content of imports into the other territories. South Africa retained around 98% of the revenue pool. The South African Government was responsible for the tariff management.

The CET of SACU was actually the South African import tariff. Pretoria promoted and protected its domestic industries. This was done in terms of a strategy of import-substituting industrialisation that, as a distinct government policy, dates back to 1925. This strategy contributed significantly to the industrialisation of South Africa (Ibid.).

Botswana, Lesotho and Swaziland became independent in the 1960s and in 1969 a new SACU Agreement was adopted.[79]At that stage Namibia was still known as South-West Africa. After the First World War the League of Nations mandated South Africa to administer this former German colony as an integral part of its own territory. Namibia became independent in 1990, after a protracted international legal battle and a liberation war.[80]

Under the 1969 Agreement the SACU CET remained the South African tariff, managed by South African authorities primarily in the interest of the South African economy. The same applied to excise duties. Although there were indications that South Africa had to consult the other parties before imposing, amending or abrogating any customs duty,[81] their active consent was not required. South Africa could, in terms of the 1969 Agreement, change tariff levels unilaterally. This situation was at the heart of the argument that SACU was undemocratic. Other commentators called this the 'the most hegemonic of customs unions… South Africa simply decided trade policy and compensated the smaller countries for the costs it imposed on them' (Schiff and Winters 2003).

3. The 2002 SACU Agreement

The background sketch provided above tells an important story. SACU is a unique arrangement in which South African interests have always dominated in terms of structure and administration. The South African economy also

---

[79] The agreement came into operation on 1 March 1970.

[80] After the Second World War the United Nations established the Trusteeship Council to bring all of the former German colonies in Africa under United Nations (UN) control. South Africa objected and the International Court of Justice heard several cases over the next 20 years until, in October 1966, the UN General Assembly decided to end the mandate, declaring that South Africa had no right to administer the territory and that henceforth South-West Africa was to come under the direct responsibility of the UN (Resolution 2145 XXI of 27 October 1966).

[81] 1969 SACU Agreement, Article 5.

provided the major part of regional growth, albeit often in a much contested manner. Efforts to reform SACU face a formidable challenge in disentangling the organization from these realities and a long history of skewed evolution.

Political and economic changes in southern Africa during the 1990s encouraged the parties once again to find a new modus operandi. With apartheid gone the members embarked on a pursuit of formulating a new working formula and creating a novel architecture for the organisation. The 2002 SACU Agreement took several years to finalise. The result was a text which contains the following objectives for SACU:

(a) to facilitate the cross-border movement of goods between the territories of the member states;
(b) to create effective, transparent and democratic institutions which will ensure equitable trade benefits to member states;
(c) to promote conditions of fair competition in the Common Customs Area;
(d) to substantially increase investment opportunities in the Common Customs Area;
(e) to enhance the economic development, diversification, industrialisation and competitiveness of member states;
(f) to promote the integration of member states into the global economy through enhanced trade and investment;
(g) to facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by member states;
(h) to facilitate the development of common policies and strategies.[82]

The new agreement promised a different design and new management of the CET, as well as common policies to improve the functioning of the single internal customs territory and the Revenue Pool. New structures and institutions were pledged with powers to act and speak on behalf of the collective. Article 7 in fact states that 'the following institutions of SACU are hereby established…': these include the SACU Tariff Board, the ad hoc Tribunal, Technical Liaison Committees, and National Bodies. A Common Negotiating Mechanism is mentioned elsewhere in the agreement.[83] Common

[82] See SACU Agreement, Article 2.
[83] The latter is mentioned in Article 31(2): 'The member states shall establish a common negotiating mechanism in accordance with the terms of reference to be determined by the

policies on agriculture, competition, industrialisation, and unfair trade practices are mentioned in Part 8 of the agreement.

This 2002 SACU Agreement did not bring about fundamental change and SACU could not escape its legacy. It has proven practically impossible to 'democratise' the organisation. The common policies did not materialise and at the institutional level South Africa still directs matters. SACU is on a path where ad hoc arrangements have come into existence and, unless they are changed or improved, may form permanent features of the organisation.

SACU now functions in terms of an unwritten de facto script. The most important example is how the South African International Trade Administration Commission (ITAC) has taken over the functions of the proposed Tariff Board. ITAC now administers the CET of SACU and related tariff issues such as trade remedies. Disputes between the members cannot be resolved in a rules-based manner because the SACU Tribunal, although provided for in the 2002 Agreement,[84] has not been established. The loss of the tribunal amounts to a further institutional deficit and aggravates the impasse regarding the implementation of the original design.

Another such deficit resulted from the fact that the national institutions (the National Bodies mentioned in Article 14 of the SACU Agreement 2002) which had to be established within the member states in order to supplement the functioning of the Tariff Board, did not emerge. The only exception is South Africa. ITAC is South Africa's National Body; but it is primus inter pares and the successor to a former South African structure, the Board on Tariffs and Trade. ITAC has become much more than a National Body of a particular member state; it is SACU's de facto Tariff Board but functions in terms of South African legislation[85], not a SACU proper mandate.

Council in accordance with paragraphs 2 and 7 of Article 8 for the purpose of undertaking negotiations with third parties'.

[84] Article 7 establishes the SACU institutions and the list includes the Tribunal. Article 13 provides: 'Any dispute regarding the interpretation or application of this Agreement, or any dispute arising thereunder at the request of the Council, shall be settled by an ad hoc Tribunal'. No such disputes have been declared and no 'members' (judges) have been appointed.

[85] The International Trade Administration Act 71 of 2002.

Botswana has adopted legislation on a National Body[86] and has appointed the necessary officials but this legislation is based on the assumption that the SACU Tariff Board will be established. It does not provide for interaction with ITAC (which now performs the CET related functions originally reserved for the Tariff Board). Apparently Lesotho has identified officials in the Ministry of Trade to do the same but they have not yet undertaken any of these tasks. Namibia has legislation on a National Body in the pipeline.

It is important to note that the new SACU design assumed the existence and active functioning of inter-state as well as national structures. When either of these elements is absent, the formula cannot operate as intended. On this score SACU suffered a twofold setback. Both the inter-state (Tariff Board and Tribunal) and domestic structures (National Bodies) failed to become reality. In the meantime, the CET had to be administered; this became ITAC's responsibility.

The Tariff Board was intended to serve as an independent expert body with the task to recommend tariff changes, anti-dumping, countervailing and safeguard duties on goods imported from outside the Common Customs Area, as well as on rebates, refunds or duty drawbacks. In order to supplement this design, the member states have to establish 'specialised, independent and dedicated National Bodies'. Their function is to propose tariff changes where necessary and to engage with other related SACU issues. The National Bodies have to carry out preliminary investigations and recommend tariff changes required for the implementation of the national development plans of all the members.

This architecture promised a novel feature for SACU: the recognition that all the members were entitled to policy space over tariffs and for domestic industrial development. This was in addition to the common regional industrialisation policies which were envisaged but did not materialise.

The most important failure involved the fact that the Tariff Board never got off the ground. ITAC performs its SACU related tasks in terms of SACU Council resolutions adopted in 2004 and 2005. These resolutions sanction this development but there was an understanding that ITAC would act on behalf of all members and that the arrangement would be revisited once the BLNS

---

86 This is the Botswana Trade Commission Act of 2013.

countries have developed the required technical capacity. The July 2005 Council resolution on the ITAC role contains an addendum spelling out these provisos. The implementation of these assumptions did not follow. SACU functions in terms of interim arrangements condoned by the failure to properly design and review them

Additional problems about day-to-day issues have emerged. The SACU institutions now seldom meet. Annual budgets are adopted but substantive issues are not discussed nor decided. This deprives the members not only of platforms for discussion and implementing joint action, but it also means that difficulties arising between the parties lack a forum for resolving them. Two recent examples can be mentioned. During the course of 2015 livestock exports from Namibia to South Africa was suspended because of disagreement on new Sanitary and Phytosanitary (SPS) requirements imposed by Pretoria. In former times such issues would have been discussed and resolved in the Technical Liaison Committee for Agriculture. This time it ended up before the SPS Committee of the WTO. In another case South African exporters of chicken were confronted by Namibian quantitative restrictions. The South African Government did not assist in resolving the ensuing dispute and SACU fora were not available. Eventually these companies had to bring court applications in the Namibian courts, which they lost on a technical point.[87]

These seem to be examples of wilful neglect. Even if SACU cannot resolve problems of high politics, it can still serve as a very useful instrument for facilitating trade and ironing out technical issues.

4. The achievements

The political arrangements at the SACU apex are problematical but the commercial reality is often quite different. The private sector benefits from many practical integration arrangements and shared business practices. Technically the SACU Agreement provides for a customs union arrangement for trade in goods only. Services and other trade-related disciplines are not formally covered. The everyday picture is a more nuanced one; the region's de

[87] See South African Poultry Association & 5 others v the Minister of Trade and Industry and 3 others (2016).

facto integration goes beyond what the agreement provides for. Trade in services is a fact of life, direct payments are possible, the rand is legal tender in all but Botswana because of the existence of the Common Monetary Area,[88] professionals are often allowed to practice in each other's countries, the same common-law tradition applies, cross-border investments are made, and technical standards are mostly harmonised or recognised.

In some important ways SACU has grown into a well-functioning single customs territory in which many business-related benefits have become part of cross-border commerce. To provide an example: If equipment used in in Windhoek would break down today, the replacement part can be delivered from Johannesburg overnight. There will be no customs-related delays at the border because SACU is a single customs territory. Other forms or border controls have been streamlined: for example, visas are not required. Trans-frontier payment can be made immediately and electronically because both countries belong to the Common Monetary Area.

SACU now has a permanent institution, the Secretariat, based in Windhoek. It does not enjoy supranational powers but makes an important contribution in providing technical support. This is done by collecting data on behalf of the members, with budgeting and assistance in trade negotiations. It could do considerably more if the political conditions so allow.

A number of trade deals have been concluded under the new SACU Agreement. The SADC Economic Partnership Agreement (EPA) with the European Union (the most important external trade partner of SACU) entered into force on 10 October 2016. This is a WTO-compatible agreement offering asymmetry in market access for goods. It liberalises trade by making it less expensive to export and import: tariffs will be eliminated or in some cases reduced. It provides for duty-free, quota-free access to the EU for Botswana, Lesotho, Mozambique, Namibia and Swaziland. Market access is no longer at the discretion of the EU –it is anchored in a treaty between the parties. South Africa has negotiated better access than granted under the bilateral Trade, Development and Cooperation Agreement (TDCA) of 2000.

---

[88] Which is based on a separate agreement.

Since May 2008 an FTA with the European Free Trade Association (EFTA)[89] has been in force. It is presently under review. A Preferential Trade Agreement between the Common Market of the South (MERCOSUR) and SACU was signed on 15 December 2008, in Salvador, Brazil, and, on 3 April 2009 in Maseru, Lesotho. In June 2015 the Tripartite FTA (TFTA) with the members of the Common Market for East and Southern Africa (COMESA) and the East African Community (EAC), was signed. It has not yet entered into force because the tariff schedules, rules of origin and trade remedies are still outstanding. Since November 2016 SACU has been involved in negotiating the Continental FTA (CFTA), which comprises all African Union (AU) members. The indicative date of conclusion is December 2017. Its first part will cover trade in goods, trade in services and investment. This will be followed by agreements on competition and intellectual property rights.

5. What does the future hold for SACU?

In 2011 the SACU Heads of State and Government adopted a 'developmental integration agenda' to put SACU on a sustainable development path. A number of priority areas were identified as part of a new work programme. They include a review of the revenue-sharing formula, trade facilitation, the establishment of SACU's institutions, a unified engagement in trade negotiations, as well as trade in services. This plan was not implemented. Lack of political urgency, weaker global and regional economic outlooks as well as a decline in the growth of the South African economy apparently contributed to the stalling of the implementation.

In June this year the SACU leadership decided to make a renewed effort at restoring the organisation. At a special retreat it was decided to set in motion a formal process to mould 'SACU into a vehicle for regional development …,[to] benefit all the members … [and to] build regional infrastructure, supply-side capacities, industrial development and value chains to stimulate regional growth and development'.

Does this mean that the agreement might be altered and that a new understanding about how the CU will function within the broader SADC region might be on the cards? South Africa emphasises the following: regional

89 Iceland, Liechtenstein, Norway and Switzerland are the EFTA members.

industrialisation (which it also pursues in the SADC context), a review of the SACU institutions, addressing the sustainability challenges faced by the Revenue-Sharing Formula, and how new trade agreements with African nations and other third parties will be negotiated and concluded.

Pretoria does not foresee the establishment of the original Tariff Board. If this important element in the architecture of SACU will not become a reality the implications will indeed be far-reaching. It will require a new set of arrangements, including amendments to the agreement. The mandate of ITAC to manage the CET on behalf of all the members will have to be revisited and this could include policy space for the BLNS around the import tariff and on rebates. Their own industrialisation policies will require a legal and institutional foundation. The detail of such a new plan is not clear at present. Task teams are said to be established in order to work out the detail.

The fact that SACU is a CU and that South Africa has always controlled tariffs and industrial policy constitutes an important factual and political reality. Will this state of affairs change? How? There are no signs that South Africa will accept the jurisdiction of a ’supranational’ body with powers over industrial and related policies.

The best option, and one which would retain SACU as one single structure, would be to revisit all SACU’s deficiencies and failures as an interrelated package and to develop a comprehensive set of proposals on how to deal with them. This will amount to a revamping of the organisation. If it is accepted that the original Tariff Board will not become a reality the most obvious need is to spell out the SACU-related functions of ITAC in an interstate legal instrument, to provide for national institutions in the BLNS countries to interact with ITAC in terms thereof, and to monitor ITAC’s activities through the Council of Ministers and the Commission.

Such a model will also have to address the challenges of common policies and how to ensure that the region develops in a coherent manner. The challenge to balance common policies with individual policy space cannot be avoided. It will require that the BLNS countries become more actively involved and take coresponsibility for the future of the organisation. If this can be achieved most of the de facto benefits which private commerce within SACU presently enjoys

might be retained. It will be necessary to continue with the Common Monetary area too, although this does not fall within SACU's sphere of competence.

It is not certain that such a compromise will be found. Intergovernmental cohesion might be more difficult to ensure since the policy and economic needs of the members are often very different, even among the BLNS countries. The regional and international environments are not to be ignored either. It is quite a challenge to negotiate trade deals with third parties if domestic needs and development plans push in different directions. Up till now SACU has not yet faced the test of negotiating from a common platform for trade in services and investment. (The SADC regimes around these disciplines are rudimentary in nature and often entail cooperation models only.) This will soon change. The United Kingdom (UK) is an important traditional trading partner and, after the Brexit referendum, wants to leave the EU. There will be a transitional phase (activating Article 50 of the Lisbon Treaty which allows for two years to finalise new bilateral arrangements between London and Brussels) but eventually the UK will have to negotiate separate agreements with African nations or groups of them. The UK will be interested in services such as banking and insurance. And it will not forever be possible to resist American demands for a comprehensive post Africa Growth and Opportunity Act (AGOA) trade agreement (Barber 2016). India is also knocking on the SACU door – again with services the key objective of Delhi.

SACU faces a new round of trade negotiations and it is not clear that it has the cohesion and structures to conclude deals which will serve the needs of all its members simultaneously. One of the reasons is that the organisation does not develop policies for trade negotiations in an inclusive manner. The BLNS will soon have to make a fundamental choice: whether to live in the shadow of South African priorities in services and related disciplines (as is the case with trade in goods and the import tariff) or to actively pursue their own national interests. The same challenges will arise within Africa. The CFTA negotiations on trade in goods and services formally kicked off in November 2016.

6. Conclusion

The title of this chapter raises certain questions: What has SACU been designed for, what has it delivered, and where is it heading? Let us try and answer them.

SACU's basic design has always been one which focused on trade in goods around the hegemonic position of South Africa. This reflected and accommodated the needs of former times. As such it functioned reasonably well; provided it is accepted that the revenue-sharing formula lubricated the arrangement and could offset the price which the BLNS states paid, in particular over recent years, in terms of limited national policy space. De facto regional integration benefited in that cross-border commerce has flourished. On this score too, South African firms, investors and service providers have been the dominant players. Their size and first-mover advantages counted.

This traditional recipe is nearing the end of its useful live and needs to be changed. It seems as if the members have not yet found the formula for how to do this. Given its dominant position and the different needs of its economy, South Africa's emphasis on 'developmental industrialisation' sounds reasonable, provided the fine print implications for the BLNS are clarified. This has not happened. Hopefully the promises made at the recent special retreat will provide the answers. This process starts as soon as possible; new trade agreements are in the pipeline and different disciplines such as trade in services and investment are being targeted as part of these negotiations. Once concluded the region and the member states will (again) be locked into new legal arrangements.

The demise of the SACU Tariff Board is the strongest indication yet that the 2002 SACU formula has been abandoned. This deficit has not been addressed through new rules and new joint structures, resulting in governance uncertainties for the BLNS in particular. ITAC administers the CET, which is essentially based on South Africa's tariff book; and hence it de facto promotes South Africa's trade and industrial policy. SACU structures do not meet and default positions become the rule.

South Africa's domestic troubles add to SACU's present dilemma. The South African economy suffers from severe job losses, fiscal and trade deficits,

energy insecurity, labour conflict, a declining mining sector, policy uncertainty, weak investor confidence, a volatile currency, corruption, and a deterioration in competitiveness.[90]The slowdown in the South African economy pushed unemployment to over 34% in 2014 when considering the broad unemployment rate (this includes discouraged workers).[91]South Africa faces its own crisis; and this will not leave SACU intact.

Where do these developments leave SACU and the BLNS countries? Under the existing system South African trade policy remains dominant. It is an instrument of its national industrial policy, the tariff being the key for advancing South Africa's trade interest. Pretoria emphasises industrial development, employment growth and increased value-added exports. Its National Industrial Policy Framework (NIPF) and the Industrial Policy Action Plan (IPAP) are central components of this strategy and these seek to encourage and upgrade value-added and labour-absorbing industrial production.

However, there are new needs now and yesterday's formulas have become unworkable. Trade in services brings new opportunities for global integration, but requires sound policy decisions. The SACU Agreement does not deal with trade in services. The BLNS countries stand to benefit substantially from enlightened trade in services agreements.[92]

What lies ahead? If the original SACU design has definitely been abandoned (and this has not been officially announced) it needs to be replaced with a new and workable arrangement. SACU needs a new game plan; the present state of affairs amounts to a stalemate with detrimental consequences for the BLNS countries in particular.

Ideally the SACU leadership should strive for an inclusive prior agreement about what is wrong with the present system and why, what works well, and how to find a new modus operandi. Certain aspects about the present SACU

---

[90] *The Global Competitiveness Report of May 2016 places South Africa 52nd of the 61 countries surveyed. The indicators show that the country continues to underperform: it came last in its rate of employment (worse than Venezuela); bottom on the list for 'relocation threats of production' (i.e. businesses wanting to leave); labour relations; life expectancy at birth; and infrastructural health problems.* See *Lowman (2016)* and *Parsons (2015)*.

[91] See Statistics South Africa (2015).

[92] See, for example, Haufiku (2016).

dispensation can be retained and strengthened. SACU offers to the private sector a well-functioning and integrated commercial space in which trade in goods and services takes place on a daily basis. These services range from transport to finances, cross-border payments, and the mutual recognition of standards and certificates. Trade facilitation is promoted through the absence of cumbersome internal customs controls. In many ways the customs union aspect (which governs trade in goods) has stimulated a valuable additional integration process where the flag follows the trade. These benefits should be retained.

A restructuring of relationships needs a secure and predictable legal framework, an improvement on the present one. If it means a scaling-down of expectations and a more realistic approach, the various governments have to design what is necessary, while accepting the challenges of adopting and implementing national development policies and reforms. This will require transitional arrangements and a realistic adjustment period. The BLNS countries are not homogenous and will face different types of adjustment challenges. It would be disastrous if South Africa would pull the plug on the BLNS countries. The whole region then stands to become destabilised and fragmented – a situation in which all the member states will suffer and pay the cost.

The irony is that there are clear linkages between what South Africa has to do in order to get its own house in order and ensuring better regional economic policies and governance. This southern African region is a vital market for South African exporters, service providers, investors and professionals. Namibia is the fourth largest export destination of South African goods; and Botswana is not much further down that list. With Lesotho there are vital water-related agreements.

Regional integration between countries at different levels of economic development is never easy. However, the evidence suggests that SACU member states stand to be better off together than going their separate ways. It is worth the trouble to find out whether this is indeed possible and how to achieve a more suitable arrangement. SACU needs vital reforms; this is for the sake of all its members.

References

Barber, S. 2016. US complains of disadvantage as EU-SADC trade deal kicks in. *Business Day,* October 7.

Haufiku, P. 2016. *Namibia's position on trade in services.* UNCTAD country paper. UNCTAD Directorate of International Trade.

Lowman, S. 2016. US toppled as world's most competitive economy. SA Africa's only nominee. *BizNews.com*. http://www.biznews.com/sustainable-business/2016/05/30/us-toppled-worlds-competitive-economy-sa-retains-african-crown/.

McCarthy, C. 2006. The Southern African Customs Union – a review of critical elements in the development of the world's oldest customs union. *Journal of Law and Economics in International Trade*, 2(2).

McCarthy, C. 2013. *A perspective on common industrial policies for the member states of the Southern African Customs Union.* tralac Working Paper. Stellenbosch: tralac. www.tralac.org.

Parsons, R.2015. Buck stops here and not with the dollar. *Business Times,* 15 March.

SACU Agreement 1969.

SACU Agreement 2002.

Schiff, M. and Winters, L.A. 2003. *Regional integration and development*. Washington, D.C.: World Bank. p. 85.

South African Poultry Association & 5 others v the Minister of Trade and Industry and 3 others (A 326/2015) [2016] NAHCMD 199 (8 July 2016).

Statistics South Africa. 2015. *Quarterly labour force survey quarter 4, 2014.* Pretoria: Statistics South Africa. http://beta2.statssa.gov.za/publications/P0211/P02114thQuarter2014.pdf.

The Global Competitiveness Report, May 2016.

The International Trade Administration Act 71 of 2002.

Regional integration remains an important aspect of the development agenda for countries in Southern Africa. The collection of chapters in the 2015/2016 Monitoring Regional Integration Yearbook, covers diverse aspects of this agenda, including trade matters, non-tariff barriers, developments of the regional economic communities such as SACU as well as the role of cities in regional development. These themes also reflect the broader shifts in the global development agenda as articulated in the 17 Sustainable Development Goals adopted by the members of the United Nations in September 2015.