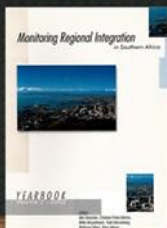
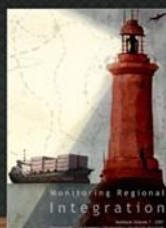
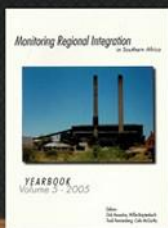
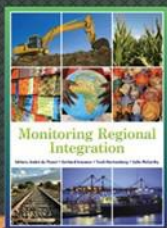


Monitoring Regional Integration in Southern Africa Yearbook 2017/18 15th Edition



Editors: Trudi Hartzenberg, Gerhard Erasmus,
Paul Kalenga and Talkmore Chidede

Monitoring Regional Integration in Southern Africa

Yearbook 2017/2018

Edited by
Trudi Hartzenberg, Gerhard Erasmus,
Paul Kalenga and Talkmore Chidede



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Preface

Monitoring Regional Integration in Southern Africa is celebrating its 15th anniversary. This edition includes a review of the developments since 2001, the year when the first edition was published. This is intended to give the reader a comprehensive idea of the manifold transformation process that the southern African region has been through in the past 15 years. This conversation is as complex as the range of social, economic and political aspects *Monitoring Regional Integration in Southern Africa* dealt with since its inception.

All the states in the region share a common quest for economic growth and the desire to be more present and involved in the global market, in order to draw a more positive balance from their trading activities. This goal is also the main purpose of the Southern African Development Community (SADC). Although the main purpose, the linkages between politics and the economy oblige the community of nations to deal with topics that go well beyond economics. New challenges and choices arise and need to be taken in these modern and often complicated times.

The constellation of SADC has been relatively stable in the almost two decades throughout which this *Monitor* has been issued, with only minor changes in terms of members. This is especially remarkable when considering the radical changes and developments experienced by some member states, which consequently increased the challenge of setting common strategies and policies.

Joint strategies are also constantly challenged by the unique diversity the southern African region is marked by. Whilst appreciating each nation's individual character, overcoming and mastering social, historical, political, geographical and climatic differences but working as one has been one of the main accomplishments of southern African integration.

Another coalition in this ongoing process of regional integration that needs to be closely observed is the Southern African Customs Union (SACU), due to its strong influence on the economic situation of its member states as well as

on the whole region. Hence, SACU as one of the oldest and still existing customs unions, will be examined in this edition as a review of the past years. The third community operating in this region is the Common Market for Eastern and Southern Africa, which is usually not in the focus of interest for this monitor, yet should be at least considered as an influencing institution.

After reading this book, one might have a better idea of the fields in which the regional integration of southern Africa and the cooperation of the states operates and can draw a final positive balance.

The Konrad-Adenauer-Foundation looks back thankfully on more than 15 years of successful and productive collaboration with its partners and wishes *Monitoring Regional Integration in Southern Africa* all the best for its future.

Mr. Thomas W. Keller

Resident Representative of the Konrad-Adenauer-Foundation
Namibia/Angola

Acronyms

- ACP – African, Caribbean and Pacific
ACDEG – African Charter on Democracy, Elections and Governance
ADD – Alliance for Democracy and Development
ADF – African Development Fund
AEC – African Economic Community
AfCFTA – African Continental Free Trade Area
AfDB – African Development Bank
AFD – *Agence Française pour le Développement*
AFTA – Arab Free Trade Area
AGOA – African Growth and Opportunity Act
AIDA – Accelerated Industrial Development of Africa
AU – African Union
AMU – Arab Maghreb Union
BEC – Broad End-use Categories
BIAT – Boosting Intra-Africa Trade
BITs – Bilateral Investment Treaties
BOT – Build-Operate-Transfer
BTDIxE – Bilateral Trade Database by Industry and End-Use
CAMI – Conference of African Ministers of Industry
CCZ – Council of Churches in Zambia
CEN – SAD – Community of Sahel-Saharan States
CET – Common External Tariff
CFI – *Comité de facilitation d’Inga*
CICOS – Congo River Basin Organisation
CMCs – Conflict Management Committees
CMT – Committee of Ministers of Trade
CODESI – *Commission pour le Développement du Site d’Inga*
COMESA – Common Market for Eastern and Southern Africa

CONSAS – Constellation for Southern African States
CPI3 – Project Steering Committee Inga III
CU – Customs Union
DFIs – Development Finance Institutions
DRC – Democratic Republic of the Congo
DSB – Dispute Settlement Body
DSU – Dispute Settlement Understanding
EAC – East African Community
EAPP – Eastern African Power Pool
ECCAS – Economic Community of Central African States
ECF-SADC – Electoral Commissions’ Forum of SADC Countries
ECOREC – Government Commission of Economy and Reconstruction
ECOWAS – Economic Community of West African States
ECZ – Electoral Commission of Zambia
EFTA – European Free Trade Association
EIB – European Investment Bank
EIRR – Economic Internal Rate of Return
EMBs – Electoral Management Bodies
EPAs – Economic Partnership Agreements
EPC – Engineering Procurement and Construction
ESC – Electricity Sub-Committee
EU – European Union
FDD – Forum for Democracy and Development
FTA – Free Trade Area
FLS – Front-Line States
GATT – General Agreement on Tariffs and Trade
GDP – Gross Domestic Product
GVCs – Global Value Chains
IBA – Independent Broadcasting Authority
ICCPR – International Covenant on Civil and Political Rights
ICP – International Cooperation Partners

ICT – Information and communication technology
IDA – International Development Association
IEA – International Energy Agency
IFC – International Finance Corporation
IGAD – Intergovernmental Authority on Development
ILC – International Law Commission
IPAP – South Africa’s Industrial Policy Action Plan
IPRs – Intellectual Property Rights
IRI – International Roughness Index
ISIC – International Standard Industrial Classification of All Economic Activities
ITAC – International Trade Administration Commission
IUMP – Industrial Upgrading and Modernisation Programme
JCC – Judicial Complaints Commission
LDC – Least Developed Countries
LPI – Logistics Performance Index
MCO – Ministerial Committee of the Organ
M&E – Monitoring and Evaluation
MIGA – Multilateral Investment Guarantee Agency
MIP – Memorandum of Information Project
MISA – Media Institute of Southern Africa
MLC – Media Liaison Committee
MRE – Monitoring, Reporting and Evaluation
MRHE – Ministry of Hydraulic Resources and Electricity of DRC
MTF-REI – Ministerial Task Force on Regional Economic Integration
NAFTA – North American Free Trade Agreement
NCHRP – National Cooperative Highway Research Program
NEPAD – New Partnership for Africa’s Development
NPV – Net Present Value
NSAs – Non-State Actors
OAU – Organisation of African Union
OECD – Organisation for Economic Co-operation and Development

PeP – Patriots for Economic Progress
PF – Patriotic Front
PFC – Press Freedom Committee
PPAs – Power Purchase Agreements
PPP – Public-Private Partnership
PRS – Price Range System
PTA – Preferential Trade Area
PVT – Parallel Voter Tabulation
RECs – Regional Economic Communities
REI – Regional Economic Integration
RI – Regional Integration
RoO – Rules of Origin
RTA – Regional Trade Agreement
RVCs – Regional Value Chains
SACCORD – Southern African Council for Constructive Resolution of Disputes
SACU – Southern African Customs Union
SADC – Southern African Development Community
SADCC – Southern African Development Coordination Conference
SAPP – Southern African Power Pool
SARDC – Southern African Research and Documentation Centre
SSA – Sub-Saharan Africa
SEAC – SADC Electoral Advisory Council
SEC – SADC Electoral Commission
SEOM – SADC Electoral Observation Mission
SEZs – Special Economic Zones
SIDPF – SADC Industrial Development Policy Framework
SIPO – Strategic Indicative Plan for the Organ
SNCs – SADC National Committees
SNEL – DRC's *Société Nationale d'Electricité*
SPV – Special Purpose Vehicle
TFA – Trade Facilitation Agreement

TFTA – Tripartite Free Trade Area
UDF – United Democratic Front
UN – United Nations
UN COMTRADE – United Nation Commodity Trade Statistics Database
UNCTAD – United Nations Conference on Trade and Development
UNECA – United Nations Economic Commission for Africa
UNSD – United Nation Statistics Division
UPG – Universal Print Group
UPND – United Party for National Development
UPP – United Progressive Party
USAID – United States Agency for International Development
VOC – Vehicle Operating Cost
WB – World Bank
WEF – World Economic Forum
Westcor – Western Power Corridor
WTO – World Trade Organisation
ZAF – Zambia Air Force
ZANU PF – Zimbabwe African National Union Patriotic Front
ZAPU – Zimbabwe African People’s Union
ZESCO – Zambia Electricity Supply Corporation
ZNBC – Zambia National Broadcasting Corporation
ZRA – Zambia Revenue Authority

Introduction

Fifteen years of monitoring regional integration in Southern Africa

Gerhard Erasmus

1. Looking back

When this Yearbook was first published, the world was a different and optimistic place. The geopolitical changes resulting from the demise of Communism in the early 1990's brought peace dividends in the form of freer trade, the movement of people, and support for economic integration. In South Africa, apartheid had come to an end, followed by a peaceful transition and the adoption of an exemplary constitution.

The global economy was in great shape, while the World Trade Organisation (WTO), launched on 1 January 1995, and its new dispute settlement system were perceived as harbingers of proper rules-based trade governance. The WTO had ambitious plans for integrating developing countries into the international economy and adopted the Doha Development Agenda in 2001. China had just joined the WTO¹. Its remarkable economic growth and integration into the world economy were on course. The rest of the world saw this as mainly a positive development; bringing the opportunities of cheap labour and a growing market for commodities and industrial goods.

The European Union (EU) implemented a bold enlargement initiative which saw Eastern European countries (previously under communist rule) joining the community. Brussels also developed new strategies for its relationships with the African, Caribbean and Pacific (ACP) countries. It wanted to move away from non-reciprocal trade preferences under the Cotonou Agreement (for

¹ It happened on 11 December 2001.

which the WTO waiver was coming to an end) to WTO compatible Free Trade Areas (FTAs), called Economic Partnership Agreements (EPAs).²

In Southern Africa, there were some major changes and promising developments. Namibia became independent in 1990 and in 1994 Nelson Mandela was elected as President of South Africa. Pretoria wanting a new era for its relations with Africa, joined the Southern African Development Community (SADC)³, and started negotiations for a new and ‘democratic’ Southern African Customs Union (SACU) Agreement.

The African Regional Economic Communities (RECs) were enthusiastic about deeper integration. Most had plans for moving rapidly from FTAs to Customs Unions (CUs) and common markets, although the emphasis was on trade in goods. Trade in services was still unfamiliar terrain.

The idea of rules-based trade governance apparently enjoyed wide-spread support. The Dispute Settlement Body of the WTO became an active forum for settling multilateral trade disputes, while several of the RECs established regional Courts and Tribunals. Many Bilateral Investment Treaties (BITs) were concluded; allowing for, *inter alia*, direct investor-state dispute settlement.

This introductory chapter provides an overview of some important developments considered to be relevant to the decision of fifteen years ago to monitor regional integration in Southern Africa and to publish an annual review of developments. We look at certain global as well as regional developments and conclude by asking what lies ahead and what needs to be monitored now.

² At the 2001 WTO Ministerial Conference, WTO Members granted a waiver to the EC allowing it to give preferential market access for the ACP Group of Countries, the last waiver under the Lome Convention. It had to be replaced by Free Trade Agreements between the EC and ACP countries in 2008 <https://www.ictsd.org/bridges-news/bridges/news/ec-acp-cotonou-waiver-finally-granted>.

³ The Southern African Development Coordination Conference (SADCC) was the forerunner of today's SADC. SADCC was transformed into SADC on 17 August 1992, with the adoption of the Windhoek Declaration and the Treaty establishing SADC.

2. All is not well on the multilateral level

Many of the global and regional plans and structures launched at the beginning of the 21st century have since become unstuck or have been redirected. On the multilateral level, the most serious challenges to the global trading system came with the financial crisis of 2007–2008, considered by many economists to have been the worst financial crisis since the Great Depression of the 1930s. In July 2008, the WTO’s Trade Negotiations Committee convened to conclude the Doha Development Round but failed to agree on agreements for agriculture and industrial products. The final stumbling block was the special safeguard mechanism for developing countries (WTO, 2008).

The 11th Ministerial Conference of the WTO, held in Buenos Aires in December 2017, has confirmed the existence of serious tensions in the WTO. This meeting concluded without any new deal and no signs that the Doha Development Agenda any longer offers realistic promises for accommodating the demands of the developing world. Even the relatively ‘neutral’ proposals on an agreement to ban subsidies for illegal, unreported and unregulated fishing (which national leaders had agreed to do by 2020 as part of the United Nations’ Sustainable Development Goals) could not make it.⁴

The *Economist* (2017) described this Ministerial as ‘the triumph of self-interest over the greater good’, amid signs ‘to enhance trilateral cooperation in the WTO’ when dealing with excess capacity, technology transfer and local-content requirements.⁵

In agriculture there has been disagreement about what could be termed ‘systemic issues’. The G33 developing country coalition issued a joint declaration in which they called for ‘meaningful development-centred outcomes on the special safeguard mechanism and public stockholding. WTO members ought to refrain from making any linkages with other issues’ (International Centre for Trade and Sustainable Development (ICTSD), 2017).

⁴ For a discussion of the issues, see The Economist ‘The WTO’s failure to reach an agreement on curbing subsidies for illegal fishing is baffling’ 2017 <https://www.economist.com/news/leaders/21732848-wtos-failure-reach-agreement-curbing-subsidies-illegal-fishing-baffling>.

⁵ According to a joint statement released by America, Japan and the EU.

A slightly more positive sign from the Buenos Aires Ministerial Conference came when a coalition of countries (ranging from America and the EU to Nigeria⁶) signed up to negotiate new rules on e-commerce on a plurilateral, rather than a multilateral, basis. The first Declaration on Global Electronic Commerce was adopted on 20 May 1998 at the Geneva Ministerial.⁷ It has not yet been possible to agree on new rules for the disciplines involved in e-commerce. In Buenos Aires seventy-one members⁸ decided to initiate exploratory work towards future WTO negotiations on trade-related aspects of electronic commerce, with participation open to all WTO members. A first meeting is planned for the first quarter of 2018. The aim is to negotiate a WTO agreement on the trade-related aspects of electronic commerce, but it may end up being a plurilateral agreement.⁹

As long as enough members agree among themselves for the deal to be worthwhile, and do not discriminate against other members of the WTO, this could be a constructive development. But the message was clear: if some members want to block discussion, then they will be left behind (The Economist, 2017). However, it seems unlikely that a surge of plurilateral agreements will be enough to jolt the WTO into life. For that, the organisation's members will need to show more commitment and be prepared to accept meaningful compromises. The Buenos Aires meeting failed to do so. And there are more problems.

3. A crisis for multilateral dispute settlement

Most observers argue that it would be a mistake to abandon the WTO process entirely. It is a member-driven arrangement but still offers the only platform for multilateral trade negotiations and dispute settlement. This matters for

⁶ The only African state joining this group.

⁷ See WTO Doc WT/MIN(98)/DEC/2

⁸ They are: Albania; Argentina; Australia; Bahrain; Brazil; Brunei Darussalam; Cambodia; Canada; Chile; Colombia; Costa Rica; European Union; Guatemala; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; Korea, Republic of; Kuwait; Lao PDR; Liechtenstein; the former Yugoslav Republic of Macedonia; Malaysia; Mexico; Moldova, Republic of; Montenegro; Myanmar; New Zealand; Nigeria; Norway; Panama; Paraguay; Peru; Qatar; Russian Federation; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey; Ukraine; United States; and Uruguay.

⁹ For the text of the Buenos Aires Joint Statement on Electronic Commerce, see WTO Doc WT/MIN(17)/60.

issues like salvaging the world's fish stocks; which requires action that is both global and urgent.

However, the WTO's dispute settlement dimension is also under threat. At its November 2017 meeting, the WTO Dispute Settlement Body (DSB) failed, on its tenth attempt, to launch a selection process to fill a growing list of vacancies on the Appellate Body. The United States again withheld its agreement to launch the process. The US is now withholding its support on the appointment of new Appellate Body Members on the grounds that the DSB must first address its systemic concerns about the practice of such Members to remain involved in WTO cases. The US has argued that departing Members of the Appellate Body should not be allowed to keep working on cases still ongoing when their four-year term finishes. This does not seem to be an unreasonable point.

But the US has a more serious complaint. It has raised concerns in the past, including under the Obama administration, about what Washington sees as judicial activism by the Appellate Body.¹⁰ The suspicion in Geneva is that the US is now laying the groundwork for a bigger attack on the WTO's dispute settlement system.

In a speech during the Buenos Aires Ministerial Conference, Mr Robert Lighthizer, the US Trade Representative said: 'The WTO is losing its essential focus on negotiation and becoming a litigation-centered organisation. Too often members seem to believe they can gain concessions through lawsuits that they could never get at the negotiating table. We have to ask ourselves whether this is good for the institution and whether the current litigation structure makes sense.'¹¹

There are more specific criticisms too. Mr Lighthizer has, for example, warned that the US would have to consider action if the WTO finds in China's favour in a dispute between Beijing and the EU over whether China deserves 'market economy' status in the WTO. There has been criticism of the WTO's

¹⁰ Financial Times 'WTO chief warns of risks to trade peace' <https://www.ft.com/content/3459f930-a532-11e7-9e4f-7f5e6a7c98a2>.

¹¹ The Opening Plenary Statement of USTR Robert Lighthizer at the WTO Ministerial Conference is available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr>.

institutional capacity to cope with a rising China and what US officials have labelled its unprecedented mercantilism and cheating of the system.

Does it matter what the US says and does? The Secretary General of the WTO says it does. ‘The US misgivings about the system are important. A key member like the United States having concerns is not something that we could or should ignore.’¹²

Some commentators fear that the dispute settlement system of the WTO could break down: ‘Unless new AB members are appointed, the Appellate Body will face severe delays. If the AB dips down to two members, it could not formally operate, since each case requires at least three sitting judges. But even a court with fourth or five judges will find it hard to manage its caseload, and face legitimacy problems, because decisions will be taken by only a few judges from a few countries with particular legal traditions (such as the U.S. and China). This could lead — in an extreme scenario — to the crumbling of the WTO dispute settlement system.’¹³

Does the Trump administration have a long-term plan? The current United States Trade Representative recently reminisced about the days of the General Agreement on Tariffs and Trade (GATT), when a party could unilaterally block the adoption of a decision it did not like. He seems to suggest that the Trump administration may wish to deploy the Appellate Body crisis to force a return to a more politicised dispute settlement system. That may suit Mr Trump’s style. It may not be a good thing for international trade governance nor for the rules-based system underpinning the WTO.

4. Ambitious integration plans do not escape the impact of national policies

There have been potentially significant trade and integration developments closer at home. The most important recent one is the conclusion of the Tripartite Free Trade Area (TFTA) negotiations, which has since inspired the African Union to launch negotiations for the African Continental Free Trade Area (AfCFTA).

¹² Financial Times ‘WTO chief warns of risks to trade peace’.

¹³ <https://www.washingtonpost.com/news/monkey-cage/wp/2017/09/27/trump-is-fighting-an-open-war-on-trade-his-stealt>.

The TFTA has its formal roots in a decision by the Heads of State and Government of the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the SADC, adopted at the first Tripartite Summit in October 2008 in Kampala, Uganda.¹⁴ Their final communiqué states that the Tripartite Summit had ‘resolved that the three RECs should immediately start working towards a merger into a single REC with the objective of fast tracking the attainment of the African Economic Community’.¹⁵ In trade, customs, and economic integration, it approved the ‘expeditious establishment of a Free Trade Area (FTA) encompassing the member/partner States of the three RECs with the ultimate goal of establishing a single Customs Union’.¹⁶ It also wanted ‘measures to facilitate the movement of business persons across the RECs’.¹⁷

The participating states subsequently adopted a Memorandum of Understanding on Inter-Regional Cooperation and Integration,¹⁸ shifting the emphasis to **cooperation** in specific areas and **harmonisation** of trade and investment regimes and of infrastructure programmes. Article 1 (3) of this document provides the key to what the TFTA was actually meant to achieve:

‘The cooperation between the parties shall relate, but not restricted to the following areas:

- a) Trade liberalisation and customs co-operation generally and the establishment of a Free Trade Area, and any other deeper form of integration as may be agreed by the parties;
- b) Development of programmes to enhance movement of business persons, labour and services across the region;

¹⁴ COMESA, EAC, SADC (2008) Final Communiqué of the COMESA-EAC-SADC Tripartite Summit of Heads of State and Government, 22 October 2008, https://www.tralac.org/wpcontent/blogs.dir/12/files/2011/uploads/FinalCommuniqueKampala_20081022.pdf.

¹⁵ Ibid., para 13.

¹⁶ Ibid., para 14(i).

¹⁷ Ibid., para 14(ii)(c).

¹⁸ COMESA, EAC, SADC (2008) Memorandum of Understanding on Inter Regional Cooperation and Integration Amongst COMESA, EAC and SADC http://www.tralac.org/wpcontent/blogs.dir/12/files/2011/uploads/MoU_Inter_Regional_CooperationIntegration_19_01_2011.pdf. This MoU came into force on 19 January 2011.

- c) Development of joint infrastructure programmes, financing and implementation;
- d) Development of joint programmes for agricultural development and food security;
- e) Maintenance of close collaboration in preparation of common regional positions and strategies in multilateral and international trade fora; and
- f) Other activities of mutual interest as may be agreed upon from time to time.’

In June 2013, the Ministers of Trade confirmed modalities and principles for tariff negotiations which put paid to the 2008 ambition. It was agreed that only those states that are not party to a free trade agreement would undertake tariff reduction negotiations with each other. This meant that the tariff regimes of the existing RECs (and the associated rules of origin) would remain intact. These regimes will exist alongside the new FTAs to be negotiated as part of the TFTA process. Importantly, they agreed on a modest level of ambition for tariff negotiations. Countries would liberalise 60–85% of their tariff lines on entry into force of the TFTA, with negotiation of the remaining 15–40% of tariff lines to be conducted over a period of five to eight years. Closer scrutiny reveals that a substantial portion of some offers included many tariff lines which were already fully liberalised, meaning modest gains. These negotiations are still in progress.

The re-direction of the TFTA process (from one single regime to a cooperation pact) happened mainly through the adoption and clarification of its Negotiating Principles arbitration, and in particular, the one on the REC *acquis*. This resulted in a recipe for additional FTAs.

Acquis is a French term meaning ‘that which has been agreed’. In the context of the Tripartite Free Trade Agreement it means that the negotiations should start from the point at which the COMESA, EAC and SADC trade negotiations have reached. Tariff negotiations and the exchange of tariff concessions would be among Member/Partner States of the Tripartite FTA that have no preferential arrangements in place between them. This will both preserve the *acquis* and build on it.

In June 2015, the Third Tripartite Summit officially launched the COMESA-EAC-SADC Tripartite FTA in Sharm El Sheikh, Egypt.¹⁹ The communiqué adopted at this occasion reiterated that the tripartite integration process is based on a **developmental approach** anchored in three pillars: Market Integration, Infrastructure Development and Industrial Development. The tripartite initiative is described as ‘a decisive step to achieve the African vision of establishing the African Economic Community’.²⁰ However, at that point the tariff schedules, rules of origin and trade remedies were still outstanding. Annexes on these disciplines have now been accepted but tariff offers are still being negotiated and will presumably continue in 2018.

The AfCFTA is an initiative of the African Union. It was announced at the 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa in January 2012. That meeting adopted a decision to establish the AfCFTA by an indicative date of 2017. The Summit also endorsed the Action Plan on Boosting Intra-Africa Trade (BIAT), which identifies seven priority action clusters: trade policy, trade facilitation, productive capacity, trade-related infrastructure, trade finance, trade information, and factor market integration. Negotiations for the establishment of the AfCFTA were officially launched in June 2015. The first meeting of the AfCFTA Technical Working Groups was held from 6 to 17 February 2017 in Kigali, Rwanda, followed by further meetings in Nairobi in May 2017, in Durban in September 2017 and in Abuja in November – December 2017. This process will continue in 2018.

Both the TFTA and AfCFTA are about advancing the African integration agenda. They have the potential to bring major benefits. The TFTA, once in operation, will create a market of 26 countries with a population of 625 million and a combined GDP of US\$ 1.6 trillion. The AfCFTA aims to create a market of over 1 billion people and a combined GDP of over US\$ 2

¹⁹ The text of the Agreement can be sourced from the tralac website (tralac, SADC-EAC-COMESA Tripartite Free Trade Area Legal Texts and Policy Documents, <https://www.tralac.org/resources/by-region/comesa-eac-sadc-tripartite-fta.html>). The official title of the agreement is Agreement Establishing a Tripartite Free Trade Area Among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community.

²⁰ COMESA, EAC, SADC (2015) Communiqué of the Third COMESA-EAC-SADC Tripartite Summit, 10 June 2015. https://www.sadc.int/files/5914/3401/0196/Communiqu_of_the_3rd_COMESA_EAC_SADC_Tripartite_Summit.pdf

trillion.²¹ However, these two initiatives follow different approaches. The AfCFTA is more comprehensive and addresses, unlike the TFTA, trade in goods and services simultaneously. It aims at boosting intra-African trade on a continental scale, while the TFTA is about closer co-operation among three existing RECs.

The TFTA and AfCFTA implementation strategies are not, at present, synchronised; unless they are adjusted to pull in the same direction and forge compatible regimes, they may add to existing obstacles. These negotiations may in fact bring about new FTAs and more overlapping membership complications.

Why has the initial TFTA ambition (to build on what has already been achieved in the RECs, to establish a duty-free, quota-free, and exemption-free trade arrangement, and specifically to address the problem of overlapping membership) been adjusted in such a fundamental manner? What will the AfCFTA eventually achieve? What do the TFTA negotiations tell us about African regional integration endeavours?

Mega trade deals such as the TFTA and AfCFTA have their formal origins in high-level political decisions and statements about bigger picture endeavours. The pursuit of the objectives of the Abuja Treaty of 1991 (to form the African Economic Community) is probably the most ambitious of these schemes and is still a political ideal. However, once negotiating modalities have been worked out and the actual negotiations start, trade negotiations become state-driven. Government representatives will seek, through offers and counter offers, to secure optimal gains (market access benefits) while not conceding too much regarding national positions. In traditional state-driven FTA negotiations (as opposed to negotiations in well-integrated communities speaking with a single voice), the parties essentially pursue national objectives.

South Africa's regional and trade policies offer an important insight for understanding the present direction of regional integration in Southern Africa

²¹ Minister Rob Davies: Debate of the State of the Nation Address, South African Government, 15 February 2017, <http://www.gov.za/speeches/sona-debate-minister-trade-and-industry-15-feb-2017-0000>

and further afield. South Africa is the region's major economy and Africa is an important export destination for South African merchandise.²² However, Pretoria pursues its trade policies in the context of protecting its national policy space and national industrial development. In the words of the South African Minister of Trade and Industry:

‘We also need to be clear as a country that localisation is an imperative.... The Trade Policy adopted in 2012 identified tariffs as tools of industrial development. It said trade policy is subordinate to industrial policy and must be informed by the needs of industrial development. It said we must utilise and defend Policy space that allows us to localise and pursue transformation. It says we must not hesitate to defend and use trade remedies and access dispute bodies when we are being unfairly treated... Above all, we must be wary of signing away policy tools that are either important now or which may be so in the future...

Our overriding priority is to work to promote African regional integration. More precisely it is to pursue a broadening of integration across existing regional communities within a development integration framework. Practically, this means taking steps to enlarge the free trade areas existing in SADC and other regional economic communities into larger more expansive FTAs, but also to complement this with active cooperation to address infrastructure deficiencies. The aim of this is to promote more intra-African trade and support industrialisation through the creation of large regional markets that can support the development of regional value chains.²³

South Africa's *Industrial Policy Action Plan* (IPAP) must support the re-industrialisation of the South African economy and underpins its approach to regional economic integration. IPAP provides for the implementation of the SADC Industrial Development Implementation Matrix to promote the participation of South African manufacturers in mutually beneficial regional

²² The Minister of Economic Development Ebrahim Patel would regularly emphasise that ‘Africa brings huge benefits for SA’. BusinessReport, May 25, 2015. Almost 29% of South Africa's merchandise exports in 2015 were sold in other African countries. South Africans and local firms are heavily involved across the continent as investors and providers of services.

²³ Minister Rob Davies' contribution to the State of the Nation address to Parliament on 15 February 2017. <http://www.polity.org.za/article/dti-rob-davies-address-by-minister-of-trade-and-industry-during-the-sona-debate-parliament-cape-town-15022017-2017-02-15>.

value chains, particularly in agro-processing, mineral beneficiation and pharmaceuticals (Cronje, 2014).

South Africa's emphasis on national policy space has become a key concept for understanding its approach to regional trade, integration and industrialisation. This has implications for how new African trade agreements are designed and what can be expected as binding outcomes. The TFTA and the AfCFTA are framework agreements. They do not provide for their own monitoring institutions or a comprehensive set of directly enforceable obligations which apply from the outset.

The TFTA is a good example; it is an inter-state contract which spells out how trade liberalisation and development will be pursued over time²⁴. It is a framework for the gradual implementation of a freer trade in goods regime, while guaranteeing national policy space as part of the process.

This does not make it useless, but its legal texts should be studied with care. They reflect what the member states have been prepared to accept, for now, as new commitments. They chose incrementalism as the route to trade liberalisation and industrialisation, perhaps wisely. The TFTA is not a new REC with institutions to promote deeper integration or supra-national policy making. And it is still incomplete. Trade in services, infrastructural development and other disciplines are still to be added, although this may happen via the AfCFTA negotiations.

For the same policy space reasons Pretoria has also re-negotiated its BITs, to remove the direct investor-state dispute settlement aspect. The reason for doing so is the claim that national development policies should not be held hostage by litigation by private investors in foreign fora. This argument has gained wider acceptance; the investment provisions in new regional trade deals (often called Partnership Agreements) reflect a similar sentiment. This does not mean that the rights of investors are left without protection. It does, however, indicate that future legal claims under these agreements will be

²⁴ The Preamble to the TFTA Agreement expressly refers states that “*a framework of trade co-operation among Tripartite Member/Partner States based on equality, fair competition and mutual benefit will contribute to the creation of a viable development community.*”

measured more directly against the countervailing public interest policies of host states. What is not yet sufficiently clear is how national courts and international investment dispute settlement mechanisms will co-exist and how their jurisprudence will develop.

5. Developments in SACU

Developments in SACU merit mentioning. They shed light on the consequences for regional integration of the fact that Africa is not homogenous. National interests and aspirations are often incompatible. The experiences of the BLNS countries (Botswana, Lesotho, Namibia and Swaziland) show what challenges arise when pursuing regional integration in our part of the world and what it means to co-exist with a powerful neighbour in a customs union. SACU's recent history also demonstrates that deeper integration (e.g. in the form of a customs union) comes at a price; smaller member states forfeit their unilateral policy space over tariff and trade policies. They cannot pursue national industrialisation strategies in a unilateral and independent manner. However, the private sector often enjoys considerable benefits in terms of trade facilitation.

SACU is not recognised by the African Union as an REC but participates in African and other trade negotiations as one customs territory. Tariff offers are made jointly in order to protect and account for the existence of a Common External Tariff (CET).

SACU has a long history of trying to work out a mutually compatible *inter partes* arrangement. It is the world's oldest functioning customs union, which predates African integration efforts by several decades. SACU's roots go back to 1910 when the Union of South Africa was formed. British colonial designs of the time dictated that a customs union arrangement had to be added in order to promote the development of the former British protectorates of Bechuanaland, Basutoland and Swaziland. This resulted in an agreement guaranteeing duty-free trade and monetary transfers to the smaller members. These features are still part of SACU: it is a single customs territory (no tariffs are levied on intra-SACU trade), has a CET and implements a special revenue

sharing arrangement under which tariff income (on trade with third parties) is shared in terms of a formula rather generous to the BLNS countries.²⁵

The post-apartheid South African government agreed to negotiate a new SACU Agreement. The SACU Agreement of 1969 favoured South Africa's dominance, did not provide for common policies and common institutions, and did not take sufficient account of the different levels of development among the five member states. The Preamble to the new Agreement (it was signed in 2002 and entered into force in 2004) even admits that 'dispute settlement provides mutually acceptable solutions'.

However, the negotiations were difficult and took eight years. In the end, some major aspects remained problematic in nature; it is difficult to work out detailed trade and integration arrangements between uneven partners and 'to create effective, transparent and democratic institutions which will ensure equitable trade benefits to Member States' (Article 2(b), 2002 SACU Agreement). The new design included provisions on an important new SACU institution called the Tariff Board, consisting of experts drawn from all the member states. It was given powers to administer the SACU CET, to make recommendations to the SACU Council on the level and changes of customs, anti-dumping, countervailing and safeguard duties, rebates, refunds or duty drawbacks based on the directives given to it by the Council (Article 11, 2002 SACU Agreement). Each member state had to establish 'specialised, independent and dedicated National Bodies... which shall... receive requests for tariff changes and other related SACU issues'(Article 14, 2002 SACU Agreement). They would carry out preliminary investigations and recommend tariff changes to the Tariff Board and had to adhere to similar procedures. An ad hoc tribunal would have settled 'any dispute regarding the interpretation or application of this Agreement, or any dispute arising thereunder at the request of the Council' (Article 13, 2002 SACU Agreement). There are also provisions on identical rebates (Article 21, 2002 SACU Agreement), and Common Policies on Industrialisation, Agriculture, Competition and Internal Unfair Trade Practices (Part Eight, 2002 SACU Agreement).

²⁵ Tariff revenue is shared on the basis of the value of intra SACU trade, not the destination of imported goods. South African imports generate about 90% of the tariff revenue.

This promising start failed to materialise. The Tariff Board is still not in place and South Africa is on record that it does not want such a supra-national institution with powers to formulate and implement tariff and trade policies. It wants to retain that space for itself. The BLNS countries have not yet launched their own National Bodies. A South African institution, the International Trade Administration Commission (ITAC), administers the SACU CET, on the basis of Council resolutions which gave it a temporary mandate for doing so. The ad hoc tribunal does not exist; neither does the Common Negotiating Mechanism.²⁶ There are no common policies on industrialisation, competition, agriculture or unfair trade practices. SACU did get a new institution, the Summit. It is responsible for the 'political and strategic direction and priorities of SACU'. Decisions are taken on the basis of consensus.

Where does SACU stand? Have the political aims of the 2002 Agreement been too ambitious? Although SACU has not escaped the hegemonic reality of South African membership and the constraints coming with that fact, the other side of the coin is a long history of close interaction and commercial integration. There are substantial benefits. In many ways, SACU is a demonstration that African regional integration does work. The single customs area functions smoothly insofar that internal customs controls are absent. The national legal, judicial and administrative systems are highly compatible and share the same common law tradition. SACU is in fact a well-functioning space for private commerce, retail, transport and investment. Four of the five member states (Botswana is the exception) are in a common Monetary Area; their currencies are pegged and freely convertible. SACU is also an Excise Union.

The present problems seem to be predominantly of a political nature. They are about challenges to sovereignty and how to implement national development policies. SACU tried to find a new *modus vivendi* with the adoption of the 2002 Agreement but failed to implement that contract. The status quo, despite the important benefits of revenue sharing, imposes considerable constraints on the weaker members.

Part of the explanation for the present state of affairs is that regional integration among uneven partners is always very difficult. SACU member

²⁶ Provided for in Article 31 of the SACU Agreement.

states (including South Africa) also face serious economic challenges at home. Effective responses depend on space for all governments to promote domestic industrialisation and to do so in the context of effective and fair regional strategies.

In June 2017 SACU decided on a new work plan. The aim is to revitalise its internal functioning and to advance regional development. This will be an important space to monitor. There are many reasons why SACU should be strengthened, not weakened. One of them is that the BLNS countries (as well as southern Africa) are a major market for South African goods. South Africa is, at the same time, the main trading partner of the BLNS countries. These are the benefits of regional integration. They should be protected and advanced.

6. What role for regional courts and tribunals?

What role do courts of law play in consolidating the implementation of trade and regional integration agreements? This aspect needs to be studied and monitored because respect for legal obligations contained in international agreements is vital for proper trade governance. This applies to the intra- and the inter-state levels. Good trade governance starts at home. On this score, the African track record is not inspiring.

Compliance with trade-related undertakings brings many advantages: transparency, respect for the rule of law, certainty and predictability in markets. Objective and impartial decisions about the interpretation and application of trade agreements freely entered into by sovereign states is not anathema to the pursuit of national policies. But the picture is mixed. In those RECs with deeper commitments (such as COMESA and the EAC) regional courts are slowly developing and refining their jurisprudence on ‘community law’, as a result of applications filed by private parties.²⁷ In SADC (which has abandoned plans to become a customs union and, by implication, serious efforts to develop SADC community law) the Tribunal established as part of the regional institutional architecture, got abolished after it ruled against

²⁷ Two important judgments by the COMESA Court of Justice need mentioning in this regard. See Erasmus G. 2015. ‘The Polytol judgment of the COMESA Court of Justice: Implications for rules-based regional integration. tralac Trade Brief No. US15TB04/2015 and Erasmus G ‘The COMESA Court of Justice clarifies important Jurisdictional Issues’ tralac discussion 2017 <https://www.tralac.org/discussions/article/12412-the-comesa-court-of-justice-clarifies-important-jurisdictional-issues.html>.

Zimbabwe for expropriating private land without compensation.²⁸ (It must be added that this case did not involve a trade dispute. The judgment invoked general provisions on democracy and the rule of law in the SADC Treaty to the effect that a private party was granted protection of rights typically found in that part of a national constitution which protects human rights. This relief was granted in respect of a SADC member state offering no such protection in the law of the land.)

The new SADC Tribunal will (once in operation) only hear inter-state claims, which are unlikely to be filed. African governments do not litigate against each other over the violation of trade agreements. The best recent example of this is the lack of sanctions against Zimbabwe for its flagrant violation of its obligations under the SADC and COMESA trade protocols.

The ad hoc Tribunal provided for in the 2002 SACU Agreement has never been established. This might be part of the explanation why private parties now sue the governments of SACU member states in their own courts for violations of the SACU agreement and other trade agreements.²⁹ Where does this state of affairs leave African regional integration? Two different dimensions involved in the rules-based implementation of trade agreements (inter-state dispute settlement and the protection of the rights of private parties) should be distinguished. As long as African governments do not consider their regional trade agreements to require the certainty and rigour of legal compliance, and do not employ formal dispute settlement mechanisms, regional integration efforts will lack an important building block. It is true that trade-related disputes can also be resolved through direct consultations. There is no evidence of this happening in the RECs.

The absence of effective remedies for private parties is a more immediate concern. When officials do not have to justify their measures and

²⁸ See discussion of the SADC Tribunal at <https://www.tralac.org/discussions/article/12687-the-sadc-tribunal-saga-continues-before-the-south-african-courts.html>.

²⁹ Examples are two Namibian cases: *Matador Enterprises (Pty) Ltd (A 352/2013)* and *Clover Dairy Namibia (Pty) Ltd (A386/2013) v The Minister of Trade and Industry [2014] NACHMD 156 (16 May 2014)* and *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)*. Both these cases involve quantitative restriction (on dairy and poultry products respectively) imposed by Namibian authorities in order to protect local industries. National industrialisation efforts are at the heart of these developments.

administrative action before courts of law (including domestic courts) the rights of traders, service providers and investors will remain uncertain. Capriciousness and corruption flourish under such conditions. Another consequence is that the expertise (in the executive and judicial branches of government) required for good trade governance will remain weak.

7. What lies ahead and what should be monitored?

This introductory chapter has painted a broad canvass of important thematic and factual developments of relevance for the mandate of the Yearbook. It shows that there is important work to be done and that we should continue to monitor regional integration in southern Africa and on the rest of the continent.

The list of topics discussed above is not exhaustive. A new monitoring agenda should include the first phase of the AfCFTA, which is scheduled to be concluded in March 2018. The texts of the first agreements will require careful reading and analysis while preparing for the debates on services, investment and infrastructural development which will be negotiated during the second phase.

We should not ignore issues such as Brexit, for which 2018 will be a decisive year. It will bring new challenges for the two EPAs (the ESA and SADC EPAs) already concluded with the EU when the United Kingdom was still a member. The African members of these FTAs should ensure that their preferential market access to the UK will not be weakened. This will require thorough preparations and formal discussions. The present indication is that London wants to roll over existing preferences into domestic law. What must the affected African governments do in return? What must they offer and how? What is SACU (which has a CET) expected to do in order to secure the many benefits and preferences granted in the SADC EPA? It cannot negotiate and conclude a trade agreement with the UK because the Brexit process is not yet completed. London cannot negotiate new deals while still formally an EU member. Neither does it want to do so for some years to come, when there will be certainty about its own global and regional relationships.

Those African nations without EPAs should also monitor the Brexit process. The UK was a member of the GATT when it joined the EU in 1973. However, in 1995, it joined the WTO as part of the EU. When it now leaves the EU and

takes up its own seat as a WTO member, there will be work to be done. The UK will have to submit and negotiate its own offers on services and tariff rate quotas. It will, in addition, have to request new waivers in order to grant preferences to developing countries and Least Developed Countries (LDCs). Such waivers will have to be followed by domestic laws and procedures. What happens to African preferences in the interim?

There are indications that the approach developed more than ten years ago for negotiating the EPAs may be running out of steam. What should anchor EU-African trade arrangements? It would be unfortunate if African trade officials consider Everything but Arms and existing GSP mechanisms as sufficient. They are not. African exports could do much better and be advanced more comprehensively. Formal agreements are reciprocal and difficult to negotiate but they bring the benefits of legal certainty and broader coverage. This matter needs to be properly studied.

The same applies to the African Growth and Opportunity Act (AGOA). It has already been indicated that this unilateral preferential offer will not be extended beyond 2025. The United States wants to conclude FTAs with groups of African countries. The sooner we start looking at the implications, the better.

And then there is China, which seems to be going from strength to strength. China is not known for concluding FTAs with African nations. However, it advances its interests on the continent in many other ways. They should be scrutinised in greater detail. The American withdrawal from the Trans Pacific Partnership negotiations has granted Beijing major geopolitical benefits. It will embolden China's initiatives in Africa and elsewhere.

Domestic political developments need to be monitored. Corrupt governments and failed states are not good candidates for sound regional policies and do not comply with international trade obligations. An example is Zimbabwe, where Robert Mugabe has now been ousted after 37 years in office, often under suspicion of stolen elections. The Zimbabwean economy is in ruins. Obligations under COMESA and SADC legal instruments have been violated with impunity. This is a sad chapter in Africa's regional integration narrative. Zimbabwe will hopefully see effective governance and the proper utilisation of its not insignificant potential. The new Zimbabwean government is reported

to recognise the need for urgent remedial action and for measures to restore investors' confidence and their involvement. Respect for the rule of law should be high up on the national agenda.

Kenya has recently gone through turbulent presidential elections, while the Democratic Republic of the Congo (DRC) experiences unrest, humanitarian need and economic decline. Joseph Kabila, now in his 16th year of power, may be forced to hold elections in 2018. In Angola President dos Santos has departed from the presidential palace, after 40 years in control of that potentially rich but dysfunctional state. The African domestic political scene displays many theatres of concern, and of promise.

A final word about domestic political developments should be saved for South Africa, where one has seen the premature end of Jacob Zuma's second term as president. The election of Cyril Ramaphosa at the end of 2017 as leader of the ruling African National Congress was followed by a difficult process to force President Zuma to step down. Cyril Ramaphosa, as President of South Africa, now faces the challenges of restoring clean and effective governance in South Africa; this could make a major contribution to improve regional policies and to provide leadership at a time when it will be increasingly needed.

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Chapter 1

Regional integration and disaggregated agricultural trade

*Moses Herbert Lubinga, Lucius Phaleng
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1. Introduction

Agriculture is the mainstay for a number of countries in south of the Sahara. The sector employs over 75% of the population in sub-Saharan Africa (SSA) with over 17% of value-added to Gross Domestic Product (GDP) (World Bank, 2017). With the current globalisation of value chains, trade in agricultural sector has taken a new landscape, with countries producing more specialised goods over which they exhibit comparative advantage as per the expectations from Ricardian theory of trade of 1817. This change in the agricultural trade landscape requires informed policy decisions that would enhance competitive production and trade in agricultural goods across African countries. In addition, southern Africa has shown renewed energy to deepen its regional integration with a number of initiatives. The Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA), the most prominent regional arrangements aim at facilitating a smooth flow of agricultural goods across border with minimal trade bottlenecks. Of recent, heads of state from ascribing members of COMESA, SADC and the East African Community (EAC) launched trade negotiations which shall include discussions on minimising non-tariff barriers (more importantly, the Rules of Origin (RoO)). This presents an opportunity for countries to overcome trade related bottlenecks, among other challenges like food insecurity and poor infrastructure which are affecting the African continent. Such initiatives are foreseen to strengthen the COMESA-EAC-SADC free trade area (FTA) which is still in its infancy stages.

Minimising trade related challenges would then translate into increased global competitiveness of TFTA member states thereby fostering economic development. However, in this era of global value chains (GVCs), the nature of agricultural trade amongst the TFTA member states is unclear, yet a clear understanding of this puzzle should enable policy makers to design and develop appropriate interventions with potential to spur economic development. Dollar (2016) cited in the 2017 GVC development report posits that African countries are not much integrated in the GVCs due to a number of factors, including governance issues both within the country and the neighbouring states. However, little is known about the required initiatives and the kind of policy interventions upon which GVC participation will deepen amongst African economies. Hence the focus of this study in assessing the nexus between regional integration and agricultural trade, disaggregated by end-use category. Specifically, this paper is aimed at (i) determining the composition of agricultural exports basing end-use category before and after the establishment of regional economic communities (RECs) – COMESA in particular, and (ii) assessing tripartite member countries' depth of integration in agricultural trade.

Some countries may for instance be advantaged in producing agricultural products ready for consumption unlike others that exhibit comparative advantage in producing intermediate or capital goods depending on a number of factors, such as natural resource endowments. Therefore, the variation in the nature of end-use agricultural products a given country trades in most requires designing and developing initiatives and policies that will enable strategic positioning and deeper integration of a given country into the modern GVCs. This work therefore provides an insight into the composition of agricultural trade categorised by end-use category before and after the establishment of the COMESA FTA. Findings thus provide an indication of the kind of initiatives and policies that tripartite member countries should consider so as to benefit more from the regional integration framework. Appropriate economic development initiatives and policies may stimulate increased competitiveness among agricultural industries, say through promoting the use of more efficient and advanced production technologies.

2. A brief overview of EAC, COMESA and SADC

In June 2011, the heads of state of COMESA, EAC and SADC member states launched negotiations that will lead to the establishment of COMESA-EAC-SADC FTA. The COMESA was enacted into a preferential trade area (PTA) for eastern and southern Africa in 1982. It comprises of 19 member states, of which seven also ascribe to the SADC (See Table 1). The COMESA trade liberalisation program started in July 1984. The COMESA was transformed into an FTA in 2000 and imports of certain goods from member states acquired duty free access. The EAC Treaty was enacted on 30 November 1990 and entered into force on 7 July 2000 following its ratification by the original three partner states (i.e. Kenya, Tanzania and Uganda). Prior to its revival in 1990, the EAC had originally been established in 1967 but collapsed in 1977 (Goldstein and Ndung'u, 2001). Burundi and Rwanda acceded to the EAC Treaty on 18 June 2001 and became full members of the community with effect from 1 July 2007.

Table 1: Member state distribution between COMESA, EAC and SADC

Countries	COMESA (19)	EAC (5)	SADC (15)
Angola			*
Botswana			*
DRC	*		*
Lesotho			*
Madagascar	*		*
Malawi	*		*
Mauritius	*		*
Mozambique			*
Namibia			*
Seychelles	*		*
South Africa			*
Swaziland	*		*
Tanzania		*	*
Zimbabwe	*		*
Zambia	*		*
Burundi	*	*	
Kenya	*	*	
Rwanda	*	*	
Uganda	*	*	
Comoros	*		
Djibouti	*		
Egypt	*		
Eritrea	*		
Ethiopia	*		
Libya	*		
Sudan	*		

Source: SADC, COMESA and EAC official websites (2017)

The South Sudan acceded to the Treaty on 15 April 2016 and become a full member on 15 August 2016. The EAC agreement aims at widening and deepening cooperation among the partner states in the political, economic and social spheres. Tanzania is the only SADC member state that is also a member of EAC. In 2010 the EAC launched a common market where member states agreed to open their borders to each other and allow goods and services to move between countries without restrictions. On the other hand, SADC was formed as a loose alliance of nine majority ruled states in southern Africa known as the Southern Africa Development Coordination Conference

(SADCC) with the aim of coordinating development projects to reduce economic dependence. The SADCC was transformed into a development community in August 1992 with the aim of fostering regional integration. The SADC FTA was formally launched in August 2008 with the exception of Angola, the Democratic Republic of Congo (DRC) and Seychelles³⁰, which do not participate in this arrangement.

3. Relevant literature

Literature on the linkage between regional integration, GVCs and international trade has received limited attention thus far. Much of the related literature focuses on how institutions affect participation in the growing GVCs, both at micro and macro-levels (Levchenko, 2007; Koopman et al., 2015; Wang et al., 2014; and Wang et al., 2016). Except for work by Wang et al. (2016; 2017a; 2017b) and Timmer et al. (2016) whose analysis includes the agricultural sector, most of the GVCs literature epicentres on manufacturing and non-Africa countries. In addition, such literature dwells more on value-added with little focus on end-use of the generated goods.

4. Methodology

This study takes into consideration the three RECs, that is, the EAC, COMESA and SADC. Given that member countries of the EAC also ascribe to either COMESA, SADC or both (as shown in Table 1), they were randomly distributed between COMESA and SADC to avoid double counting. Burundi, Kenya and Uganda were considered under COMESA while Tanzania is a member of the SADC. South Sudan only joined the EAC in 2016, hence was not considered in the subsequent analysis. A full list of countries considered in this paper is presented in Annex 1. In our analysis, we take cognisance of countries that exhibit dual membership to COMESA and SADC (e.g. Tanzania, Malawi and Zimbabwe). For such countries average trade performance was analysed both prior and after the enactment of COMESA as a free trade area.

To assess the extent to which the tripartite member countries are integrated in agricultural trade (disaggregated by end-use category), the proportion of imported intermediated agricultural imports in each country's agricultural

³⁰ Seychelles formally acceded to the SADC FTA in May 2015.

exports was used. Although Wang et al. (2017b; 2016) justify the use of factor content or value-added to overcome double counting and missing information limitations associated with the assessment of the extent to which economies participate in GVCs, our analysis directly used end-use categories of agricultural goods. This was due to limited access to value-added trade data for a number of countries within sub-Saharan Africa. In this context, depth of integration refers to the share of imported intermediate goods in a country's/region's exports. It provides a reflection of the extent of integration among countries in COMESA and SADC. In this case, a country's or region's exports entailed all the three types of end-use categories of agricultural goods, that is, intermediate, household consumption and capital goods given that intermediate agricultural imports may be used in the production of the different end-use type of goods.

This measure of the depth of integration was premised on the fact that African countries largely export unprocessed agricultural commodities and also that when some of the importing trade partners receive the unprocessed/intermediate agricultural goods, they add value through agro-processing and then export it again (Wang et al., 2017). Thus, the higher the proportion, the greater the depth of integration with other trading partners in intermediate goods. A low value does not necessarily imply that a country is not well integrated, but it is rather more anchored on trading in other end-use type of agricultural goods.

5. Data source

Data used in the analysis was extracted from the Bilateral Trade Database by Industry and End-Use (BTDixE), compiled by the Organisation for Economic Co-operation and Development (OECD). The BTDixE industry is based on the International Standard Industrial Classification of All Economic Activities (ISIC). In this respect, end-use categories refer to the process of breaking down trade in agricultural goods according to how the goods are made use of by the users. According to the BTDixE documentation³¹, the system of national accounts (SNA) provides for three basic types of domestic end-use categories. That is, intermediate goods, household consumption goods and capital goods which were developed basing on guidelines of the United Nation Statistics Division (UNSD) designed to convert from HS classification to

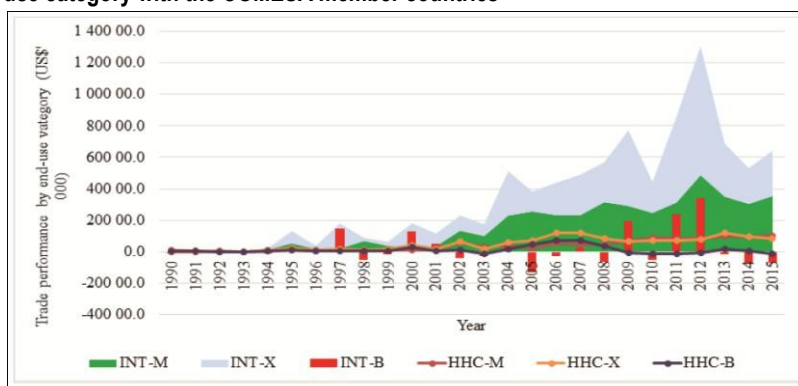
³¹ Available at: http://stats.oecd.org/Index.aspx?DataSetCode=BTDIXE_I4.

Broad End-use Categories (BEC). An intermediate good is defined as an input to the production process that has itself been produced and, unlike capital, is used up in production. As an output, an intermediate good is used to produce other goods (or services) contrary to a final good which is consumed and can be referred to as a ‘consumption good’ (Miroudot et al., 2009).

6. Results

Findings reveal that SADC member countries trade more in intermediate agricultural goods than in household consumption goods (See **Figure 1**). Before the year 2000 when COMESA became a free trade area, SADC was generally a net exporter of both intermediate and household consumption goods to then members of the eastern and southern preferential trade area (DRC, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia, Zimbabwe, Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Rwanda, Sudan and Uganda) which existed at the time. Trade performance was basically low, with intermediate and household consumption agricultural exports (imports) valued at about US\$33.2 million (US\$21.6 million) and US\$9.4 million (US\$6.0 million) respectively.

Figure 1: SADC’s trade performance in agricultural goods disaggregated by end-use category with the COMESA member countries



Source: OECD stat (2017)

Note: INT-M, INT-X, INT-B, HHC-M, HHC-X and HHC-B denote intermediate imports, intermediate exports, trade balance for intermediate goods,

household consumption imports, household consumption exports, trade balance for household consumption goods respectively.

Following the establishment of COMESA as a free trade area in 2000, SADC's trade performance with COMESA gradually flourished, registering significant increase in intermediate agricultural goods from the mid-2000s up to the present (2015 as per the period under review). Table 2 provides the average values of agricultural trade disaggregated by end-use category between SADC and COMESA for the various time frames.

Table 2: SADC's trade performance with COMESA before and after enactment of COMESA as a free trade area

Period	SADC exports (US\$ '000)		SADC imports (US\$ '000)		Trade balance (US\$ '000)	
	INT	HHC	INT	HHC	INT	HHC
Pre-COMESA	33 223.5	9 408.1	21 617.7	5 998.5	1 1605.8	3 409.6
Post COMESA (2000-10)	201 140.4	6 6118.1	190 625.6	43 337.2	10 514.8	22 780.9
Post COMESA (2011-15)	444 314.0	90 082.4	361 411.5	91 997.8	82 902.4	-1 915.4

Source: Authors' computation based on OECD stat (2017)

From the above analysis, it is expected that a similar trend in trade flows would be observed if COMESA's trade performance with SADC is assessed. As earlier alluded, COMESA member countries generally imported more intermediate agricultural goods from SADC member countries between the early 2000s and 2011. This is a clear indication that the two trade blocs are more integrated in trading in intermediate goods, largely being supplied by SADC member states. However, since 2012, COMESA registered a declining trend in imports of intermediated agricultural goods by about 56% per annum. This observation suggests an ongoing transition of COMESA and SADC

countries becoming more integrated in trading more in household consumption goods.

Table 3: COMESA's trade performance with SADC before and after enactment of COMESA as a free trade area

Period	COMESA exports (US\$ '000)		COMESA imports (US\$ '000)		Trade balance (US\$ '000)	
	INT	HHC	INT	HHC	INT	HHC
Pre COMESA	6 292.9	2 730.6	19 252.3	2 261.6	-12 959.3	469.0
Post COMESA (2000–10)	16 337.4	9 904.7	63 768.8	10 669.8	-47 431.4	-795.1
Post COMESA (2011–15)	26 517.8	19 618.2	52 247.3	18 789.5	-25 729.5	828.7

Source: Authors' computation based on OECD stat (2017)

However, there is a mismatch in the values of trade flows between the two trade blocs given that imports by COMESA are expected to be equal to exports by SADC (Table 4), hence the difference (column 3) should be zero. This discrepancy in the true description of trade pattern was also mentioned by Wang et al. (2016; 2017b). The discrepancy may be attributed to three reasons. Firstly, the difference in which a given country may categorise a certain agricultural good. Wang et al. (2017b) reckons that the measurement problem arises from the heterogeneity of customs product codes used to classify goods. For instance, country A in SADC may categorise cassava or wheat as an intermediate good for the agro-processing industry (i.e. cassava and wheat being raw materials in the manufacturing and baking sectors, respectively), yet the same cassava and wheat are categorised as a final household consumption goods by country B in COMESA. Most countries within COMESA (e.g. Uganda, Kenya, Malawi and Rwanda) consider cassava as a staple food rather than an industrial crop as done in South Africa (SADC). Secondly, under-declaration of the value of traded goods, especially at the point of entry in the importing country. This is mainly done by business people in order to avoid paying exorbitant taxes. Under-declaration of goods may arise when customs officials are corrupt at border customs (Miller, 2006; Thede & Gustafson, 2012). Lastly, there is a likelihood of double counting that may arise across borders (Wang et al., 2017b).

Table 4: Imports of COMESA against SADC's exports

Year	COMESA imports from SADC (1)		SADC exports to COMESA (2)		Difference (US\$ '000) (3)	
	Intermediate goods	Household consumption	Intermediate goods	Household consumption	Intermediate goods	Household consumption
	A	B	C	D	(C-A)	(D-B)
1990	-	-	4 362.6	7 470.8	4 362.6	7 470.8
1991	0.9	-	13 006.1	5 186.8	13 005.2	5 186.8
1992	3 512.4	3 430.6	98.3	795.0	-3 414.0	-2 635.6
1993	818.6	118.2	655.4	31.3	-163.2	-86.9
1994	3 215.7	708.4	9 060.1	9 081.4	5 844.4	8 373.0
1995	7 492.5	3 290.1	78 311.5	19 532.5	70 819.0	16 242.4
1996	3 538.2	2 138.6	20 770.1	7 735.9	17 231.9	5 597.4
1997	141 197.5	5 224.4	160 295.3	15 032.2	19 097.8	9 807.8
1998	17 601.0	4 165.1	20 232.6	13 001.3	2 631.6	8 836.2
1999	15 145.9	3 540.5	25 442.9	16 214.0	10 296.9	12 673.5
2000	42 184.4	3 380.4	154 198.8	38 801.9	112 014.4	35 421.5
2001	13 040.0	4 175.6	80 257.9	18 328.7	67 217.9	14 153.1
2002	7 214.6	3 156.1	96 581.7	66 587.5	89 367.2	63 431.4
2003	31 570.7	5 108.9	75 174.0	16 817.9	43 603.4	11708.9
2004	44 733.4	5 837.4	282 872.7	58 485.3	238 139.4	52647.9
2005	21 028.5	5 527.3	126 970.1	71 259.8	105 941.6	65 732.5
2006	20 875.8	8 335.5	206 183.3	120 305.6	185 307.4	11 970.1
2007	27 697.4	18 863.3	257 614.6	118 334.5	229 917.2	99 471.2
2008	104 046.3	20 174.7	253 893.3	81 941.7	149 847.0	61 767.0
2009	324 852.7	18 564.7	481 213.4	64 381.8	156 360.6	45 817.1
2010	64 21.3	24 574.2	197 584.4	72 053.9	133 371.1	47 479.8
2011	153 419.9	10 725.1	547 152.4	71 266.5	393 732.4	60 541.4
2012	23 653.7	16 995.9	820 805.6	76 255.3	797 151.9	59 259.4
2013	40 513.5	32 948.9	337 853.2	120 542.3	297 339.7	87 593.4
2014	23 677.1	11 921.6	227 299.4	96 724.2	203 622.3	84 802.6
2015	19 972.0	21 355.9	288 459.2	85 623.6	268 487.2	64 267.7

Source: Authors' computation based on OECD stat (2017)

Despite the fact that membership to SADC and COMESA fosters inter- and intra-regional trade for member countries, unidirectional trade flows were observed between some countries including Seychelles, Rwanda, Namibia and Lesotho, among others. That is, some countries only export without necessarily importing from some trading partners, and the reverse is also true. Furthermore, data reveals that Seychelles does not trade with Ethiopia. In addition, some countries only traded in one type of end-use agricultural goods. For instance, with the exception of 2002, Seychelles only exported household consumption goods to Madagascar. A deeper analysis into selected countries within SADC and COMESA was also undertaken to ascertain the type of end-use agricultural goods they trade in most and how this has evolved over the years since the enactment of the trade blocs as free trade areas. Three countries were selected randomly per bloc, looking at their export value. That is, Uganda, Kenya and Egypt for COMESA, Seychelles, South Africa and Zambia for SADC. Also, an analysis of countries like Zimbabwe, Tanzania and Malawi that belong to both COMESA and SADC was undertaken.

Findings presented in Table 5 reveal that all selected countries registered an increase in agricultural trade upon enactment of COMESA FTA (See Annex 2 for detailed country tables). As expected, outstanding trade performance was observed among countries (Zimbabwe, Tanzania and Malawi) that ascribe to both COMESA and SADC. Such countries face less resistance in trading with partners within the blocs. The table below shows that SADC member countries trade in end-use agricultural good varies by country. For instance, South Africa's trade is skewed more towards intermediate exports while Seychelles' trade comprised more of household consumption imports while Swaziland's trade shifted from intermediate goods towards household consumables. Therefore, South Africa's integration in trade with COMESA member countries is largely anchored on intermediate agricultural goods, while Seychelles and Swaziland are more integrated in agricultural trade by importing household consumption goods.

Table 5: Annual average trade performance by end-use category of agricultural goods of selected countries before and after enactment of COMESA as a free trade area

	Agricultural trade by end-use category	Prior REC (1990–2000)	After REC 2001–2010)	After REC 2011–2015)
SADC		US\$ '000	US\$ '000	US\$ '000
Seychelles	Intermediate exports	9.7	0.99	15.0
	Household consumption exports	74.2	273.4	69.5
	Intermediate imports	480.2	342.8	446.5
	Household consumption imports	1 119.8	2 193.7	3 219.0
South Africa	Intermediate exports	16 424.1	55 166.6	19 674.0
	Household consumption exports	925.9	6 573.6	8 870.1
	Intermediate imports	3 084.3	4 656.5	8 448.2
	Household consumption imports	2 064.6	7 116.6	16 602.4
Swaziland	Intermediate exports	1 585.9	704.9	0
	Household consumption exports	57.5	16.4	137.1
	Intermediate imports	1 018.1	4 757.3	726.8
	Household consumption imports	33.3	47.4	189.2
COMESA				
Egypt	Intermediate exports	274.2	788.1	774.0
	Household consumption exports	40.1	1 271.7	5 203.5
	Intermediate imports	1 674.9	2 774.5	8 110.2
	Household consumption imports	177.2	928.1	2617.6
Kenya	Intermediate exports	984.6	4 535.3	798.28
	Household consumption exports	1 877.5	6 143.5	4 165.47
	Intermediate imports	16 961.8	54 960.4	2 889.63
	Household consumption imports	947.9	6 956.1	3 851.31
Uganda	Intermediate exports	2 574.1	3 412.8	7 877.7
	Household consumption exports	240.5	354.5	369.0
	Intermediate imports	803.4	2 813.4	3 478.6
	Household consumption imports	45.1	868.2	3 780.4

Dual membership (SADC and COMESA)				
Zimbabwe	Intermediate exports	14 726.7	34 755.3	151 148.3
	Household consumption exports	3 121.4	35 253.9	31 017.2
	Intermediate imports	1 139.7	125 554.8	278 121.5
	Household consumption imports	606.5	19 483.3	41 543.2
Tanzania	Intermediate exports	2 664.4	9 728.5	32 439.6
	Household consumption exports	1 353.9	4 464.6	9 487.6
	Intermediate imports	3 107.3	7 046.7	17 395.1
	Household consumption imports	692.8	3 115.1	2 258.0
Malawi	Intermediate exports	7 169.2	40 508.7	34 484.8
	Household consumption exports	7 249.5	22 826.1	41 894.8
	Intermediate imports	4 345.1	45 495.0	55 962.9
	Household consumption imports	361.6	2 481.4	4 237.6

Source: Authors' computation based on OECD stat (2017)

For COMESA, Egypt's increased average trade in intermediate imports coupled with rising household consumption may be attributable to the value addition activities through which the imported intermediate goods may be processed and then re-exported. This assertion may as well be used to explain Kenya's trade performance in imports of intermediate goods and the relatively balanced exports of household consumption goods. This school of thought is also discussed in a little more detail by Wang et al.(2016) who argue that value-added to intermediate goods that are imported by any given country are used to produce either intermediate or final goods and services which may then be exported back to the source country through third parties as consumable goods. Uganda's trade is largely skewed towards intermediate agricultural goods more than any of the other end-use categories. For Zimbabwe and Tanzania, trade is more into intermediate agricultural exports while Malawi exhibits both a high level of intermediate imports and household consumption goods, probably due to some value addition and re-exporting of the goods.

With regards to the depth of integration, findings in Table 6 reveal that agricultural exports of COMESA member countries were largely (181% on average) attributed to intermediate agricultural imports from SADC countries

while exports of SADC countries contained about 73% of intermediate agricultural imports. This implies that the depth of integration by COMESA member countries with SADC countries lies more in intermediate agricultural exports.

Table 6: Depth of integration among COMESA and SADC member countries

Year	COMESA	SADC
1990	0%	49.8%
1991	0.2%	5.5%
1992	60.3%	53.1%
1993	73.9%	131.7%
1994	124.0%	72.6%
1995	192.0%	53.3%
1996	37.6%	60.5%
1997	794.8%	11.3%
1998	99.6%	203.7%
1999	48.2%	89.9 %
2000	217.6%	14.0%
2001	88.1%	35.5%
2002	56.6%	81.6%
2003	149.7%	108.0%
2004	164.8%	67.2 %
2005	109.1%	129.0 %
2006	85.2%	71.1%
2007	84.3%	61.8%
2008	240.3%	93.8%
2009	928.4%	53.2%
2010	166.2%	91.4%
2011	783.8%	50.6%
2012	42.6%	54.2%
2013	55.6%	76.4%
2014	53.1%	93.7%
2015	52.4%	94.7%

Source: Authors' computation based on OECD stat (2017)

With regards to the effect of the enactment of the COMESA free trade area, Table 7 shows that the level of integration increased, with COMESA countries' level of integration almost rising by two folds. Following the

enactment of COMESA as an FTA, the depth of integration of COMESA countries increased by 38.3% while SADC countries rose by about half the rate of COMESA (16.9%).

Table 7: Depth of integration pre- and post-COMESA FTA enactment

	Pre-COMESA (%)	Post-COMESA (2000–10) (%)	Post-COMESA (2010–15) (%)	Growth rate (Post-Pre-COMESA) (%)
SADC	67.8	79.3	73.9	16.9%
COMESA	149.8	207.3	197.5	38.3%

Source: Authors' computation based on OECD stat (2017)

A summary of the depth of integration by selected countries is also presented in Table 8. Overall, trade flows of selected countries largely comprise of intermediate agricultural goods. After the enactment of COMESA FTA, the proportion of intermediate goods in South Africa's total agricultural exports closely identifies with the average for the SADC region while for the other countries, the share is higher. With the exception of Seychelles, Tanzania and Egypt, which on average registered a decline in level of integration during the first ten years after the enactment of COMESA as a free trade area, all other countries reveal an increase in trade integration. Seychelles' case may partially be explained by the fact that she relies more on the tourism sector, which Dollar and Kidder (2017) argue that such economies tend to depend more on high value-added goods. Before the enactment of SADC in 1992, Seychelles' trade performance with COMESA member countries was low. However, following the enactment, Seychelles became more integrated in importing intermediate agricultural goods but after 2008, when SADC became an FTA, her trade became more skewed towards high valued household consumption goods from SADC.

Worthwhile to note, Seychelles' level of trade integration with COMESA member countries drastically increased by over 25 folds between 2011 and 2015, a clear indication that establishment of the FTA enhanced the country's

agricultural trade. The declining trend in Egypt's depth of integration in trading of intermediate agricultural goods may probably be explained by the country's adding value (through agro-processing) to the intermediate imports, which are then exported as household consumption goods. Tanzania is a special case given that she ascribes to both COMESA and SADC.

Table 8: Depth of integration pre- and post-COMESA FTA enactment

	Pre-COMESA (%)	Post-COMESA (2000–10) (%)	Post-COMESA (2010–15) (%)	Growth rate (Post-Pre-COMESA) (%)
Seychelles	775.6	140.1	3 859.8	-81.9
South Africa	67.8	79.3	73.9	17.0
Swaziland	175.4	5 708.4	1 541.4	154.5
Egypt	435.0	287.3	134.6	-34.0
Kenya	230.8	465.0	11.6	01.5
Uganda	74.7	88.2	48.8	18.1
Tanzania	70.9	66.2	86.0	-6.6
Zimbabwe	1.5	184.9	164.0	12 226.7
Malawi	41.9	98.2	83.9	134.4

Source: Author's computation based on OECD stat (2017)

The high depth of integration in trading intermediate agricultural goods may be explained by Dollar and Kidder (2017) who note that African countries are generally less involved in global value chains due to a number of factors. For instance, the scholars note that countries like Swaziland and Seychelles are resource constrained with small populations, implying that they may not necessarily have enough resources to transform intermediate agricultural goods into goods of higher value. Broadly, Dollar and Kidder (2017) clearly identify infrastructure (e.g. unreliable power supply) and poor governance among African economies as the major limitations hindering the deepening of integration in the GVCs.

7. Conclusion and policy recommendations

This paper focused on assessing the evolution of agricultural trade, disaggregated by end-use category among SADC and COMESA member states. In addition, the extent to which countries are integrated in agricultural trade both prior and post enactment of COMESA as a free trade area was

undertaken. Agricultural trade between SADC and COMESA member countries is largely skewed towards intermediate agricultural goods. With the exception of Egypt, which registered both high imports of intermediate goods which are transformed into household consumption goods that are exported, other countries largely export intermediate agricultural goods. There are discrepancies in data, i.e. exports recorded by country A are not a true mirror image of what is registered by the importing country (B). With regards to the depth of integration in trade (measured as the proportion of intermediate imports of a country's total agricultural exports), member countries of the two economic blocs registered a drastic increase in the level of integration except for South Africa, Seychelles, Egypt and Tanzania. South Africa and Egypt's depth of integration generally declined after the enactment of the COMESA FTA due to the relatively more value addition initiatives in the agricultural sector in these countries. Tanzania's case is exceptional given that she ascribes to both SADC and COMESA.

The following recommendations are drawn from the research findings. (i) To address the discrepancies in the data, there is need to harmonise the categorisation of external trade by end-use goods across the RECs (COMESA, EAC & SADC). Harmonisation may entail establishment of minimum standards and/or mutual recognition of products and quality standards of member countries such that if a good is declared to be intermediate at the point of exit in country A, it should also be recognised as an intermediate good at the point of entry into the importing country. (ii) Rather than trading in intermediate agricultural goods, EAC, SADC and COMESA member countries should further enhance value addition so that intra- and inter-regional trade becomes more rewarding in monetary terms. Furthermore, value addition through agro-processing also leads to more job creation along commodity value chains, thereby creating room for reducing the unemployment burden across countries. Therefore, SADC and COMESA member countries should further streamline and foster industrial and trade policies that are bound to increase productivity gains creating employment along agricultural value chains. This will directly and/or indirectly create opportunities for firms to upgrade to specialised activities, thereby making countries more integrated into the GVCs.

8. Limitations

The values of the depth of integration should be interpreted with caution given that the analysis does not truly ascertain how much of the imported intermediate goods are used for producing the various end-use agricultural goods for export purposes by a given country. For example, there is a possibility of all or a larger proportion of intermediate imports being used to produce goods that are only used within the country, irrespective of the end-use category.

It is a challenge to tell if the estimated values for the depth of integration are either over or underestimated. In addition, it is also difficult to associate the generally large values of the estimates on either the large numerator or small denominator given that the values can range from zero to infinity.

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ANNEX 1. Countries considered in the analysis

Burundi, DR Congo, Egypt, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, South Africa, Seychelles, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

Note: The following countries were not in the database of the OECD. Angola, Comoros, Djibouti and Eritrea.

ANNEX 2: Agricultural trade by end-use categories for selected countries

Key for all tables

INT-X = Intermediate exports

INT-M = Intermediate imports

HHC-X = Household consumption exports

HHC-M = Household imports

a) Seychelles and South Africa in US\$ ('000)

Year	Seychelles				South Africa			
	Total exports		Total imports		Total exports		Total imports	
	INT-X	HHC-X	INT-M	HHC-M	INT-X	HHC-X	INT-M	HHC-M
1990	0.0	0.00	0.00	0.00	0	0	90.56	37.70
1991	0.0	0.00	0.00	0.00	0.9	0	51.08	393.25
1992	0.0	0.00	0.00	0.00	98.3	795.0	474.48	4863.90
1993	0.0	0.00	0.00	0.00	63.5	4.0	812.73	118.49
1994	34.9	138.74	932.64	1 600.85	1 121.3	37.9	399.78	520.34
1995	70.19	104.88	457.55	2 123.41	3 157.9	47.6	1 679.87	569.41
1996	0.00	29.83	1 711.12	1 572.49	1107.7	247.1	911.43	413.23
1997	1.19	117.11	175.02	2 663.04	12 2759.2	2 121.5	4 623.61	5 919.21
1998	0.00	78.29	769.21	2 509.29	9151.7	2 640.4	6 787.29	3 860.63
1999	0.00	126.15	901.26	1 849.06	9 110.0	2 653.1	13 713.94	3 097.46
2000	0.30	221.43	335.84	0.00	33 594.9	1 637.9	4 382.27	2 916.58
2001	0.02	150.16	418.79	2 103.47	9 908.2	1 925.0	3 964.13	1 290.41
2002	0.91	153.59	131.89	3 139.26	2 324.5	1 563.3	5 762.58	2 051.09
2003	0.02	234.86	600.10	3 970.99	14 466.9	2 668.4	7 222.57	4 594.37
2004	0.13	211.42	101.39	2 640.58	33 766.9	4 323.6	6 568.12	2 803.19
2005	0.74	312.57	142.56	1 180.57	9 534.1	3 726.0	3 639.49	6 104.29
2006	0.08	461.58	168.75	1 403.87	14 589.0	6 874.4	2 405.07	7 799.89
2007	0.02	535.23	85.67	2 137.41	10 482.9	8 542.0	2 371.89	9 069.52
2008	0.00	25 651	1 333.22	209 976	86 534.8	10 566.6	3 486.63	11 175.90
2009	0.00	0.00	0.00	0.00	313 646.9	11 749.3	4 152.16	11 035.87
2010	8.07	418.38	445.32	3 261.31	56 412.0	13 797.4	6 992.72	15 241.92
2011	31.62	218.32	541.78	4 029.28	31 632.6	6 180.7	7 013.70	9 020.36
2012	30.08	97.16	689.16	3 382.24	15 958.7	5 358.9	7 712.59	12 373.89
2013	1.11	25.68	133.98	2 616.91	20 523.4	16 679.5	6 388.31	29 886.14
2014	3.68	0.00	599.11	2 967.41	15 314.5	6 275.0	9 557.94	18 102.52
2015	8.75	6.51	268.55	3 099.27	14 940.9	9 856.7	11 568.40	13 628.99

b) Swaziland and Egypt in US\$ ('000)

Year	Swaziland				Egypt			
	Total exports		Total imports		Total exports		Total imports	
	INT-X	HHC-X	INT-M	HHC-M	INT-X	HHC-X	INT-M	HHC-M
1990	0.00	0.00	1.58	0.66	0.00	0.00	0.00	0.00
1991	0.05	0.00	0.89	6.87	0.00	0.00	0.00	0.00
1992	6.54	45.99	8.34	85.43	0.00	0.00	0.00	0.00
1993	31.42	0.09	5.55	2.07	0.00	0.00	0.00	0.00
1994	187.19	2.15	7.37	9.09	198.62	5.25	2 298.57	44.66
1995	522.73	3.74	29.38	9.59	436.15	20.34	4 029.69	274.60
1996	407.90	39.99	16.68	6.89	736.90	29.62	1 494.43	344.85
1997	10 822.90	164.38	88.97	117.69	13.77	128.61	1 600.77	268.57
1998	4 445.23	215.98	190.49	67.73	271.60	48.00	1 649.19	457.94
1999	1 021.31	159.85	182.24	60.68	668.81	96.85	3 922.67	284.58
2000	0.00	0.00	10 667.59	0.00	690.05	112.07	3 428.54	274.49
2001	9.09	0.62	1 466.49	47.79	1 735.59	105.15	658.90	1 887.68
2002	0.00	25.55	1 087.89	23.01	1 733.10	100.41	1 120.55	1 014.61
2003	4 696.27	0.00	648.23	2.34	1 123.11	148.47	5 952.21	1 463.24
2004	20.29	39.50	903.89	9.36	916.62	324.08	2 062.64	1 198.02
2005	4.58	14.34	2 358.84	55.81	101.86	418.71	2 966.56	140.69
2006	0.00	0.00	4 329.91	53.62	145.53	420.79	5 069.63	330.31
2007	137.82	0.00	7 791.25	62.08	106.65	1 056.68	7 046.31	221.35
2008	2 000.57	4.96	15 714.51	164.31	1 328.00	2 385.41	1 185.90	1 107.45
2009	161.11	78.95	10 689.86	6.21	384.06	3 380.97	512.81	1 097.97
2010	20.12	0.00	2 582.21	49.61	305.97	4 376.77	1 169.83	819.70
2011	0.00	31.83	1 649.84	0.71	968.67	4 856.11	6 201.30	2 257.11
2012	0.00	110.64	1 186.03	0.00	600.79	5 322.82	12 172.79	3 232.60
2013	0.00	413.80	3.77	183.88	722.36	6 446.20	9 856.09	2 945.07
2014	0.00	50.95	635.97	488.09	812.65	5 130.96	6 957.94	1 771.88
2015	0.00	78.38	158.29	273.14	765.40	4 261.60	5 362.84	2 881.27

c) Kenya and Uganda in US\$ ('000)

Year	Kenya				Uganda			
	Total exports		Total imports		Total exports		Total imports	
	INT-X	HHC-X	INT-M	HHC-M	INT-X	HHC-X	INT-M	HHC-M
1990	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1991	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1992	497.55	3 580.73	3 505.22	2 041.07	0.00	0.00	0.00	0.00
1993	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1994	0.00	0.00	0.00	0.00	176.28	51.66	268.22	3.69
1995	0.00	0.00	0.00	0.00	328.72	70.27	2 092.86	252.92
1996	0.00	0.00	0.00	0.00	3 329.06	512.57	923.34	9.93
1997	3 127.41	6 043.56	130 993.02	2 377.13	3 121.94	22.80	3 912.06	54.93
1998	2 292.10	4 658.42	8 314.72	2 281.26	7 341.90	936.06	872.97	33.49
1999	3 225.81	3 594.96	9 256.28	1 904.90	11 525.02	940.98	306.89	20.82
2000	1 687.22	2 774.50	34 510.84	1 822.20	2 492.51	111.65	460.78	120.43
2001	920.98	1 717.15	9 450.70	1 874.11	1 520.80	7.65	548.28	183.87
2002	2 540.34	830.80	1 166.15	1 803.46	4 318.71	465.81	2 873.76	179.11
2003	3 284.40	4 137.48	11 640.38	2 355.77	5 339.30	19.02	2 839.63	278.32
2004	3 071.19	3 084.41	38 703.69	3 388.84	7 097.16	196.41	2 817.93	352.74
2005	3 558.39	6 667.23	9 651.38	3 128.19	2 869.87	710.67	4 457.44	446.73
2006	6 499.08	6 012.86	13 166.70	5 222.04	2 049.97	265.31	1 448.60	476.30
2007	10 780.56	7 333.96	12 693.34	13 281.24	1 405.07	52.17	2 909.26	791.50
2008	5 841.09	8 701.43	90 721.11	12 807.28	2 697.14	221.65	3 134.10	1 121.13
2009	4 080.63	9 467.00	312 823.77	9 821.54	2 406.43	107.82	3 497.14	2 794.47
2010	4 776.37	13 482.58	49 587.17	15 878.86	4 423.88	1 498.62	3 607.60	2 058.11
2011	0.00	0.00	45.83	0.00	5 004.45	439.97	4 924.08	2 653.73
2012	0.00	0.00	0.00	0.00	5 667.69	396.52	3 235.53	3 345.22
2013	3 991.39	20 827.33	14 402.30	19 256.53	4 868.52	513.50	2 368.15	3 686.85
2014	0.00	0.00	0.00	0.00	8 209.13	374.20	2 359.67	3 490.70
2015	0.00	0.00	0.00	0.00	15 638.48	120.92	4 505.45	5 725.29

d) Zimbabwe and Tanzania in US\$ ('000)

Year	Tanzania				Zimbabwe			
	Total exports		Total imports		Total exports		Total imports	
	INT-X	HHC-X	INT-M	HHC-M	INT-X	HHC-X	INT-M	HHC-M
1990	0.00	0.00	0.00	1.21	0.00	0.00	0.00	0.00
1991	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1992	3 407.47	2 589.60	125.18	117.10	0.00	0.00	0.00	0.00
1993	223.66	114.05	160.89	8.63	0.00	0.00	0.00	0.00
1994	1 893.66	668.36	1 555.03	99.41	0.00	0.00	0.00	0.00
1995	3 776.07	3 238.58	1 126.15	482.20	66 770.14	10 349.71	12 536.85	6 671.79
1996	2 008.31	1 748.35	6 324.84	1 738.04	0.00	0.00	0.00	0.00
1997	3 634.05	2 911.44	6 270.73	532.93	0.00	0.00	0.00	0.00
1998	3 891.67	1 276.04	4 915.64	1 789.91	0.00	0.00	0.00	0.00
1999	3 715.93	702.66	12 240.54	1 968.07	0.00	0.00	0.00	0.00
2000	6 757.00	1 644.16	1 461.80	882.98	95 223.38	23 985.43	0.00	0.00
2001	3 122.55	276.55	5 385.35	2 872.69	46 684.79	4 572.94	2 723.97	2 674.65
2002	4 885.27	251.33	3 163.29	652.17	57 296.06	5 1376.01	15 026.52	29 764.82
2003	12 380.37	2 219.85	6 047.05	1 532.62	0.00	0.00	0.00	0.00
2004	9 845.87	1 394.31	15 936.93	1 203.74	45 943.46	18 315.19	149 412.55	13 420.33
2005	11 478.93	1 786.92	3 771.60	3 206.03	1 241.00	39 823.84	122 813.40	4 474.81
2006	6 272.42	1 461.11	8 184.32	1 439.08	29 979.75	86 735.97	141 075.78	15 901.09
2007	17 047.76	10 321.30	10 861.01	2 517.63	40 199.98	84 685.15	200 467.47	11 725.80
2008	14 482.42	9 602.87	8 025.45	4 779.75	25 081.51	50 812.31	209 901.78	20 503.89
2009	10 525.23	6 696.97	3 985.16	4 971.67	48 648.92	7 315.11	211 495.99	45 255.86
2010	7 244.09	10 635.12	5 107.20	7 975.68	36 477.18	8 902.18	202 630.95	51 111.64
2011	121 138.71	4 512.06	972.09	603.87	193 516.66	18 921.23	255 989.69	47 863.90
2012	7 695.06	11 525.36	33 930.77	568.64	270 724.10	28 357.38	444 592.03	42 608.00
2013	19 970.64	14 886.17	25 592.06	8 255.05	136 492.53	34 267.79	218 989.84	39 852.77
2014	8 362.55	5 261.51	14 095.85	1 670.25	90 810.64	36 236.53	210 180.49	37 421.99
2015	5 031.13	11 253.08	12 384.51	192.21	64 197.58	37 302.82	260 855.49	39 969.35

e) Malawi in US\$ ('000)

	Malawi			
Year	Total exports		Total imports	
	INT-X	HHC-X	INT-M	HHC-M
1990	4 362.57	7 470.73	5 807.61	387.60
1991	13 005.26	5 186.74	947.03	515.11
1992	0.01	0.01	0.01	0.01
1993	0.03	0.01	0.05	0.03
1994	7 785.26	8 890.07	11 724.19	1 294.64
1995	6 525.48	8 926.90	15 754.09	249.98
1996	6 538.37	6 931.49	0.01	0.01
1997	19 208.83	10 723.25	0.01	0.01
1998	6 090.04	9 484.96	0.01	0.01
1999	3 830.68	10 357.90	7 322.59	974.78
2000	11 514.72	11 771.88	6 240.36	554.95
2001	11 139.53	10 212.93	14 010.07	550.96
2002	10 874.21	9 707.81	67 121.27	1 184.16
2003	32 646.55	11 124.97	41 447.45	1 955.64
2004	20 227.57	18 672.12	46 482.87	4 184.55
2005	35 732.74	26 115.83	91 713.69	1 906.45
2006	85 997.41	23 537.67	44 047.41	3 390.54
2007	80 166.39	22 719.13	21 121.76	1 947.73
2008	55 276.89	18 746.07	64 916.77	2 616.75
2009	47 677.74	42 852.43	39 266.15	3 856.97
2010	25 348.36	44 572.03	24 823.03	3 220.62
2011	89 102.86	42 046.44	30 664.86	3 215.62
2012	23 269.20	38 670.23	20 162.91	3 081.89
2013	21 616.99	45 919.37	108 007.93	4 088.15
2014	24 665.81	49 267.19	68 500.33	5 555.83
2015	13 769.19	33 570.74	52 478.94	5 246.62

Chapter 2

Regional Economic Communities and the African Union in the pursuit of industrialisation: Interface testing and the creation of synergies in the case of SADC

Gabila Nubong

1. Introduction

The African Union (AU) recognises eight Regional Economic Communities (RECs), including the Southern African Development Community (SADC) as important pieces that will complete the puzzle of the creation of an African Economic Community (AEC)³². According to Article 88 of the Abuja Treaty (1991), the AEC will be established mainly through the coordination, harmonisation and progressive integration of the activities of the RECs. The fulfilment of this provision requires that there be some synergy and interface between the activities of the AU and that of the RECS like SADC. This chapter examines the interface between the AU and SADC's programs and policy frameworks in the area of industrialisation. For this purpose, it examines the Accelerated Industrial Development of Africa (AIDA) program of the AU alongside SADC's Industrial Development Policy Framework (SIDPF), and the Action Plan for SADC Industrialisation Strategy and Roadmap. The objective of this comparison is to ascertain whether in a practical area like industrialisation, there are synergies in the interface between continental level policies and programs and those at regional levels. Synergies

³² The other RECs recognised by the AU are: the Arab Maghreb Union (AMU), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), and the Intergovernmental Authority on Development (IGAD).

would exist where there is evidence of coordination and harmonisation between the AU and regional policies. This would further create a perfect building block scenario where these two can be routed into policy priorities and implementation plans of the AU and RECs' member states.

An examination of the AU's AIDA and SADC's policy documents on industrialisation shows similarities in the proposed interventions but no evidence of policy coordination in actual implementation. There is no evidence that SADC is implementing its industrialisation program in a manner that intentionally seeks to serve as a building block of the AU's AIDA. Even though the notion of harmonisation and policy coordination only faintly suggests that implementation ought to proceed in a manner that regional efforts serve as some sought of foundational block to continental efforts, it is not clear whether such should even be expected in an area as versatile as industrialisation policy and programs. This is particularly true because industrialisation by nature ought to follow the comparative advantage and endowments (available resource, knowledge, technology, skills and potential markets plus political commitment) of every member state and cannot really be driven effectively at the supra-national level less than the continental level. This understanding poses the question around the relevance of continental level initiatives like the AU's AIDA and brings imperative focus on what ought to be the role and mandate of regional and continental level institutions in the pursuit of a developmental agenda like the industrialisation of the continent.

Though there are known challenges to regional cooperation and integration on the continent, it is worth applauding the constant efforts being made towards promoting collaboration between the RECs and the AU. This has, however, not registered the kind of progress that may be desired and it is therefore crucial that more work be done in streamlining and synchronising the functioning of the RECs and AU. Synergies ought to be created through more harmonisation and policy coordination in all areas and this would be particularly important in the domain of industrialisation, because industrialisation remains a key piece of the AU's and SADC's pursuit of developmental regionalism.

Harmonisation and policy coordination in industrialisation may practically require that sub-regional industrialisation plans be implemented as part of a

well-coordinated continental plan. In an extreme scenario, there may be a case for the competency for the formulation of industrial policy to be transferred from the member states to the RECs or even directly to the AU, with the AU delegating an express portion of the implementation responsibilities of such a mandate down to the RECs. This has, however, not been the reality of Africa's integration as very little transfer of sovereignty occurs towards regional and continental institutions. On the other hand, the fact that the AU and RECs are pursuing a model of developmental regionalism, which has not been the case in other places (the European Union for example), means that they need to think more innovatively about their approach and roll out of industrialisation policy. At the moment, the AU has adopted the approach of prioritising industrialisation and charting a vision for the industrialisation of the continent while assigning certain roles and responsibilities for its accomplishment to the RECS. RECs, as the case of SADC, have created regional industrialisation master plans that are more in tune with the realities of their member states and seem to be caught in between the discharge of this member state related plans and the implementation duties assigned to them from the AU. Whether or not all this is translating to an advancement of the industrialisation agenda remains to be tested but the very preliminary examination of these interfaces suggests that there is still room for improvement.

This chapter therefore barely attempts to paint a picture of the synergies that currently exist between the continental and regional level commitments and programs of industrialisation. It begins in section 1.2 by situating industrialisation within the developmental regionalism agenda, which is the approach to development via regional integration that has been preferred by the AU and its RECS. It then proceeds in section 1.3 to comparatively examine the AU's AIDA program alongside SADC's Industrial Development Policy Framework, industrialisation strategy and road map. Section 1.4 highlights some related challenges in Africa's regionalism that need to be addressed in order to create synergies between the AU and its RECs like SADC and section 1.5 concludes the paper.

2. Industrialisation within the developmental regionalism agenda

The Abuja Treaty was a critical integration milestone of the Organisation of African Union (OAU) which was ratified by its member states in 1991 with the following objectives:

- i) To promote economic, social and cultural development and the integration of African economies in order to increase economic self-reliance and promote an endogenous and self-sustained development.
- ii) To establish, on a continental scale, a framework for the development, mobilisation and utilisation of the human and material resources of Africa in order to achieve a self-reliant development.
- iii) To promote cooperation in all fields of human endeavour in order to raise the standard of living of African peoples, and maintain and enhance economic stability, foster close and peaceful relations among member states and contribute to the progress, development and the economic integration of the continent.
- iv) To coordinate and harmonise policies among existing and future economic communities in order to foster the gradual establishment of the AEC.

This treaty that constituted one of the founding documents of the AU was one of the earliest signals of the AU's intention to approach the development of its member states as a collective venture. There has therefore always been an intent to pursue regional integration as a means of attaining other development related objectives. Nkrumah and the founding fathers of African unity firmly believed that a united Africa stood a better chance at influencing the course of its development and the nature of its engagement with the rest of the world. They argued that if Africa's multiple resources were used for its own development, the continent would be among the most modernised in the world (Nkrumah, 1965:2). The means by which Africa's resources would be used for its own development, given its unique colonial past, was therefore to come from unity, self-reliance and collective action. Promoting collective self-reliance provided the initial rationale for regional economic integration in Africa. From a developmental perspective therefore, regional cooperation and integration has always been seen as an important step towards industrialisation, the development of internal continental trade, and a reduction of her dependence and vulnerability to fluctuating overseas markets. It is also a means of mobilising and maximising Africa's scarce resources of capital and skills and forging the way to unity both politically and economically (Asante, 1997). This conceptualisation of regionalism to pursue development objectives is the underlying philosophy of Africa's continental integration drive. This philosophy has underpinned the cooperation efforts of RECs like SADC and has influenced the creation of a large number of continental and regional

developmental policy documents like the AU's AIDA and SADC's own Industrial Development Policy Framework, its industrialisation strategy, Road Map and Action Plan for implementation. This is evidence of the fact that the notion of developmental regionalism is embraced both at the level of the RECS and at the level of the continent. This notion of pursuing regional integration and development goals is one that is very unique to Africa's regionalism and poses tones of challenges. There has been little argument over the notion that collective self-reliance would be beneficial for Africa's upliftment. There is, however, not much clarity on how this is supposed to play out in the interfaces between continental led initiatives and regional led initiatives. This can be further complicated for an aspect like industrialisation which is typically within the competency of member states.

In the example of the European Union (EU), industry falls within the domains where the EU Commission only has the competence to support, coordinate or supplement actions of the member states. The implication of this being that the EU may not adopt legally binding acts in this area that would imply the harmonisation of national laws or regulations³³. This leaves the responsibilities to the member states to articulate and plan industrial policy with the EU playing only a supportive and coordination function of aligning their objectives for industry with the other already identified integration objectives. If Africa were to draw inspiration from the EU's experience, it would therefore be ideal for both SADC and the AU to adopt a similar posture with respect to the prioritisation of industrialisation except for the fact that their emphasis on developmental regionalism may suggest a different and greater involvement.

According to United Nations Conference on Trade and Development (UNCTAD) (2013), there are four key 'policy tools and drivers' for fostering developmental regionalism in Africa. The first driver of developmental regionalism is industrial policy, which, as the report notes, is already being incorporated into regional integration initiatives in Africa through, for example, the regional industrial development policy of the EAC and the industrial development pillar of the Tripartite Free Trade Agreement being negotiated by the EAC, COMESA and SADC. The second potential driver of developmental regionalism in Africa is the use of development corridors. In

³³ Also see <http://ec.europa.eu/citizens-initiative/public/competences/faq#q3>.

theory, these spatial development initiatives encourage intra-regional trade through linking markets. They also improve the productivity of local industries and economies by expanding and improving trade-related infrastructure. The third key policy tool of developmental regionalism is the establishment of special economic zones (SEZs), which can serve both as platforms for supplying regional markets and as locations from which to source regional inputs and the fourth and final driver is the promotion of regional value chains. African countries are encouraged therefore to promote the development of regional value chains by investing in infrastructure and business support services as well as in broader policy areas such as education, innovation and technology. Regional value chains provide local firms with access to foreign markets and inputs, thereby freeing them from the constraints of small domestic markets and providing them with opportunities to benefit from economies of scale and 'learning-by-doing'. In pursuing these four avenues as a collective, it is expected that developmental regionalism would facilitate industrial restructuring and economic transformation through the implementation of 'strategic' trade policies that are consistent with the domestic industrial policy frameworks of the states involved. This would be the case if gradual and sequenced trade liberalisation is combined with complementary policy actions, such as coordinated investments into regional transport infrastructure, in order to improve linkages between the states involved and enhance the productive capacities of the region. There is evidence that regional economic communities like SADC are embracing these perspectives and putting in place initiatives to foster developmental regionalism through the four avenues identified above. There seems to be a traditional focus on gradual and sequenced trade liberalisation alongside conscious and planned policy actions aimed at building the productive capacities of member countries and promoting industrial restructuring. As such for SADC's practice of developmental regionalism to be effective, especially in the area of industrialisation, it needs to extend its agenda beyond tariffs and non-tariff measures, import and export quotas and bans, technical and phytosanitary standards, to include issues such as competition policy, the provision of infrastructure and other public goods, investment, promotion of research and development, and building the domestic productive capacities of both the private sector and state-owned enterprises within its member states. Its emphasis on developmental regionalism in industrialisation ought to focus on facilitating industrial restructuring and economic transformation through the implementation of 'strategic' trade policies that are consistent with the

domestic industrial policy frameworks of its member states. This would entail focusing on complementary policy actions such as coordinated investments into regional transport infrastructure, in order to improve linkages between its member states and so enhance the productive capacities of the region. In addition, SADC needs to put more emphasis on the coordination and the promotion of policy harmonisation among its member states while focusing on the strengthening of the structures, institutions and capabilities of national governments to implement such policies (UNCTAD, 2013:97). This ought to not only be the emphasis of SADC but that of the AU's industrialisation efforts. Since industrialisation cannot be pursued and driven in isolation by regional and continental organisations, it is important that the roles and responsibilities of regional organisations with respect to the industrialisation agenda be carefully delineated from those of the member states. Member states should not aspire or take up roles that could best be played by regional organisations and vice versa. Whereas such propositions seem intuitive, it is not too clear at the moment whether the roles adopted by SADC and the AU are currently the most appropriate for the pursuit of industrialisation as part of their developmental regionalism agenda. It is also not clear whether there are synergies in their respective efforts towards the promotion of industrialisation on the continent. To better understand these two aspects and ascertain the existence of synergies, it is important to comparatively examine their stated industrialisation objectives as articulated in their respective policy documents, as shall be the focus on in the next section.

3. Synergies in industrialisation policies between SADC and the AU

Africa's expectations about the contributions from industrialisation for its upliftment are huge. As the AIDA implementation plan argues, it is industry, together with its related activities that drives the expansion of economies, spearheads economic growth, provides a nurturing space for entrepreneurship, creates technological dynamism, fosters productivity, generates employment and contributes to agricultural productivity and output as well as value addition to existing agricultural resources (AU, 2008:15). From the dawn of independence, African countries have consistently demonstrated a firm belief in the importance of industrialisation. This gained momentum in the wake of the independence of the 1960s with the initial practice of import substitution industrialisation, which gave way to the dominance of outward looking export

promoting developmental models. There however seems to be a return to a popularisation of the discourse on industrialisation though tempered against a host of supply-side constraints that continue to remain the reality of many African countries. Some of these constraints include the lack of the required industrial capacities and capabilities, inadequate entrepreneurship and institutional support, energy and infrastructure bottlenecks and related demand constraints due to the unharnessed purchasing power of the rising African middle class and failure to take advantage of the buying power of the next to one billion people on the continent. The identification of these constraints has motivated the calls to generate skills, stimulate productivity, promote investment, provide infrastructure and transport facilities, upgrade enterprise operations, transfer technology, reduce costs of doing business and introduce appropriate standards to enable African products to compete internationally (AU, 2008:16). These calls and renewed emphasis on industrialisation are being coordinated and driven at both the sub-regional level and at the continental level even though it is less clear whether the planning at the level of the RECs is what is feeding into the planning at the continental level or whether the industrialisation processes and emphasis at AU and RECs levels are just two (perhaps opposing or even contradictory) processes running concurrently.

At the continental level, there is the AIDA that is the main policy framework for the industrialisation of the continent. AIDA was adopted at the 10th Ordinary Session of the AU Assembly of Heads of State and Government (10th AU Summit) held in Addis Ababa, Ethiopia in January 2008. The 10th AU Summit was devoted to the theme of ‘The Industrialisation of Africa’ and resulted in the adoption of the *Action Plan for Accelerated Industrial Development of Africa*. A follow up Conference of African Ministers of Industry (CAMI) held in April 2008 reached a consensus on structuring the implementation of the action plan according to seven program clusters, being the following:

- i) industrial policy and institutional direction
- ii) upgrading production and trade capacities
- iii) promote infrastructure and energy for industrial development
- iv) human resources development for industry
- v) industrial innovation systems, research and development and technology development
- vi) financing and resources mobilisation
- vii) sustainable development.

To roll out this seven-pillar action plan, a total of 16 programmes and 49 projects were identified as part of the implementation action plan broken down into 21 immediate, 17 mid-term and 11 long-term projects predicated upon their logical sequencing and availability of resources. Through this process the AU (assumingly with the participation of its member states and their RECs in their respective capacities) was rolling out and articulating an industrialisation vision for the continent. The classical assumption that was made in this instance, as has been the case of many other African policy frameworks of this nature, is the notion that broad-based participation and consultation would automatically mean ownership. After bringing together the right people around the table, the hope is that with the implementation of concrete action-oriented programmes, projects and activities, AIDA would foster industrial growth and structural change in Africa and entrench industrial integration regionally, across the continent and ultimately integrate Africa into the global economy. This assumption of expectation takes for granted that the actions and activities contemplated at the continental level will be synchronised with the actions and plans undertaken at the regional level and ultimately implemented at the country level especially because they were part of the process of drafting and arriving at this continental industrialisation framework.

In this regard, regional organisations like SADC and their institutions are expected to play a role to drive the continental industrialisation project and are even assigned specific responsibilities within the coordination architecture of AIDA. The argument being that strong African regional industrial integration is expected to feed into the continent's industrialisation success. Within the thinking of AIDA, the success of RECs at feeding into the continental industrialisation objectives could happen through a number of channels including: the mainstreaming of industrial policy and the strengthening of regional institutions; the mobilisation of resources for the development of infrastructure (roads, airports, seaports and information and communication technology to link the entire region); and the possibility of channelling investments from the African Diaspora, Sovereign Wealth Funds, foreign direct investment and emerging African capital markets into regional investment projects in industry. This would enable African industry to benefit from economies of scale as well as specialisation and clustering of industry in suitable sub-regional locations in Africa (AU, 2008:17). Strengthened with this believe is the role of these regional organisations in the continental

industrial edifice, specific roles are attributed to the RECs within the implementation strategy of AIDA, as can be gathered from Table 1 below:

Table 1: AIDA Implementation Strategy – Regional Interface

Cluster	Regional interface role for SADC
Industrial policy and institutional direction	Re-orientating Regional Regulatory Frameworks of an enabling environment for industrial complementarities.
Upgrading production and trade capacities	Regional Framework to coordinate quality activities.
Promote infrastructure and energy for industrial development	Re-orientating Regional Regulatory Frameworks of an enabling environment for industrial complementarities.
Skills development for industrial development	Establish or strengthen specialised regional training centres.
Industrial innovation systems, R&D and technology development	Establish regional technology transfer and diffusion centres. Establish regional centres for technology foresight.
Financing and resource mobilisation	Re-invigorate finance institutions (DFIs and Regional institutions). Facilitating the strengthening of regional and national stock markets. Consolidate regional investment funds.
Sustainable development	Regional networking for the achievement of a contextually-grounded Corporate Social Responsibility Agenda.

Source: Extracted from AIDA Framework document

As can be gathered from the table above, the AU has placed an expectation upon SADC to host a number of identified institutions/regional coordination centres, as well as invest efforts in harmonising their own policy frameworks. In a sense, the success of AIDA depends critically upon certain activities being executed at the level of the regions, either by means of coordination or through the actual implementation of critical components of the plan. For example, the creation of a coordinated regional level regulatory framework is crucial for the success of the industrial policy and institutional development pillar. Other region level responsibilities include the establishment of specialised regional training centres, regional technology transfer and diffusion centres and regional centres for technology foresight. Seen differently, there are certain performance expectations on the part of RECs like SADC that are critical for the success of AIDA, which is why the AU has set up mechanisms to monitor and report upon progress. Off course, the underlying assumption being that the RECs (who participated in the drafting of AIDA alongside member states)

would own the policy framework and are going out to see that its implementation is successful, while also bearing in mind that its successful implementation would further depend upon the collaborative efforts and coordination with the member states of the REC. This is why the implementation strategy for AIDA makes propositions on how to create coherent industrial policy frameworks at national, regional and continental levels that are well-focused and sensitive to local endowments. It also makes proposals on how to create dynamic responses to infrastructure and alternative energy needs and guarantee their efficient management and maintenance. It addresses the question of skills shortages and how to respond to the training and skilling of people in key areas of industrial growth and on how to create well-focused innovation systems that generate the necessary know-how for industrial development. It ultimately addresses the very pressing question of financing but proffering the use of internal and external sources to invest in key industrial development. Ultimately, the plan explores the options of creating a sustainable development framework that guarantees responsible industrialisation. As a strategy, AIDA is definitely a comprehensive exploration of the question of industrialisation on the continent and the corridors along which it could be explored. As a policy framework, AIDA proposes a broad framework around which RECs could draft and design their own industrial policy focus according to their unique contextual realities and comparative advantage. And there is some evidence of synergy between AIDA and SADC's industrialisation objectives just by looking at the elaboration of their industrial development policy documents and framework. Some of these similarities are highlighted in table 2 below.

Table 2: Similarities between AIDA and SIDPF

AIDA	SIDPF
Industrial policy and institutional direction	Developing sector specific strategies. Improving standards, technical regulations and quality infrastructure.
Upgrading production and trade capacities	No direct equivalent.
Promote infrastructure and energy for industrial development	Improving provision of infrastructure for industrial development. Improving standards, technical regulations and quality infrastructure.
Skills development for industrial development	Developing and upgrading skills for industrialisation.
Industrial innovation systems, R&D and technology development	Promoting industrial upgrading through innovation, technology transfer and research and development.
Financing and resource mobilisation	Developing a mechanism for industrial financing. Promoting local and foreign direct investments and exports.
Sustainable development	No direct equivalence.
No direct equivalent	Enhancing support to small and medium-sized enterprises.
No direct equivalent	Developing regional strategies to exploit opportunities in cooperation with other regions in the world.

Looking at the similarities between the two policy documents, it seems evident that both identify common important factors for the industrialisation of the continent. As can be expected, both frameworks identify the importance of addressing the infrastructure challenge, developing the requisite skills for industrial development. They also both highlight the importance of industrial innovation systems and promoting industrial upgrading through innovation, technology transfer and R&D. The question of resource mobilisation and mechanisms for industrial financing is another common factor, which together speak to the fact that these policy frameworks have synergy and address some of the common elements that the continent needs for the advancement of its industrialisation agenda. Where they show evidence of being sensitive to context specific realities and evidence of capturing the priorities articulated by the member states is at the level of the approaches adopted within their action plans and implementation strategies.

At the level of SADC, the Heads of State and Government adopted the SADC Industrialisation Strategy and Road Map (2015-2063) and later accompanied this with a costed action plan for the implementation strategy, and the design of a suitable institutional framework to implement the strategy in 2017. The primary orientation of the strategy is the necessity of structural transformation of the SADC region by way of industrialisation, modernisation, upgrading and closer regional integration (SADC, 2015:11). As an industrialisation strategy, it is anchored upon three strategic pillars being:

- i) industrialisation as a champion of economic transformation
- ii) enhancing competitiveness
- iii) deeper regional integration.

These three strategic pillars have been rolled out with three potential growth paths being identified:

- i) agro-processing
- ii) mineral beneficiation and downstream processing
- iii) industry and service-driven value chains.

These are being proposed against the realisation that there are specific structural deficiencies that characterise the economies of the SADC region including the fact that they are largely resource-dependent, there is widespread low-value addition in production and low levels of exports of knowledge-intensive products. Against these realisations, industrial policy that is well developed and targeted is expected to play a role in creating conditions that would facilitate higher levels of investments towards economic restructuring with the hope that this leads to the growth of value-adding manufacturing. The use of industrial policy at country level with a coordination at the regional level is meant to be underpinned by a strong industrial diversification drive, the development of viable and competitive regional value chains capable of feeding into global value chains as well as supporting measures to enhance capital and labour productivity and efficiency.

The emphasis on value chain is done out of the recognition that this is a significant trend in global trade and exchanges. This is meant to be accomplished at the national level by SADC member states promoting investment, trade and industrial regionalisation through their national policies in a manner that supports the growth of the productive capacities of the regional economy and achieves regional industrial integration for a more

effective participation in the regional and global value chains (SADC, 2017:4). Through this, SADC has therefore adopted an investment-led trade and regional economic and industrial integration that aims at favouring the development of regional value chains making use of instruments like regionally coordinated procurement, targeted domestic and foreign investment, technology transfer, skills development and the development of a friendly investment and regulatory environment. From a perspective of the identification of suitable strategies and avenues by which industrialisation is supposed to come to the continent, it is clear that the AU and SADC rightly articulate a number of plausible options to be pursued. They agree on a number of important factors, like finance, infrastructure and the need for innovation driven industrialisation. Though there is some evidence of synergy in the identification of priority areas, there seems not to be enough evidence of policy coherence and coordination in their functioning and approaches to the pursuit of industrialisation aside from the identification of common important focal areas.

The point of departure of the SIDPF that informs both its industrialisation strategy and roadmap, as well as its action plan seems to be the Industrial Upgrading and Modernisation Programme (IUMP) adopted by the SADC Committee of Ministers of Trade in June 2009. This is an approach that has been developed and popularised by the United Nations Industrial Development Organisation (UNIDO). The UNIDO's comprehensive Industrial Upgrading and Modernisation Programme approach (IUMP) aims to improve the industrial performance of manufacturing SMEs and their networks by strengthening their productivity and international competitiveness. The objective of the programme is to contribute to economic growth and facilitate regional socio-economic, industrial and trade integration of developing countries and economies in transition by increasing the capacities of local industries for value-added generation, economic diversification, export and employment creation. Their approach was popularised in the early 2000s and saw a number of countries including SADC countries develop country level IUMPs following the UNIDO framework. It is building upon this background and culture therefore that the SADC industrial framework sought to establish a regional IUMP with the objective of enhancing the competitiveness of existing industrial capacity and promoting the development of regional value chains in selected sectors across the region (SADC, 2014:5). The focus of SADC IUMP is therefore to upgrade existing manufacturing capacities, modernise

productive facilities, reinforce the institutional support infrastructure and strengthen the region's capacities for research and innovation.

This raises the normative question of the actual, intended and perceived role of the AU in the definition and formulation of policies that gets adopted and implemented at the regional and national level. It is important for policy coherence that the AU be perceived as the authoritative voice on all matters related to specific policy areas it has identified as priority for its pursuit of developmental regionalism. There is nothing intrinsically wrong with the fact that though SADC countries participated in the drafting and articulation of AIDA they rather defaulted to the UNIDO for inspiration on how to craft and shape their industrialisation policy framework, action plan and industrialisation strategy. This suggests that UNIDO's approach to the subject may have been more practical and implementable and perhaps the AU should adopt a similar approach to the articulation of its industrialisation priorities. The question of how policies are formulated and implemented is not a challenge that is unique to the domain of industrialisation. But industrialisation in itself as a policy objective cannot be pursued in isolation within the set objectives of developmental regionalism, there are complimentary priority actions that need to be undertaken to streamline and render the regionalisation and cooperation project more effective. The ability to deal with some of these broader challenges holds a key to the advancement of the industrialisation agenda and consequently merit a brief treatment as part of this discussion.

4. Addressing the synergies and related challenges in Africa's regionalism

The story of regionalisation on the African continent is one in which political rhetoric and commitment to regional integration have not always been matched by implementation reality, as some of the objectives and targets have not been met (Olivier, 2010; Draper, 2012). Creating synergies between continental and sub-regional policies and programs is just one amongst a plethora of other challenges that also need to be addressed for Africa's integration objectives. Akokpari (2008:106) has identified what he terms 'structural bottlenecks' that militate against effective integration in Africa, these include:

- the problems posed by multiple memberships of states in various regional organisations
- low levels of intra-regional trade coupled with the continent's stronger trading relation with partners external to Africa
- the prevalence of weak institutions, debt and conflicts
- the tension between the states and regional organisations with respect to the preservation of their national sovereignty
- concerns over the unequal distribution of the costs and benefits from integration among states
- and the dangers of pursuing economic and political integration simultaneously.

While these have been extensively documented as noted bottlenecks in Africa's integration process, it is not completely clear why these bottlenecks have persisted over many years notwithstanding the belief in the developmental benefits of integration for Africa. The question of multiple membership to regional organisations and the existence of many regional groupings (apart from those recognised by the AU) all attest to the complex nature of the continental integration project (Dinka and Kennes, 2007; Draper et.al., 2007; UNECA, 2006 and 2008). Multiple memberships prevent states from fully committing to the objectives of regional integration and undermine the efficiency and effectiveness of regional formations. It further exerts considerable material, financial and human resources pressures on states. For a region characterised by scarce resources and weak institutions, simultaneous implementation of conflicting policies in a bid to satisfy the demands of various groupings takes a devastating toll on participating countries (Akokpari, 2008:100). With the complexity and challenge of multiple membership it becomes increasingly difficult to harmonise say custom policies amongst the participating members that belong to a number of different regional economic integration arrangements at the same time. Countries therefore choose which regional arrangement to belong to not based on a preoccupation with the impact of multiple membership on continental integration but based on which arrangement best serves their immediate strategic interest and developmental aspirations. The same logic would apply to AU member states' unwillingness to surrender the control of macro-economic policy making to a regional/continental authority, or to face potential consumption costs that may arise from importing from a high cost member country, or to accept the unequal distribution of the gains and losses

that may follow an integration agreement while discontinuing existing economic ties with non-members (Geda and Kebret, 2007:359).

Some authors like Oyejide et al. (1999) have argued that African integration schemes suffer from endemic implementation lapses because of a lack of political will to carry out agreed commitments in the face of ensuring loss of national sovereignty, absence of adequate technical and management expertise, expectation of loss of fiscal revenue on trade taxes, and uncertainty over the distribution of the gains and losses of integration. Though this may indeed be a question of the lack of political will, it certainly comes across as the result of the benefits of integration not being perceived as higher than its associated costs. Political expediency (for example responding to urgent domestic needs with scarce resources under pressure from a constituency that has given a developmental mandate within a specific electoral cycle) may be the reason why there is a lack of political will to implement regional and continental level commitments.

Some would argue there is consensus about the importance of an integrated Africa but only disagreement about how to achieve this objective. To other analysts however, the disagreements about the pace and model of integration as well as the poor implementation record instead, point to a more fundamental problem associated with the conception and design of the existing set of African regional integration schemes and institutions. McCarthy (1999) for example, finds fault with both the conception and design of most of Africa's regional integration schemes. He argues that integration was conceptually designed as an inward-looking instrument of industrial development. In this context, the principal goal of integration and growth in intra-regional trade was for economic development and structural transformation through industrialisation; while the main role of integration was to aggregate the small individual economies into larger regional markets. Even though the formation of these larger integrated markets has remained elusive in most parts of the continent, this was a problematic approach to be adopted in the first place because though the 'new' regional economy would be larger than the individual economies, the combined markets would still not have been large enough to promote the high levels of industrial development promised by regional integration aspirations (Oyejide et al., 1999:7). As such, the economies of scale argument for the promotion of regional cooperation would have made for larger and hopefully more competitive markets but

would not have led to the large-scale industrialisation and economic transformation that these countries were hoping to benefit from regional cooperation without a structural transformation of their own national economies.

Hartzenberg (2011) also blames the poor implementation of Africa's regional economic integration arrangements on the paradigm of linear market integration marked by step wise integration of goods, labour and capital markets, with eventual monetary and fiscal integration. Arguing that focusing on supply side constraints through a deeper integration agenda that includes services, investment, and competition policy (other than border issues like tariffs) may prove to be a more effective route for the promotion of integration. Motsamai and Qobo (2012) on the other hand identify three interlinked factors that limit regional integration processes in Africa and constrain its potential to be used as a vehicle for development in national economies, beneficial integration into the global economy and facilitating Pan-African Unity. These are cantered on: institutions of governance including the structure of domestic politics, structural conditions of poorly developed economies and their dependence on one or two primary products, as well as the capacity to assert policy preferences in international economic relations. All these myriads of challenges point to one thing that the creation of synergies between continental and regional level policy priorities in the area of industrialisation would need to be accompanied by complimentary measures in other areas and aspects of regional cooperation within the continent. The efforts made by the AU to place this matter on the agenda is quite commendable as are the initiatives undertaken by SADC to operationalise and define regionally sensitive approaches to the subject. The continent is a long way from contributing a significant share in global value chains and increasing its industrial base to a size commensurate to its population standing in the world. Much more needs to be done to operationalise the industrialisation priorities that have been identified at the continental and sub-regional levels and a good step in this direction would be to resolve the many other challenges that plague regional cooperation and integration on the continent and perfecting the synergies that already exist in certain areas between continental and regional level programs and planning.

5. Conclusion

The very many implementation challenges common to regional cooperation within the African continent are a testimony of the difficult circumstances around which SADC has to articulate its own developmental priorities to serve the interest of its member states who are also member states of the African Union. The possibility and risks of a divided allegiance between sub-regional and continental priorities can be greatly mitigated by the promotion of greater synergies between continentally identified priorities and regionally defined objectives. This ought to be even more so for an area as important as that of industrialisation which is a clear priority for the African continent. It is not always possible to formulate industrial policy for member states at the continental or sub-regional levels, but these two can play a great role in leveraging the economies of scale that exist in creating a coordination platform that would enhance the performance of the industrial policies of their member states. Both SADC and the AU therefore can play a great facilitation and coordination role in advancing the objectives of industrialisation in Africa, they both just need to give some more strategic thinking on where their edge lies in creating an enabling environment for the industrialisation drive of their member states to strive. An ideal prerequisite for this to happen would be that synergies be created between their respective efforts and then an emphasis be placed on eliminating the other barriers that exists in Africa's integration and cooperation efforts. By so doing, the aspirations and goals of developmental regionalism can be materialised on the continent with industrialisation playing the significant role it is expected to play.

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Chapter 3

The Grand Inga Dam hydropower project the unfulfilled dream to power Africa: How to make it work?

Master Mushonga and Sylvanus Ikhide

1. Introduction

According to the World Bank and International Energy Agency (IEA) (2017), there were 1.06 billion people living without access to electricity, whilst 3.04 billion relied on solid fuel and kerosene for cooking and heating in 2014. The electricity access deficit is overwhelmingly concentrated in sub-Saharan Africa (SSA) (62.5% of the population) and South Asia (20%), followed by East Asia and the Pacific (3.5%), and Latin America (3%) and the Middle East and North Africa (3%). 640 million Africans are living without electricity, while 343 million people in South Asia lack access to electricity according to the African Development Bank (AfDB) (2017). In SSA, 609 million do not have access to electricity. The top 20 electricity deficit countries account for 81% of people without electricity with India contributing slightly above a quarter of the people (270 million). Worryingly, 17 out of 20 electricity deficit countries are in Africa with Nigeria, Ethiopia and Democratic Republic of Congo (DRC) leading with more than 50 million of their population without electricity.

According to the World Bank (2017) between year 2000 and 2014 significant advances in electrification were noted from 77.7% to 85.5% resulting in the decline of people living in darkness from 1.3 billion to 1.06 billion. Remarkable improvements were seen in South Asia with electrification surging from 57% to 80%, East Asia and Pacific (from 90% to 96%), Middle East and North Africa (from 91% to 97%), Latin America and Caribbean (from 92% to 97%) and SSA (from 26.5% to 37.5%), now estimated to be at

just over 40% by the AfDB (2016). SSA is the only region where the number of people in darkness are on the increase from slightly below 500 million to 609 million in the period 2000 to 2014 respectively. According to the IEA and World Bank (2017) South Asia reduced its population in electricity deficit from 600 million to 350 million, East Asia and Pacific from 200 million to nearly 100 million, Latin America and Caribbean from 40 million to nearly 20 million in the period 2000 to 2014 respectively. Unsurprisingly, the per capita consumption of energy in SSA (excluding South Africa) is just 180 kWh, compared to 13 000 kWh per capita in the United States and 6 500 kWh in Europe (AfDB, 2016). Excluding South Africa (45 gigawatts), the entire installed generation capacity of SSA is only 28 gigawatts, which is less than that of a single country, Argentina (33 gigawatts). This is despite the region being in abundance with renewable energy source such as wind, sunlight and hydro.

Access to energy is crucial not only for the attainment of health and education outcomes, but also for reducing the cost of doing business, unlocking economic potentials and creating jobs. SADC has long recognised that access to energy for all is one of the key drivers of inclusive growth as it creates opportunities for women, youths and children in urban and rural areas. When SADCC was formed in 1980 and subsequently changing to SADC in 1992, they made it clear that cooperation on energy infrastructure was key to South Africa which was still under the apartheid regime by allocating the energy portfolio to Angola. This early realisation to cooperate, build and expand power plants to meet the current and future needs of the region were clearly seen as an enabler to reduce under-development and poverty through sustainable, inclusive economic development. One such energy generation project with great promise to power the region and beyond was the Grand Inga Dam in the DRC. The Grand Inga hydropower mega project can be a regional game changer to light up SADC and beyond. However, there is need to improve the bankability of such a mega investment project starting with a strong collective political will to implement the project in the spirit of regional cooperation and integration. Through the current study we demonstrate how lack of political will is affecting its realisation and proffer some recommendations to make access to energy in SADC possible through cooperation on energy infrastructure development.

2. The background of the Grand Inga Hydropower Project

The Grand Inga mega-project is a priority project for a number of Africa development organisations, including the Southern African Development Co-ordination Conference, the New Partnership for Africa's Development (NEPAD), Southern African Power Pool (SAPP), Eastern African Power Pool (EAPP) and Eskom, South Africa's largest power utility, among others. The Inga hydropower project is situated on the Congo River in the DRC, 400 km west of its capital, Kinshasa. The Congo River is the deepest in the world and eighth-longest (4700 km) with a flow rate of 42 000 m³/s, it empties water and sediment into the Atlantic Ocean and is the second longest river in Africa. DRC is one of SSA's most politically unstable and corruption troubled economies. The Grand Inga Dam project has been under development since the 1960's when the first studies were conducted.

Two power plants had already been built on the Congo River soon after the country's independence, being 'Inga I dam (351 MW, commissioned in 1972) and the Inga II dam (1 424 MW, commissioned in 1982)' (Banktrack, 2014). By year 2002, the dams were generating 40% of their capacity (AfDB, 2013). The construction of Inga I, II and 1 725 km transmission lines were major drivers to DRC's over indebtedness. While the initial budget for the transmission line was put at US\$250 million, the actual construction costs quadrupled to US\$1 billion. Within 10 years of construction, the line was delivering less than half the electricity that it was designed to carry, due to vandalism and poor maintenance. The rehabilitation of the dams was financed by the World Bank (US\$297 million) and additional financing secured from AfDB and the European Investment Bank (EIB) in 2007. By 2011 not much progress was made resulting in costs skyrocketing to over US\$1.2 billion (Banktrack, 2014).

The proposed Grand Inga project when completed could produce up to 44 000 MW with power generations constructed in phases of six power stations. The project is expected to be larger than the Three Gorges hydro power project in China (22 500 MW) and Itaipu Dam of Brazil and Paraguay (12 600 MW) which are currently the biggest power projects in the world. The proposed scheme will involve four 'energy highways' to transmit power to large areas of eastern, western and southern Africa, as well as meeting the DRC's rapidly increasing domestic and industrial energy requirements. Its costs were initially estimated at US\$80 billion and now US\$100 billion, an

amount which make it less likely to be mobilised at once, hence the need to break the project into six phases (World Energy Council, 2008). Inga III being the first phase is designed to generate 4 800 MW (AfDB, 2013). The project was expected to cost US\$11 billion excluding financing costs (World Bank, 2014:10), but now projected to cost US\$14 billion outside financing costs. The construction of subsequent phases of Grand Inga will depend on the successful construction of Inga III, accessibility of funding and demand for electricity in SADC and beyond (Banktrack, 2014). Given its great potential, one would be interested to understand the previous attempts to construct Inga III and the challenges faced. The question that has been repeatedly asked by many who are engaged in the debate of the Grand Inga is ‘Will this project ever be realised and how can it become a reality?’.

2.1 Previous efforts to construct Inga III power project

In 2002, the project was foregrounded by NEPAD and SADC planned for it to be developed by a consortium, Western Power Corridor (Westcor), led by Eskom (South Africa) and Hydro-Quebec (Canada). Westcor was formed in February 2003 by the national utility companies which are ESKOM, the DRC's Société Nationale d'Electricité (SNEL), Angola's Empresa Nacional de Electricidade, Namibia's NamPower and Botswana Power. In October 2004, a memorandum of understanding was signed by Westcor for the construction of 3 400 MW Inga III. However, the DRC rejected the regional development programme offered by Westcor and planned to develop Inga III on its own.

The bidding process was opened in June 2009. At this point Inga III was designed to be a 4 320 MW power plant with an estimated cost of US\$7 billion. BHP Billiton was selected in 2009 to develop the Inga III plant with a generating capacity of 2 500 MW in collaboration with the government of DRC (GoDRC), through a public-private partnership. BHP's aluminium smelter was to use about 2000 MW of the total power generated with surplus power supplied to the southern African power grid to meet the strain on the region's power supply. The cost of the entire project during that time was estimated to be US\$3.5 billion. On February 8, 2012, BHP Billiton announced its withdrawal from the project after deciding to shelf its interest in the aluminium smelting plant. This has slowed the process but has not stopped it.

In January 2013, the GoDRC announced that it will continue adapting the ongoing process of selecting a private developer. However, the development finance institutions (DFIs) communicated clearly that the ongoing selection process does not conform to the procurement guidelines and that DFIs public sector windows will not be able to finance the government equity in the Special Purpose Vehicle (SPV) formed by the selected developer. The GoDRC and its strategic advisors developed the Request for Proposal for the selection of a private developer which was published in 2015. Table 1 below details progress from year 2010 to date on attempts to implement the project.

Table 1: Implementation progress of Inga III BC and Mid-Size Hydropower Development Technical Assistance project

Dates	Inga III Project Events
2010	Guidelines issued by the Presidency of the DRC for the development of Inga following international best practices and the use of international tenders.
2010	Establishment of a Steering Committee to ensure the development of the project including the selection of a developer until the constitution of the Project Company.
2010	Recruitment of an international law firm to assist the Steering Committee in the selection process of the developer in order to ensure transparency in the process.
September 13, 2010	Signing of the Ministerial Decree CAB/MIN - ENER/015/2010 on the establishment and operation of the Project Steering Committee Inga III (CPI3) with duties to: i) monitor the performance and validation studies on the project; ii) prepare the various steps leading to the project; and iii) liaise between public and private stakeholders in the project. More than 35 meetings were held since CPI3 inception.
October 2010	At the request of BHP Billiton, Tractebel Engineering in France drafted a conceptual review of development options for the hydroelectric plant Inga III (tunnel option), based on the study conducted by SNC Lavalin in 2008. This conceptual study and the study of SNC Lavalin provided the basis for the development of the Request for Expression of Interest and the Memorandum of Information Project (MIP).
October 2010	Launching of the Request for Expression of Interest on the Inga III Project for the selection of the developer.
December 2010	Submission of offers from nine companies or groups of companies.
April 2011	Notification to six shortlisted companies or groups of companies, after receiving final clearance of the Government Commission of Economy and Reconstruction (ECOREC) and the Presidency of the Republic. Notification to unsuccessful candidates.
April 2011	Submission of the MIP to the six shortlisted companies or groups of companies.
August 2011	Sending of an Addendum to inform shortlisted firms of a possible second option for the development of Inga III project with an open channel instead of tunnels.
August 19, 2011	Submission of bids by three of six shortlisted companies.
October 10, 2011	Recruitment of an International Law Firm advisor Orrick Rambaud Martel, in joint venture with Banque Lazard and

	Engineering Tractebel Engineering to assist the Government, through the CPI3, in the selection process of a developer.
From 12 to 14 October 2011	Presentation by the Consortium AECOM/EDF of their pre-feasibility study report on development of the Inga site and associated transmission lines.
October 15, 2011	Official public opening of the bids of three candidate developers.
October 19, 2011	Selection by the Government of the alternative scheme proposed by the aforementioned study on the development of Inga III with open channel.
November 12, 2011	Signing of a Memorandum of Agreement between the Governments of South Africa and DRC on the development of Grand Inga for the power supply to South Africa, with a firm commitment to sign a bilateral treaty within six months.
February 7, 2012	Dispatch to the three candidate developers of the Addendum to Supplemental MIP, of the Exclusive Project Collaboration Agreement to be signed with the preferred bidder for the development of their final bid and of the draft contract to be signed with the selected developer.
February 8, 2012	Notification by BHP Billiton of its withdrawal from the Inga III development.
February 20, 2012	Letter to the three candidates informing them of the withdrawal of BHP Billiton and of the continuation of the process engaged for the selection of a developer for Inga III.
March 7, 2012	Letter to the three candidates informing them of the agreement of the Government to their request to postpone the original date of submission of their final bids and announcing consultation meetings to be held between Government, donors and project stakeholders to redefine the new electricity market following the withdrawal of BHP Billiton.
From 7 to 8 March 2012	Discussion between the Government (Ministry Energy, Project Steering Committee Inga III, the main multilateral donors involved in the Inga III development (ADB, WB, Agence Française pour le Développement (AFD), the AECOM/EDF Group and the Government Councillors (Group ORRICK/Lazard/Tractebel). Resolutions taken by the parties with the financial support of ADB to participate in: a mission to RSA to determine the energy demand of the RSA that could be drawn from Inga III: 19–22 March 2012 and a round table with Katanga Mining companies: 29–30 March 2012.
From 22 to 23 March, 2012	Discussion in Pretoria (RSA) between the Ministry of Energy of the DRC, through the Steering Committee of Inga III, and the Ministry of Energy of the RSA, the Development Bank of Southern Africa (DBSA), the Consultant EDF and the power company ESKOM South Africa for the determination of the electrical energy demand of the RSA in reference to the Memorandum of DRC-RSA agreement of 12 November 2011. Resolutions taken by the parties: (1) Commitment in

	principle by RSA to import of any excess electricity from Inga; (2) Agreement on the need for an urgent informative workshop on feasibility studies for development of Inga and priority corridors to South Africa in general and on the maximum technical capacity of the line to develop in the framework of Inga III in particular. Target date: 1st week of May 2012.
From 29 to 30 March, 2012	Roundtable in Lubumbashi with potential mining customers to get firm commitments on their electrical energy demands for 2020 and beyond (MOUs to be signed between the parties concerned). The discussion on whether the mining industry would like to become an anchor customer was in fact found to be premature and the meeting only produced a letter of intent from the mining industry saying that they would like to be kept in the information loop for the development of Inga III.
August 30 to September 1, 2012	Meetings in Paris with the Ministry of Hydraulic Resources and Electricity, SNEL, the World Bank, the African Development Bank, AECOM/EDF and Orrick/Lazard Frères/Tractebel to review the progress of the project and discuss about the next steps.
October 2012	Submission by AECOM/EDF of the feasibility report for the development of the Inga site and associated interconnections.
October 2012	Mission to Kinshasa by the World Bank, the AfDB, the European Investment Bank (EIB), the European Union (EU), the KfW, the AFD and DBSA to take note of the conclusions of the feasibility study and to review the project development plans.
January 25, 2013	Decision by HE Prime Minister of DRC to continue with the private developer recruitment process.
March 7, 2013	Initialling by the ministers in charge of energy of South Africa and DRC of a treaty between the two governments on the development of Grand Inga for the power supply to South Africa.
March 29, 2013	Signature by HE Minister of Hydraulic Resources and Electricity of two decrees creating the temporary Inga III management cell (CG13) and the ministry's facilitation committee.
April 4, 2013	Written confirmation by the World Bank Vice President for the Africa Region of the intent to support the GoDRC in its endeavour to develop the Inga III project as a first phase of Grand Inga.
April 8 to 16, 2013	Mission to Kinshasa by the World Bank, the AfDB, the EU, the AFD and DBSA to review progress of the project preparation and to examine their possible respective contributions to the development of the project.

May 16-18, 2013	Meeting organised in Paris by the GoDRC with DRC's Ministry of Hydraulic Resources and Electricity (MRHE) and advisors, external financial partners (AfDB, AFD, DBSA, EIB, International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA) and World Bank (WB)), and the candidate developers, to discuss the project institutional structure and timetable and the private developer selection process.
May 2013	An Electricity Bill passed by parliament to liberalise power generation, transmission and distribution.
June 6, 2013	Signature by HE Prime Minister of a decree creating the Commission for the Development of the Inga site – Commission pour le Développement du Site d'Inga (CODESI).
June 28, 2013	Public disclosure of the 12 TORs for E&S safeguards studies.
June 26 to July 4, 2013	Pre-appraisal mission to Kinshasa by the World Bank, the AfDB and the DBSA.
July 22, 2013:	Signature by the Minister of Hydraulic Resources and Electricity of two revised decrees creating the temporary Inga III management cell - CGI3 - and the ministry's facilitation committee – Comité de facilitation d'Inga (CFI).
July 24-26, 2013	Meeting organised in Kinshasa by the GoDRC with the MRHE and advisors, external financial partners (AfDB, AFD, DBSA, EIB, IFC, MIGA and WB), and the candidate developers, to continue discussions on the project institutional structure and timetable, and the private developer selection process.
September 20-21 2013	Official presentation by AECOM/EDF of the feasibility report for the development of the Inga site and associated interconnections.
October 9, 2013	Appointment by the Minister of Hydraulic Resources and Electricity of a coordinator for CGI3.
October 12, 2013	Notification of the project from the Minister of Hydraulic Resources and Electricity to the Congo River Basin Organisation (CICOS).
October 31, 2013	Signature by the Ministers in charge of energy of South Africa and DRC of the treaty between the two governments on the development of Grand Inga for the power supply to South Africa.
November 4, 2013	CICOS has notified the 12 Riparian (river bank) countries.
November 12, 2013	Signature by the Prime Minister of the policy letter for the implementation of the Inga III BC development.
November 2013	The AfDB approve US\$33.4 million as a Technical Assistance grant to DRC for the Inga III project.
January 2014	An Electricity Bill sailed through the Senate to liberalise the power generation, transmission and distribution to attract private interests

March 6, 2014	Prime Minister issued a statement stating that mining clients must postpone immediately and until further notice all expansion projects requiring supplemental energy.
March 20, 2014	The World Bank Group's Board of Executive Directors approved a US\$73.1 million Technical Assistance Project grant to the DRC for the Inga III Basse Chute (BC).
June 17, 2014	President Kabila signed into law the Act to govern the electricity sector.
2014	More preparation of the technical assistance (TA) project started.
2015	More meetings held between the World Bank, GoDRC and AfDB regarding the progress on the TA project.
July 25, 2016	World Bank suspends financing to the Inga III Basse Chute Technical Assistance Project (\$73.1 million grant) of which only 6% has already been disbursed. This follows DRC's decision to take the project in a different strategic direction to that agreed between the World Bank and the GoDRC in 2014.
June 2017	The GoDRC advised that plant would now be built to produce between 10 000 and 12 000 MW of power, more than double the originally planned capacity of 4 800 MW.
July 2017	A consortium led by China Three Gorges Corporation and another consortium that includes Spain's ACS (Actividades de Construcción y Servicios SA) vying to develop Inga III project instructed to submit a joint bid on the expanded project by September.

2.2 Current attempts to build Inga III

The Inga III Basse Chute and Mid-Size Hydropower Development Technical Assistance (TA) project is being funded by International Development Association (IDA) a subsidiary of the World Bank (US\$73.1 million) and AfDB (US\$33.4 million) through grants amounting to US\$106.5 million while DBSA agreed to finance feasibility studies required for the transmission lines and substation expansion. The effective date of the TA was 1st June 2014 to 30 June 2019, however, there were some delays. In summary, the TA was a first step of capacity building for DRC to finance Inga III as a public-private-partnership (PPP) model under the Build-Operate-Transfer (BOT) arrangement by enhancing the country's capacity to attract private capital. Key potential investors agreed to this arrangement as a realistic approach for the Inga dream to become a reality. Mobilising private participation and investment in hydropower development reduced the need for huge public investment especially for DRC which faces debt capacity constraints since the construction of Inga I, II and the 1.725 km transmission lines. Private sector participation enhances the project cost-effectiveness through efficiency, and innovation of the private partner.

3. Proposals for Inga III structuring, financing options and bankability

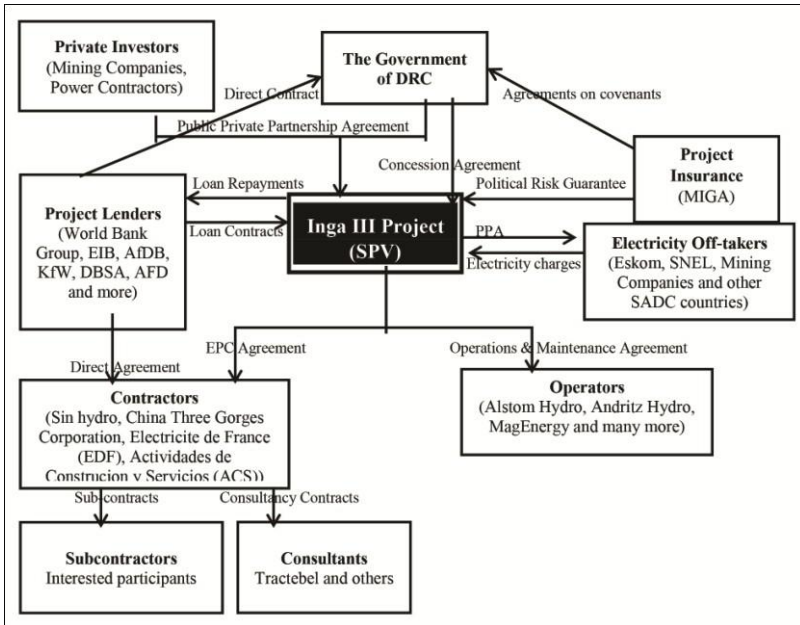
The idea to structure Inga III project as a PPP model under the BOT arrangement started long time ago. Initially sponsor countries were DRC, Namibia, Botswana and South Africa which formed a joint venture of the above national power firms named Western Power Corridor (Westcor) in 2003. However, the DRC rejected the regional development programme offered by Westcor and planned to develop Inga III on its own in 2009. Currently the main sponsors of the project are the governments of DRC and South Africa through its Eskom and the DBSA, which committed to take an active role to ensure Inga III becomes a success. Key reputable investors/lenders and stakeholders are also actively interested and involved. The PPP life cycle is to be agreed between the GoDRC and other private sponsors/investors that might come on board. South Africa is a creditworthy off-taker which improves the bankability of the project and being a low-cost hydropower will generate good cash flows to meet its debt obligations and good returns to investors. There is a risk that the various transactions linked to the Inga III BC development will not come to financial closure as the amounts

required are huge and DRC presents huge political risks. However, there are economic and social benefits which will critically depend on institutional and financial structure of the project as detailed below.

3.1 Project deal structure

The project is planned to be done under the BOT scheme which is a PPP model, where a private sector player undertakes the financing and construction of the infrastructure, as well as operations and maintenance. The special purpose vehicle (SPV) company would then operate the facility for a fixed term previously estimated as 35 years, during which the private player would be allowed to charge consumers electricity tariffs as agreed in the purchasing power agreements (PPA) or off-take contracts which enables the Inga III SPV to recover its costs as well as earn a reasonable return on investment. At the end of the fixed term contract, the power generation plant is transferred to the government or government agency concerned. The SPV as highlighted by the World Bank (2014) will be formed and South Africa is still considering joining as a sponsor at an appropriate time as the project financings requires deep-pocketed reputable sponsors. For illustration purposes only, Figure 2 below is the proposed Inga III deal structure with parties said to be involved and having competencies and experience in power deals structuring.

Figure 2: Build-Operate-Transfer deal structure for Inga III Hydropower Plant



3.2 Project investors and lenders

The Grand Inga dam has attracted a lot of attention from a number of DFIs, regional and international organisations and other power generation construction companies. Considering Inga III construction costs of approximately over US\$14 billion, huge financial resources have to be pulled together. It is refreshing to note that DFIs with power infrastructure financing experience agreed to finance the technical assistance project. The commitment by the World Bank Group to finance Inga III had attracted the attention of other DFIs to make serious commitments. Given the complexity of the project, the required funding and policy refinement, the World Bank’s expertise and experience in technical assistance, projects design, development and financing of mega infrastructure projects in PPP arrangements gives the project credibility to attract serious investors and lenders to participate.

The first initial phase of a TA project was agreed to be grant funded by the World Bank through its International Development Association (IDA) to the

tune of US\$73.1 million, fulfilling its mandate of helping the world's poorest countries. Another parallel grant was from AfDB amounting to US\$33.4 million, bringing total TA project funding to US\$106.5 million. The TA project funding was not including any funding from private developers for feasibility studies, engineering, engineering procurement and construction (EPC) sub-contracting, due diligence and funding mobilisation for the privately-financed part of the Inga III Basse Chute (BC) development (World Bank 2014:16). The TA project was to assist DRC with capacity to negotiate contracts better with investors, financiers, power off-takers and other stakeholders. The presence of the World Bank Group and other development agencies such as EU and USAID were to help balance the relative bargaining power between the DRC, investors, off-takers and local communities to be affected with the construction of the project.

As part of the TA project, DBSA agreed to finance the feasibility studies required for the transmission lines, sub-station expansion and electricity dispatch modalities for the electricity produced by Inga III and sold to South Africa and SAPP countries. USAID was considering providing TA to Inga Development Authority to enable it to effectively coordinate power development in the Grand Inga particularly in the area of ensuring the welfare of local communities are taken into consideration during the planning stages of the project. Some of the lenders agree to participate in principle are AfDB, German Cooperation (KfW), EIB, the World Bank Group (IDA, IFC, and MIGA) and other development agencies.

3.3 Project stakeholders' relationship

The stakeholders in the proposed deal were Eskom, an off-taker of 2 500 MW, mining companies in Katanga to purchase 1 300 MW, as well as Société Nationale d'Electricité (SNEL) (DRC's National Electricity Company) off-taking 1 000 MW to supply to local households, manufacturing and agriculture sectors. Other countries like Angola, Botswana, Zambia, Zimbabwe and Nigeria stand ready to purchase excess electricity from the project as they are experiencing electricity shortages. It is expected that the EPC contract for the common infrastructure will be awarded simultaneously with the concession for the powerhouse and the transmission lines to private developers. Some of the contractors which have shown interest in the power project construction are Sinohydro of China, China Three Gorges Corporation, Tractebel of Belgium, Electricite de France (EDF) and ACS of Spain. However, negotiations are still

underway for the consortiums led by China Three Gorges and ACS to submit a joint bid for the EPC as recommended by the GoDRC.

3.4 The bankability of Inga III project under the PPP arrangement

The Inga III PPP contractual agreement is subject to an agreement between project sponsors. World Bank Inga III project appraisal revealed that after the TA project construction was to start in 2017 and complete in 2022, then from 2023 to 2057 the projected will be operated by the private sector (World Bank, 2014). This makes it five years of constructing the power plant and 35 years of private sector operation before transferring the plant to the government under the BOT arrangement. However, the project is off the rails on its timelines due to a number of developments and delays in identifying and agreeing on the course of the strategic direction of the project.

In order to improve the attractiveness and bankability of the DRC energy sector an Electricity Bill was passed by parliament in May 2013 and by the Senate in January 2014. The Electricity Bill was then signed into an Act by the President on the 17th of June 2014 and came into force immediately to liberalise power generation, transmission and distribution. It further calls for the establishment of an electricity sector regulator, an electrification agency and an electrification fund (World Bank, 2014). The liberalisation of the energy sector will enable levying of market-based tariffs to improve the cost-recovery of investment. The existence of already signed off-take agreements (Power Purchase Agreements (PPAs)) with 2 500 MW going to South Africa and 2 300 MW to GoDRC (1 300 MW to mining industry in Katanga and 1 000 MW to SNEL) will guarantee cash flows to the SPV to meet its financial obligations and attain good financial returns.

An economic evaluation of the Inga III by the World Bank in 2014, found it to be economically viable, with returns that are at least comparable to those of regional projects with similar size and complexity. The net present value (NPV) of economic benefits to an assumed 35-year life is US\$7.38 billion with the economic internal rate of return (EIRR) at 17.1% per annum. The project remains economically viable with cost overruns of 10% (EIRR is 15.9% and NPV is US\$6.5 billion), if the dispatch rate of the power plant is reduced by 10% the project will have EIRR of 15.7% per annum and a NPV of

US\$5.75 billion. The project will be of economic value even if its completion is delayed by two years, the EIRR is estimated to be 14.5% per annum with an NPV of US\$4.92 billion. The economic analysis uses a consumer surplus methodology to measure the benefits associated to the additional electricity consumption made available to the local market and for exports to South Africa. The economic value of electricity supply from the Inga III is assessed for each class of beneficiaries, including SNEL customers, mining companies, and South African electricity customers. The improvement in institutional framework and outcome of the project appraisal reveal that the project is bankable even under stress conditions.

4. Inga III project risks and mitigation measures

The implementation of Inga III project is a complex matrix in a fragile country and a difficult sector context. Nevertheless, the expected benefits of the project outweigh its high-risk profile. If one looks on the quality of preparation which dates back as far as the 1960s when the first feasibility studies were done, then gained momentum from 2006, it shows how determined some parties are for its success (World Bank, 2014:23). However, the GoDRC seem not to be sincere in its handling the project as a regional infrastructure project for the benefit of the SADC region due to its withdrawals from regional cooperation arrangements of energy, for example, its withdrawal from the Westcor consortium. The recent withdrawal by the World Bank to continue funding the technical assistance project is a clear testimony that the GoDRC is not transparent in handling the project, and this had a huge negative impact on the project to attract credible investors. Risks facing the project can be grouped into two categories. Firstly, the project faces the technical, financial, political, environmental and social risks usually associated with large hydropower developments in developing countries. According to Banktrack (2014), ‘The dam will result in the flooding of Bundi Valley which will dislocate local communities from their homes and farmland; in addition, it may also create an environment that is favourable for breeding of waterborne vectors such as mosquito’.

Secondly, the project risk profile is increased by the risk associated with DRC’s political fragility and weak governance environment. The refusal of President Kabila to step-down after the expiry of his term of office, the postponement of the 2016 elections indefinitely and the withdrawal of the World Bank affects the bankability of this mega-investment project. The TA

project which was to be funded by the World Bank and AfDB were to assist in mitigating the anticipated environmental and social adverse impacts, and geological and hydrological risks associated with the Inga III project. Dam safety aspects, environmental and social impacts of the dam and of the transmission lines were to be assessed thoroughly, following international standards. In addition, stakeholder communications and dialogue with civil society and local communities is important to ensure the project benefits the local population. Although transparency is a challenge in DRC but the provision of some documents at strategic locations, consultation with local governments, traditional leaders, affected communities and non-governmental organisations, as well as continuous communication and dialogue with civil society was likely to enhance communities' welfare.

According to the World Bank (2014), AfDB (2006) and Banktrack (2014) there is a risk of not coming to financial closure as the amounts required are large and the country itself presents many risks including political risks. The TA project, which is groundwork on following proven international standards and transaction advice, was supposed to reduce the risk of not reaching financial closure. Mitigating the risks associated with the political fragility and the weak governance environment of DRC was at the core of the TA project. Previously, MIGA had agreed in principle to provide a political risk guarantee to improve the credit rating of the project, with the withdrawal of the World Bank Group such political risk insurance from MIGA will be non-existent. The presence of the World Bank and other lenders were going to help balance the relative bargaining power between the GoDRC, investors, off-takers and other stakeholders. The financial risk of power transmission constraints through SAPP countries was being mitigated by DBSA's commitment to finance feasibility studies of these transmission lines supported by the treaty signed between South Africa and DRC in November 2013 for the power supply to South Africa from Inga III project.

4.1 Economic impact of the project

The Inga III development is expected to have a transformative impact on many of the region's economies and populations, particularly those relying on thermal or small generation systems. In the DRC the project will make a significant contribution to low-cost electricity access. Benefits are also expected to reach beyond just access to energy to creating local employment, income generating opportunities and help stabilise the political environment

within SADC countries as access to energy enhances productivity. The project development was likely to lead to effective cross-border cooperation in SADC as this will bring interdependence and thus prosperity for the region and beyond (World Energy Council, 2008).

4.2 Biodiversity and social impact of the Grand Inga project

The 44 000 MW that will be generated by the Grand Inga is meant for transportation through transmission lines to southern Europe and South Africa. This means a substantial portion of the tropical rainforest will have to be cleared, destroying rich biodiversity to make way for transmission lines. In addition, most of the transmission lines will pass over villages without electrifying them, therefore leaving nearly 50 million villagers in darkness as local power grids are not included in the budget. It is sad that large dams usually benefit high and middle-income urban communities, commercial businesses and industries as electricity is distributed through power grids. Poor, dispersed, rural communities that are far from the grid rarely benefit from such investments. The better strategic and inclusive alternative is to provide off-grid electricity to the local communities such as solar systems and biogas as a stopgap measure whilst additional financial resources are mobilised to connect them to the national grid. When the Inga I and Inga II dams were built, villagers on whose lands the dams were built were promised jobs, electricity and water, but sadly, this never happened. Six communities were forcibly displaced without compensation and have never received any payment till to date. Such past experiences might reoccur given the suspension of the TA project by the World Bank which was going to address some of these issues.

Given the long history of the proposed Grand Inga power project which has failed to see its realisation, there is need to take a step backwards to have a better understanding of the challenges like what we did to be in a position to proffer practical recommendations to make it work.

5. Conclusion and policy recommendations

It is surprising that DRC is currently not a signatory to many SADC protocols including the Protocols on Energy and Shared Watercourse Systems which makes it difficult to have sustained regional cooperation on energy projects with it. If Grand Inga is to be developed as a regional infrastructure project,

there is need to ensure DRC ratify these two protocols, otherwise this shows lack of its commitment to fully participate in regional energy projects.

The continuous change on the strategic position on the Inga III project by the GoDRC is affecting the interest of private investors to commit their financial resources as there is lack of clarity of the actual size of the power plant to be constructed. The announcement by the GoDRC that the Inga III would now be built to produce between 10 000 MW and 12 000 MW, more than double the originally planned 4 800 MW capacity, indicates lack of consistence on the strategic direction of this mega investment project. Over the years the projected power generation capacity for the project has been continuously revised from 2 500 MW when BHP showed interest in implementing it, to 4 800 MW when the World Bank and AfDB committed technical assistance grants, and now to 10 000 to 12 000MW. This can be viewed as lack of serious commitment to the project which should win investors' confidence until and beyond the construction of phase six of the Grand Inga project.

The GoDRC will need to address all issues that the World Bank is not comfortable with and commit fully to the original agreement to bring about a conducive investment environment given the long-term nature of the project which requires certainty and utmost transparency. The withdrawal of the World Bank illustrates that the GoDRC violates basic environmental and procurement standards making other potential investors think twice before considering committing their resources. The best ideal situation is to bring Grand Inga as the SADC infrastructure project where member states will equally cooperate in pooling financial resources to de-risk the project as the risk profile of DRC given its record of poor governance, political instability, high sovereign debt and corruption, all work against it attracting much-needed investment.

Inga III estimated investment of US\$14 billion is so huge that neither the public sector nor the private sector could bear the full cost of its development alone especially in a conflict and fragile country like DRC. Although public financing reduces the project's cost, it is limited by the DRC's debt ceiling and concessional financing limits. On the other hand, private financing faces financial and country risk constraints. The private participation can bring relevant technical and managerial capacities into Inga III power plant development that would otherwise not be available within GoDRC. This

makes the project a suitable candidate for PPP through a BOT scheme. The commitment by several reputable DFIs and impact investors was likely to improve the project's credit rating. Bankability of Inga III was to some extent enhanced by the enactment of the Electricity Act, thus liberalising the energy sector to enable the charging of market-based tariffs to improve cost recovery thereby guaranteeing a good investment return, provided there is a political commitment to comply with the law. The commitment by Eskom, SNEL and mining companies in Katanga to an off-take agreement guarantee a ready market for electricity which enhances the bankability of the project. Above all, the World Bank project appraisal results indicate that Inga III is bankable even under stress scenarios. However, account must be taken of the myriad of risks. These include technical challenges such as poor maintenance, metering and high transmission and distribution losses, as well as non-technical risks, including theft and corruption at all levels, associated with a project of this magnitude, and the unstable political situation of the country. All these challenges are evident in the Inga I and II projects.

A World Bank's study, ('Infrastructure: A Time for Transformation') conducted in 24 countries, estimates that the poor state of infrastructure in SSA cuts national economic growth by 2% point every year and reduces business productivity by as much as 40%. The chronic power crisis that SSA is facing is the major contributor to poverty and the underdevelopment of the region as over 600 million people are without access to electricity, yet the region is blessed with large hydro resources which can contribute significantly to increase cost-effective and clean energy supply (World Bank, 2014). DRC's Grand Inga Dam can be a regional game changer that has a potential to light up SADC and beyond as it is likely to be the largest hydro site in the world and one of the continent's most cost-effective power sources (with estimated generation cost of US\$0.03/kWh). A study done by the World Bank (2012) concluded that, investment in DRC power generation gives the highest returns on investments compared to other infrastructure. Similarly, Calderon and Serven (2010,) using a large dataset comprising 100 countries over the period of 1960–2005, found robust evidence that infrastructure development has a positive impact on long-run growth, and it offers a double potential to speed up poverty reduction and lower inequality.

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Chapter 4

What reforms are necessary for the SADC trade regime to facilitate accelerated industrialisation of the region?

Boitumelo Gofhamodimo

1. Introduction

The past five years have witnessed significant efforts by the Southern African Development Community (SADC) member states to develop a perspective of the political economy of industrialising through regional integration. In 2012, the SADC Committee of Ministers of Trade (CMT) adopted an Industrial Development Policy Framework which recognised industrialisation as a sustainable development path for the region and among others, called for the mainstreaming of cross-cutting and complementary policies to support industrialisation³⁴. This development was followed by the adoption of the SADC Industrialisation Strategy and Roadmap 2015–2063 by the Extra-Ordinary Summit of April 2015 held in Harare, Zimbabwe. The Strategy was heralded as a linchpin through which the region would leverage its diverse resources for sustainable and socio-economic development through beneficiation and value addition.

The SADC Industrialisation Strategy is premised on the conviction that deeper regional integration can stimulate industrialisation. It is believed that the abundant resources, mainly from the mineral and agricultural sectors, which are exported unprocessed or minimally processed, make a compelling case for the region to pursue industrialisation as a driver for economic transformation. Through the Strategy, it is foreseen that SADC economies will progressively

³⁴ See SADC (2012), SADC Industrial Development Policy Framework

transform from the lower stages of development to higher levels³⁵ as a collective, where growth will essentially be driven by knowledge, innovation and business sophistication. Ultimately this high growth trajectory is expected to deliver an increased share of manufacturing value-added, increased exports and industrial employment and substantially raise the growth rate of the region's Gross Domestic Product. The Strategy places greater emphasis on value chain promotion to move development perspectives from a national to a regional focus³⁶.

The ambitious targets set out in the Strategy necessitated the development of an Action Plan to translate the broad objectives and interventions of the Roadmap into well-articulated, well sequenced and actionable activities towards accelerated industrialisation of the region. The Action Plan was approved by Summit on 18 March 2017 in Lozitha, Swaziland. It places focus on value chain policy making that facilitates entry into regional/global value chains; expands and strengthens cross-border value chain participation; and embeds value chains in the domestic economy³⁷. The Strategy and its Action Plan recognise the critical role of the private sector in industrial development. In this context, the 37th Summit held in August 2017 in Pretoria, South Africa, took place under the theme: 'Partnering with private sector in developing industry and regional value chains', as part of the efforts to mobilise for the implementation of the Strategy.

This paper argues that effective implementation of the SADC market integration agenda is an important prerequisite for industrial development, specifically cross-border industrial linkages. It further argues that there is need to address key trade-related challenges and constraints in order to enhance the region's participation in regional and global value chains. New reflections coupled with fundamental reforms are required to effectively facilitate trade

³⁵ The lower level of development as referred to in the Strategy is the factor driven stage while higher level is the final efficiency driven stage. The Global Competitiveness Report 2016–2017 classifies 8 out of the 12 listed countries as being at the lower level (Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mozambique, Tanzania, Zambia, Zimbabwe), Botswana is in transition between the factor driven stages and efficiency driven, Namibia and South Africa are within the efficiency driven stage while Mauritius is in transition between efficiency and investment driven stage.

³⁶ See SADC (2015), SADC Industrialisation Strategy and Roadmap 2015–2063

³⁷ See SADC (2017), Action Plan for SADC Industrialisation Strategy and Roadmap

and ensure competitiveness of SADC goods and services as part of the successful implementation of this pathway to industrial development.

2. Market integration, value chains and industrialisation

2.1 The rationale for market integration

The concept of market integration stems from the necessity to expand the economic space on which trade takes place by bringing together separate markets into one single market or a larger regional economic space in which goods, services, capital and labour move freely or with less restrictions. In this regard, countries can specialise in the production of goods and services and enjoy economies of scale, thereby stimulating growth through trade, investment as well as competitiveness.

Traditionally, market integration was achieved by reducing or eliminating tariffs and non-tariff barriers to trade. However, the past decade has seen increasing demands to deepen market integration initiatives to include trade-related issues such as services, investment, competition policy, intellectual property and trade facilitation, in addition to addressing border measures. In fact, 21st century trade policy is not so much about border measures, but a collection of new generation trade issues, to facilitate the lowering of transaction costs, competitiveness, as well as attracting investment, all of which are key to industrialisation and effective value chain development.

There is considerable policy consensus that trade, although not a panacea, can foster industrialisation. United Nations Economic Commission for Africa (UNECA) (2015) argues that trade and industrialisation are two sides of the same coin. This symbiotic relationship should accordingly be made the platform for structural transformation and competitiveness of a country.³⁸ Increased participation in foreign trade is necessary both to provide access to essential imported inputs, including capital goods, fuel and components, as well as to add value to domestic and imported resources for industrialisation and export.

³⁸ See UNECA 2015, *Industrialising Through Trade: Economic Report on Africa*

2.2 Value chain development

Regional value chains (RVCs) and global value chains (GVCs) refer to the interconnected processes of design, production, marketing and distribution of goods carried out across national borders. It is argued that the terms GVCs, global commodity chains, global supply chains, global production sharing or international production networks may be understood to refer to one and the same thing³⁹. Such chains constitute a system of interconnected production and service activities from design up to the sale of a product, where value is added at each stage of the process. In today's globalised economy, such processes no longer take place in one location, but are scattered in different locations with a strong sense of coordination and organisation.

Value chain participation is believed to be the most important source of growth in the 21st century. UNECA (2016) notes that value chains have triggered nearly 80% of global trade of inputs and products. The rapid decline in trade barriers as well as strong growth of communication networks is attributed to this development.

Evidence suggests that a number of emerging economies have accelerated industrial growth through regional and global value-chain development strategies, on the basis of which they were able to diversify their export portfolios of intermediate goods and industry-related services. The Asian region is said to have exploited GVCs most successfully compared to all other regions. It is argued that value chains played a leading role in China's rapid industrialisation, while also contributing substantially to the Asian region's rapid growth in incomes, output and employment. Slany (2016) argues that RVCs in particular, are critical in promoting intra-regional trade as they are easy to penetrate, less resource intensive and less controlled by leading firms in value chains. The South African motor accessories industry is cited as one example that has developed using this approach (SADC, 2016).

According to the SADC Industrialisation Strategy, participation in global and regional value chains is a promising growth path for SADC. The Strategy emphasises the fact that SADC's exports are overwhelmingly resource based with limited domestic value addition, explaining why intra-SADC trade is

³⁹ See UNCTAD (2015): Global Value Chains and South-South Trade. *Economic Cooperation and Integration Among Developing Countries*.

very low. This phenomenon also explains why the SADC region has the highest total level of GVC participation in Africa. It is estimated that SADC's share of Africa's GVC participation is around 40% (US\$100 billion), higher than for other parts of the continent, including North Africa whose GVC share is 35%.⁴⁰ The determination by SADC to increase domestic processing and value addition is therefore the most realistic option through which the region can transform itself, cognisant of the fact that both RVC and GVC participation are dependent upon the maintenance of high quality standards, product consistency and compliance with health and safety regulations in consumer markets as well as 'frictionless' borders where customs formalities are conducted as efficiently as possible⁴¹.

2.3 Market integration, value chain and industrialisation nexus

How quickly SADC can undertake trade policy reforms and improve trade with one another can have a fundamental effect on industrialisation and value chain development. This, in essence implies that trade policy is a key factor in promoting industrialisation and value chain development. A favourable tariff and rules of origin regime, the ability to source inputs from most competitive suppliers, an environment that is trade facilitative and rid of non-tariff barriers (NTBs), etc., would be critical ingredients to successful industrialisation. Liberalisation of trade in services as well as provisions on new generation trade issues, including public procurement and competition policies as well as a favourable intellectual property rights regime, all add to the list of trade policy issues that can set a strong foundation for both domestic and foreign investment, innovation and ability to source competitively, thereby supporting industrialisation.

However, trade policy alone cannot drive industrialisation and value chain development. Complementary policies such as inflation and exchange rate policies as well as infrastructure related policies targeting essential services for industrialisation, in particular, water, energy, ICT and transport, will have to be adequately provided within a regional context to reduce transaction costs.

Many of the trade policy instruments in SADC would, however, require to be reformed in order for the market integration pillar to adequately support

⁴⁰ See Draft Final Report – SADC Industrialisation Strategy and Roadmap (2015).

⁴¹ Ibid.

industrialisation and value chain development. A deliberate effort to target specific industries for promotion in view of the limited capacity and resources within most countries of the region would be essential such that selected trade policy instruments can be effectively applied to those industries.

The Industrialisation Strategy calls for the creation of ‘factory SADC’ which implies that production and supply chains are established for all processes and services, including the procurement of inputs across the whole value chain from within the region. However, in the absence of the necessary reforms, for instance in relation to RoO, customs and trade facilitation as well as reduced transaction costs, the formation of ‘factory SADC’ will remain a fallacy. Thus, ‘the market integration, value chain and industrialisation nexus’ should be seen in the context of the ability of the region to expand and diversify its industrial base on the basis of responsive trade policy instruments that facilitate member states to join a value chain as input and service providers from beginning to end of a production chain. Ultimately this will promote higher shares of regional value-added and intra-regional trade as well as the share of SADC exports in global markets, thus increasing industrial employment, boosting incomes and the well-being of the majority of the people of the region.

3. Overview of market integration in SADC

Market integration in SADC is underpinned by the SADC Protocol on Trade (1996), whose objectives are:

- i) To liberalise intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements.
- ii) To ensure efficient production within SADC, reflecting the current and dynamic comparative advantages of its members.
- iii) To contribute towards improvement of the climate for domestic, cross border and foreign investment.
- iv) To enhance economic development, diversification and industrialisation of the region.
- v) To establish a Free Trade Area in the SADC region.

The Protocol was signed in 1996 and came into effect in 2000 following ratification by eleven SADC member states⁴². The SADC Free Trade Area (FTA) was attained in 2008 following an eight-year period of progressive tariff liberalisation by member states at which time 85% of tariffs were zero rated. Maximum tariff liberalisation was achieved in 2012 when the tariff phase-down process for sensitive products was completed by most of the countries participating in the FTA. To date, ten member states, (Madagascar, Mauritius, Mozambique, Tanzania⁴³, Zambia and SACU member states) have completed their tariff phase downs. Seychelles acceded to the Protocol in 2015 and is still in the process of phasing down its tariffs. The other member states, Malawi and Zimbabwe, have not complied with their tariff phase down schedules while Angola, the DRC and the newly acceded Comoros are not yet parties to the Protocol.

3.1 Intra- SADC Trade

The SADC FTA remains focused on trade in goods, characterised by the liberalisation of intra-regional tariffs and NTBs. There is a small exclusion of products which are still traded on MFN basis. Article 3(1) (c) of the Protocol on Trade allows for countries which consider that they may be or have been adversely affected by the removal of tariffs and NTBs to apply for a grace period to afford them time for the elimination of tariffs and NTBs. Some members (Malawi and Tanzania) have so far utilised this provision and to date, still have outstanding tariff obligations. Unilateral decisions to delay tariff liberalisation or to reimpose duties on products on which tariffs had been liberalised by some member states has become a source of controversy amongst trade discussions in SADC.

Statistics indicate that following the entry into force of the Trade Protocol, intra-SADC trade has substantially increased. Intra-SADC exports increased by 154% in relation to total SADC trade in the ten-year period between 2004 and 2014, while imports increased by 170% in the same period⁴⁴. Furthermore,

⁴² The SADC Protocol on Trade was ratified by 11 Member States excluding Angola, the DRC, Madagascar and Seychelles when it entered into force in 2001. Madagascar and Seychelles acceded later, in 2009 and 2015 respectively.

⁴³ Tanzania had completed its tariff phase downs but requested to reimpose duty on selected sugar and paper products during a CMT meeting held in February 2011. The matter has not been resolved.

⁴⁴ See Revised RISDP 2015–2020.

total intra-SADC trade is said to have risen sharply by as much as 430.9% between 2000 and 2014⁴⁵. However, as a proportion of total SADC trade, intra-SADC trade has grown from 11.7% in 2000 to only 15% in the same period⁴⁶. This situation was a major source of concern amongst the SADC leadership, prompting the need for an Industrialisation Strategy to drive productive capacity within the region.

The CMT adopted a Monitoring, Reporting and Evaluation (MRE) system for the Trade Protocol in July 2014. The MRE provides a framework on the basis of which member states undertake annual self-assessments of performance on various commitments they have undertaken in the Trade Protocol. According to the 2016 Report, significant progress has been achieved with respect to tariff liberalisation, with an average of 90% tariff liberalisation having been attained in the region since implementation of the Protocol. It is also reported that nine member states, Botswana, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, South Africa, Swaziland and Zambia have completed their tariff phase downs and further that Malawi is at 90%, Seychelles at 94%, Tanzania and Zimbabwe at 90% and 86% respectively.

The Report notes however that some member states still maintain export duties, albeit on a few product lines, despite commitments to liberalise trade in all products. The report indicates that while only four countries still maintained export duties, the concern was with regard to the number of tariff lines which seem to be on the increase. It is indicated for instance that, Malawi has export duties on 10% of its tariff lines while Zambia maintains duties on 70% of tariff lines. Affected goods include agriculture and mineral products such as raw hides and skins, cashew nuts, mineral ores and concentrates, some of which have been listed by member states in the Industrialisation Strategy Action Plan as candidates for value addition and value chains. Four other countries are indicated to be maintaining quantitative export restrictions on the one hand and six other countries maintaining quantitative import restrictions⁴⁷.

⁴⁵ See Terms of Reference for the Development of a Trade Promotion and Trade Development Strategy for SADC (2017).

⁴⁶ Ibid

⁴⁷ The countries identified in the 2016 MRE report to be still maintaining export duties, quantitative restrictions on imports and exports are Lesotho, Malawi, Namibia, Tanzania and Zambia.

Although the region has made an impressive record towards tariff liberalisation, a case for a complete tariff reform can be made, in particular, for completion of tariff phase downs by members that are still lagging behind as well as removal of export duties and quantitative restrictions, especially if these measures are likely to facilitate implementation of the region's Industrialisation Strategy.

3.2 Non-tariff barriers

Under Article 6(1) of the Trade Protocol, members undertook to adopt policies and implement measures to eliminate all forms of existing NTBs and to refrain from imposing any new ones. There is, however, evidence to the effect that tariff liberalisation in SADC has not been matched by the reduction in NTBs as tariffs have been replaced by a plethora of NTBs (Hartzenberg and Kalenga, 2015). This, to a large extent, has been motivated by the need to find alternative revenue sources as tariff revenue was lost through the tariff liberalisation process.

The SADC NTB monitoring mechanism, which now operates within the broader context of the Tripartite Mechanism for Identification, Reporting and Monitoring NTBs is a web-based tool accessible to economic operators, governments, academic researchers and other interested parties, and enabling stakeholders to identify, report and monitor the resolution of NTBs encountered in the conduct of business across the tripartite region. While the system has succeeded in generating knowledge on NTBs, it has not been successful in resolving most of the reported cases.

The 2016 MRE Report indicates that it still takes relatively long to resolve NTBs and that this is particularly true in respect of NTBs of a policy and regulatory nature imposed by member states. Customs related NTBs are the most prevalent and take very long to resolve. They include delays at border posts, complex border procedures compounded by numerous documentation to be completed, taxes and other charges at border posts as well as inadequate border infrastructure. Rules of Origin related NTBs also surface to some degree, highlighting the need to urgently review and simplify SADC rules of origin, a matter which has been proposed on numerous occasions.

3.3 Customs and trade facilitation

In March 2016, the SADC Ministerial Task Force on Regional Economic Integration (MTF-REI) approved a SADC Trade Facilitation Programme. The programme, which followed the adoption of the WTO Trade Facilitation Agreement (TFA), and therefore fully aligned to the same, was developed in recognition of the need to prioritise the reduction of border related trading costs in the region. This would entail effective coordination, rationalisation and simplification of trade procedures and documentation; enhancement of efficiency in border operations; and improved cooperation in border management by member states so as to make the SADC FTA more functional and beneficial. The programme is comprehensive, with implementation activities identified across all four clusters as established by the TFA, namely: transparency, predictability, simplification and cooperation. Ultimately, the programme would facilitate reduction of clearance times and lower transaction costs, increase intra-regional trade and trade compliance as well as bolster export competitiveness.

Implementation of the programme has not taken off in full swing on account of capacity and funding constraints, yet SADC rankings with respect to doing business and logistics performance continue to be on the down side. For instance, in terms of logistics performance, the majority of the SADC countries are categorised as logistics unfriendly countries. A few are classified as partial performers while one, namely South Africa, is ranked as a consistent performer with a better logistics performance than others in the same income group. No SADC country is ranked as logistics friendly, though South Africa, which is ranked 20th is very close to this category⁴⁸.

The Logistics Performance Index (LPI) gives a score ranging between 1 and 5 with a higher score representing better performance. The Index gives a view of the country's logistics based on efficiency of customs clearance process, quality of the country's trade and transport related infrastructure, ease of arranging competitively priced shipments, quality of logistics service, ability to track and trace consignments and frequency with which consignments reach the consignee within the scheduled time. Looking at the 2016 figures in Table 1, of the 11 countries with 2016 data, only the top five countries on the table provide better logistics overall. The other components of the index, reflecting

⁴⁸ See SADC Industrialisation Strategy: Draft Final Report (2015)

the quality and competence, tracking and tracing, and timeliness which are considered very crucial are brought in for further analysis. The situation however remains generally the same with a slight improvement only in the timeliness factor.

Table 1: Rankings of SADC Member States in the Logistics Performance Index (LPI)

			overall LPI		Customs		Logistics, quality and competence		Tracking and tracing		Timeliness	
Country	Code		Score	rank	score	rank	score	rank	score	rank	score	Rank
South Africa	ZAF	2016	3.78	20	3.60	18	3.75	22	3.92	17	4.02	24
		2010	3.46	28	3.22	31	3.59	25	3.73	24	3.57	57
Botswana	BWA	2016	3.05	57	3.05	48	2.74	75	2.89	70	3.72	43
		2010	2.32	134	2.09	126	2.29	119	2.59	99	2.99	123
Tanzania	TZA	2016	2.99	61	2.78	60	2.92	58	2.98	60	3.44	64
		2010	2.60	95	2.42	74	2.38	105	2.56	103	3.33	80
Namibia	NAM	2016	2.74	79	2.65	73	2.63	86	2.52	100	3.19	85
		2010	2.02	152	1.68	152	2.04	144	2.04	144	2.38	151
Mozambique	MOZ	2016	2.68	84	2.49	88	2.44	109	2.75	79	3.04	97
		2010	2.29	136	1.95	145	2.20	130	2.28	135	2.40	150
Zambia	ZMB	2016	2.43	114	2.25	119	2.42	114	2.36	119	2.74	124
		2010	2.28	138	2.17	111	2.01	149	2.35	130	2.85	131
Angola	AGO	2016	2.24	139	1.80	157	2.31	128	2.21	130	2.59	141
		2010	2.25	142	1.75	151	2.02	147	2.54	106	3.01	121

Madagascar	MDG	2016	2.15	147	2.33	112	1.93	153	2.01	148	2.35	151
		2010	2.66	88	2.35	87	2.40	102	2.51	109	2.90	128
Zimbabwe	ZWE	2016	2.08	151	2.00	144	2.13	141	1.95	150	2.13	158
		2010	-	-	-	-	-	-	-	-	-	-
Lesotho	LSO	2016	2.03	154	1.91	151	2.16	138	1.92	151	2.35	150
		2010	-	-	-	-	-	-	-	-	-	-
DRC	COD	2016	2.38	125	2.00	142	2.26	133	2.48	105	2.57	143
		2010	2.68	85	2.60	59	2.93	49	2.43	119	3.20	94
Swaziland	SWA	2016	-	-	-	-	-	-	-	-	-	-
		2010	-	-	-	-	-	-	-	-	-	-
Seychelles	SEY	2016	-	-	-	-	-	-	-	-	-	-
		2010	-	-	-	-	-	-	-	-	-	-
Malawi	MLW	2016	-	-	-	-	-	-	-	-	-	-
		2010	-	-	-	-	-	-	-	-	-	-
Mauritius	MRS	2016	-	-	-	-	-	-	-	-	-	-
		2010										

Source: The Global Competitiveness Report 2016–2017.

The same picture emerges in terms of overall competitiveness. The 2016–2017 Global Competitiveness Report indicates that out of the 138 countries surveyed, 8 SADC countries are in the lower quartile ranked between 116 and 134, 1 is the third and 3 are in the second quartile. None is ranked in the first quartile, see Table 2 below.

Table 2: Global competitiveness rankings 2016 - 2017 – SADC countries

2nd quartile 35–69		3rd quartile		4th quartile	
Country	Ranking	Country	Ranking	Country	Ranking
				Tanzania	116
Mauritius	45	Namibia	84	Zambia	118
South Africa	47			Lesotho	120
Botswana	64			Zimbabwe	121
				Madagascar	128
				DRC	129
				Mozambique	133
				Malawi	134

Source: The Global Competitiveness Report 2016–2017.

The LPI as well as competitiveness rankings do not portray SADC in any good light, particularly given the negative impact that these factors have on industrialisation and promotion of regional value chains. These impediments need to be addressed for industrialisation to take its course in the region. Effective implementation of the SADC Trade Facilitation Programme becomes absolutely critical in this regard.

3.4 Rules of Origin

The SADC RoO were reported to be stringent and restrictive to trade by the mid-term review of the Protocol as far back as 2004. In fact, in some instances, the RoO have been observed to be much more restrictive internally compared with those in other preferential trade agreements that SADC has with third parties. The particular case of RoO for the textile and clothing sector in the SADC-EU Economic Partnership Agreement is one case in point. Such restrictive RoO have had the effect of constraining the development of a potentially successful manufacturing industry in the SADC region.

The proposed approach to industrialisation in SADC is selective, targeting specific industry sectors considered to have greater potential to accelerate industrialisation in the region. Successful industrialisation within the targeted industry sectors, namely pharmaceuticals, agro-processing, mineral beneficiation including downstream processing as well as value chain development would therefore require that RoO applicable to selected sectors or products are reviewed to support cross-border movement of inputs into priority industries and along priority value chains. The rigidity that has been reflected around the need to relax RoO in SADC, particularly with respect to textile and clothing as well as wheat flour can only serve to undermine industrialisation and value chain development in the region.

3.5 Trade in services

Services represent a growing fraction of trade and constitute a significant share of manufacturing value-added. According to the OECD, up to 30% of manufacturing value-added is accounted for by services, taking into account infrastructure services such as energy, telecommunications and transport. Evidence also suggests that the services sector has become an important driving force behind value chains, is critical in achieving competitiveness in manufacturing and makes a direct and significant contribution to GDP. Indeed, a number of emerging countries have accelerated industrial growth by diversifying their export portfolio of intermediate goods and industry related services. In SADC, services have been the lead sector in terms of growth for most economies, on average growing at 3.4% annually. It is indicated that the sector's share in GDP grew to 61.6% in 2011 from 57.7% in 1990⁴⁹.

The SADC agenda for liberalisation of trade in services has progressed at a rather sluggish pace following the entry into force of the Protocol on Trade which had liberalisation of trade in services as part of its built-in agenda. The Protocol on Trade in Services was finally signed in August 2012 and is due to enter into force once it has been ratified by the required number of the member states. Six service sectors have been prioritised for liberalisation, namely: construction, energy-related, financial, tourism, communication and transport services. Negotiations in the last four priority sectors, which are some of the key services in value chain and manufacturing sector growth, were completed

⁴⁹ See SADC Secretariat – Draft Report - SADC Industrialisation Strategy and Roadmap (2015).

in August 2017 and texts submitted for legal scrubbing in preparation for adoption by the CMT at its next meeting.

In line with the Action Plan for the Industrialisation Strategy, it will be important to urgently operationalise the Protocol on Trade in Services and continue to prioritise additional service sectors for liberalisation, ensuring that liberalisation of the services sector moves at par with efforts to promote regional value chains and competitiveness in manufacturing. Such efforts would even be more beneficial to SADC industrialisation if extended to the Tripartite and Continental FTA regimes where it is expected more trade relations will emerge once such agreements have entered into force.

3.6 Other trade-related issues: Competition policy, investment and intellectual property

Within the context of the regional integration pillar of the Industrialisation Strategy, deeper regional integration is depicted from two different perspectives. First, the expansion of the regional economic space within which trade takes place. In this regard, the integration of SADC within the Tripartite and Continental FTAs so as to derive scale economies through participation in larger markets, as well as opening up new opportunities for sourcing of inputs. The second aspect entails expanding and implementing a broader trade agenda encompassing services and other new generation trade issues such as investment, competition policy and intellectual property rights in addition to the conventional trade issues of tariffs and other border measures. This second aspect also involves implementation of other regional protocols and instruments that are relevant to industrialisation.

3.6.1 Competition policy

A healthy business environment requires competition, not only to provide an opportunity for consumers to choose from a wide array of goods and services, but also to ensure that the market offers goods and services at competitive prices. Competition policy provisions that, for instance, provide for antitrust rules that outlaw collusion and abuse of market power as well as enforcement against cartels. These measures will provide efficient and well-functioning markets that enhance productivity and ensure competitiveness within industry. It is in this context that a regional competition policy framework is required to

allow industry to restructure as it sees fit to meet global challenges and to address structural shortcomings that stand in the way of competition.

The competition drive in the SADC region has largely focussed on cooperation to develop institutional, policy and regulatory capacity within member states. Cooperation has also focussed on sharing of information, coordinating investigation of cases, harmonising the rules and procedures for handling cases, and undertaking joint capacity building and research. A regional competition policy framework for the region is urgently required to stimulate efficiency in production, innovation and allocation of resources and competition in the provision of products and services. This is critical for industrialisation.

3.6.2 Investment

The manufacturing sector in SADC is reported to be receiving low levels of private sector investment yet the private sector is expected to drive the industrialisation process in the region⁵⁰. To effectively play its role, private sector participation in policy planning and investment must be sought through the creation of an enabling environment which includes improvements in the doing business and logistics performance. The Regional Action Programme for Investment (RAPI) was approved by the Ministerial Task Force on Regional Economic Integration in 2012 as an exercise through which member states would coordinate their actions towards improvement of the investment climate in the region. The programme is anchored on four pillars: an investment policy framework for the region which is still under development; a peer to peer learning platform amongst the Investment Promotion Agencies in areas of excellence; an investment policy regimes database to act as a transparent regional investment data platform; and a model Bilateral Investment Treaty to assist member states to review the current content of their bilateral investment treaties as well as negotiate new ones.

It will be important for SADC to develop the Investment Policy Framework in a manner that seeks to ensure that the policy needs of the industrial sector are met, also taking cognisance of the important role of the private sector in driving investment. Private sector investments should also invest in the much-needed infrastructure in the region to support industrialisation. Infrastructure is

⁵⁰ See Action Plan for the SADC Industrialisation Strategy

identified as one of the binding constraints in SADC's industrialisation efforts and the shortfalls in energy, transport, water as well as information and communications technology would need to be addressed urgently in order to reduce transaction costs. A review of the infrastructure development projects portfolio undertaken during the review of RISDP indicates that out of the 397 original infrastructure projects, 239 were selected for implementation. Indicative costs for the 239 priority projects totalled US\$398 billion for the period 2012 to 2027 implying a much more elevated role for the private sector to jointly invest with governments to address this infrastructure gap.

3.6.3 Intellectual property rights

The protection of intellectual property rights (IPRs) needs to take centre stage in the discussions to promote industrialisation. An effective IPR regime in SADC has the potential to create jobs and increase incomes as well as government revenues. In this regard, it is in the interest of the region to work towards a common IPR Framework and support institutions that would nurture and promote innovation as well as protect the rights of inventors.

The Action Plan foresees the development of an IPR framework by 2020. The Framework would be designed to support investment attraction, research and development as well as technology transfer. Although some member states may have national IPR frameworks, currently the absence of a regional framework undermines a coordinated approach that would facilitate enforcement and address some of the many challenges faced across the region, for instance, with regard to counterfeit products.

From the above, it is clear that there is still need for SADC to further integrate for industrialisation to take root. The section below addresses itself to such trade policy imperatives that should lay the foundation for SADC's transformation.

4. Accelerating industrialisation in SADC – trade reform imperatives

Against the backdrop of a less mature trade regime, significant and timely reforms are necessary to drive economic transformation in SADC. If carefully implemented, the reforms will boost industrialisation, employment and contribute to economic growth in the region. Such reforms will also strengthen

the competitiveness of the productive sector, increase manufacturing value-added and expand exports from the region.

The main report of the SADC Industrialisation Strategy indicates that over the last quarter of the century, SADC's growth record has been unimpressive. The report notes that value-added in industry, which includes mining, energy and construction as well as manufacturing, declined from 35.5% to 31% while MVA fell from 17.6% to 13% between 1990 and 2013. Excluding South Africa, MVA declined as a share of GDP to 9.4% in 2013 from 16.6% in 1990. The report explains that this is because manufacturing has been the slowest growing sector in SADC, expanding at 1.6% annually compared with 3.3% for services and 2.1% for agriculture. Nevertheless, exports have been an important driver of growth with their share in SADC GDP increasing by a quarter between 2000 and 2012 to 38% of GDP. However, because imports grew fractionally faster than exports (13.7% annually as against 13.2% for exports), the direct stimulus to growth was negligible. Finally, the report argues that most SADC economies are experiencing de-industrialisation, a situation where manufacturing as a share of GDP is declining due to a decline in industrial capacity⁵¹.

It is against this background that the Strategy identifies quite ambitious targets to be achieved in order to move the region from the current stage of development, largely driven by export of primary commodities to markets outside the region, where they are processed and brought back as finished products. The Strategy foresees the region transitioning from factor driven stage; to investment driven; then to efficiency driven; and ultimately to the high growth trajectory driven by knowledge, innovation and business sophistication⁵². The time horizon given for this development trajectory is forty-eight years during which time economic transformation of the region will take place within a growth landscape premised on three phases.

- The first phase, 2015–2020 is particularly important in terms of the reforms that are envisaged, constituting the foundation for industrialisation in SADC. This phase coincides with the implementation of the revised RISDP (2015–2020). It is a period for

⁵¹ See SADC Industrialisation Strategy Draft Report (2015).

⁵² See SADC Industrialisation Strategy and Roadmap 2015-2063.

consolidation and achievement of the remaining RISDP agenda and laying down a firm foundation for long term development through active frontloading of industrial development, market integration and related infrastructure and services to support industrialisation.

- The second phase, covering the period 2021–2050, will be a period in which SADC economies transform from the factor-driven to the efficiency-driven stage where focus would be on diversification and enhancement of productivity and competitiveness. At this stage, the region is expected to raise GDP growth to about 8% per annum.
- In the third and final phase, 2051–2063, SADC economies will move into the innovation driven stage, characterised by advanced technologies and increased business sophistication⁵³.

Through the Strategy, the region is committed to achieving the following six major quantitative targets:

- Raising regional growth rate of GDP from 4% annually to a minimum of 7% per year.
- Increasing manufactured exports to at least 50% of total exports by 2030, from less than 20% at present.
- Increasing the share of medium and high technology production in total MVA from less than 15% at present to 30% by 2030 and 50% by 2050.
- Doubling the share of manufacturing value-added in GDP to 30% by 2030 and to 40% by 2050, including the share of industry related services.
- Building global market share in intermediate products of around 60% of total manufactured products.

⁵³ See SADC Industrialisation Strategy 2015 – 2063.

- Increasing the share of industrial employment to 40% of total employment by 2030.

As a launchpad, the current phase of the Strategy is characterised by the necessity of SADC to undertake trade policy reforms that would drive value chains and industrialisation in the region. It also entails implementation of some complementary policies and key infrastructure projects that would support development of selected priority products and value chains. Following from the above discussions, these trade policy imperatives can be summarised as follows:

- i) ***SADC must eliminate all forms of existing barriers to trade. These include both tariff and non-tariff barriers.***

In the case of tariffs, member states with delayed tariff phase downs should be encouraged to phase them down as soon as possible. Existing export duties and quantitative restrictions should also be removed as some of the restricted commodities can be transformed into final products in countries where there are capabilities and capacities for production while an active agenda for the removal of NTBs is set in motion. Furthermore, member states that are not yet party to the Protocol on Trade must recognise the importance of participating in the SADC FTA. This will not only contribute to an enlarged market but will also ensure predictability in the SADC tariff regime.

- ii) ***The Rules of Origin must be revised, simplified and should support input sourcing from competitive suppliers.***

Good lessons have been learnt regarding the benefits of simple RoO from trading arrangements such as AGOA in so far as textiles and clothing are concerned. In this context, countries such as Lesotho managed to significantly expand their clothing exports to the United States of America on the basis of simplified RoO. Such lessons have also been taken on board in the SADC–EU Economic Partnership Agreement where the single stage transformation rules were adopted as opposed to double stage transformation rules in the Trade Protocol.

- iii) ***SADC member states should move in haste to ratify the Protocol on Trade in Services so that it can enter into force. Additional efforts to identify service sectors that would support industrialisation and value chain development should be expedited.***

This is because a liberal trade in services regime will not only increase the scope of trade in services but will also serve as an important driving force behind value chains, enhance competitiveness in manufacturing and significantly raise the region's GDP.

iv) ***Efforts to reduce transaction costs in the drive towards industrialisation and value chain development are paramount.***

Particular focus should be on advancing the trade facilitation agenda through effective implementation of the SADC Trade Facilitation Programme, while also taking into account the need to improve the rankings of member states in the logistics performance index.

v) ***Timelines do matter, and industrialisation will not happen in the absence of fully supportive complementary policies and strategies.***

Therefore, moving quickly to finalise envisaged regional frameworks in competition, IPRs and investment will go a long way in supporting industrialisation in SADC. While Competition Policy remains important in providing efficient and well-functioning markets that enhance productivity and ensure competitiveness within industry, the IPR framework will be crucial in promoting innovation within an industrialising landscape.

vi) ***Finally, SADC member states should understand the necessity for harmonisation and consistency in the application of trade policy in promoting regional and global value chains.***

While sovereignty implies that a member state may choose not to become party to a Protocol or accede at a later stage, such arrangements are bound to create separate economic zones within the same region which need to be closely guarded. In the particular situation where trade policy is expanded beyond the traditional objectives of removing tariff and non-tariff barriers into more broad integration agendas of regulatory harmonisation, such as liberalisation of trade in services, competition policy, IPRs and investment, it would be important that SADC member states collectively commit to this agenda and negotiate as a region so as to avoid any possible obstacles to deepening integration and development of value chains.

The quest for accelerated industrialisation in SADC also necessitates that binding constraints to industrialisation, namely infrastructure, skills and financing, are simultaneously addressed.

- i)* Efficient and affordable **infrastructure services** (energy, water, communications and transport) are critical inputs for reducing transaction costs for industry. While a long-term solution to infrastructure development is very critical, in the meantime, consideration should be given to development of specific short-term, relatively cheaper and fast transportation corridors between specific hubs in the region. The objective would then be to enable goods and services to move within these corridors with as little trade barriers as possible and therefore reducing transaction costs. Requirements of specific industry sectors may be established, and such corridors developed as part of pilot projects.
- ii)* With respect to **skills development**: there is need to refocus the education system, giving more attention to the science, technology, engineering and mathematics subjects. The region's education system would also need to be repurposed to focus on technical and vocational skills of all kinds. At the firm level, tailor made training programmes for small and medium enterprises would need to be put in place and for the private sector in general to step up research and development efforts. This means that SADC member states should prioritise, restructure and adequately provide the resources for a new education system that would meet the industrialisation efforts in the region.
- iii)* On **financing**: a significant level of resources will undoubtedly be required to provide the necessary funding for capitalisation of investments, skills development and the infrastructure required to support industrialisation. While potential sources of funding have been identified, including the fiscal systems of member states, the financial and capital markets, private equity funds, public-private partnerships, the SADC Regional Development Fund, sovereign wealth funds and remittances, it remains imperative for SADC governments and the regional private sector to provide the requisite funds for development.

5. Conclusion

This paper sought to highlight the significance of the market integration agenda to industrialisation in SADC and the necessary reforms that would be required to effectively contribute to the SADC transformation process in its next development phases.

The paper concludes that implementation of the SADC market integration agenda is an important prerequisite for industrial development in a regional context, specifically cross-border industrial linkages. The discussions on regional value chains in the context of the SADC Industrialisation Strategy should therefore begin to seriously focus on how urgently key trade-related challenges in the SADC trade regime could be addressed. This will not only add value to the discourse on the region's industrialisation process, but most importantly, will pave the way for a sustainable development path for the region.

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Chapter 5

Dynamics of economic regional integration in Southern Africa 2000–15

Dirk Hansohm

1. Introduction

Regional integration (RI) has been an ambition of African states ever since their independence. At the forefront of such efforts has been regional economic integration (REI), and more specifically trade integration. However, a gap has remained between ambitious plans as economic unions and actual achievements. An important way to stimulate RI is its regular monitoring and evaluation (M&E).

The Southern African Development Community (SADC) with its 16 member states (MS) has as its aim deeper political and economic regional integration - even if not all the MS commit to the same speed: Angola and the DR Congo are not members of the SADC Free Trade Area (FTA) created in 2008. The SADC FTA is expected to increase welfare through an enlarged market with higher trade (within the region and beyond) and increased efficiency (through higher competition).

This article looks at core indicators covering the first 15 years of this millennium. The scope of the article does not allow to follow in detail the development for each year – rather the status in 2000 is compared to that in 2015 with a look at phases, and stable and unidirectional developments. The scope does also not allow to trace developments at state level. However, the evaluation of major economies and groups is followed. Last, the article does not follow institutional and legal developments as agreements, protocols etc. and if their pace follows plans. Rather, it concentrates on the results of REI. It asks if economic interactions within SADC have increased and if the expected benefits have indeed resulted.

The following main section looks at the record of REI in southern Africa, i.e. the 15 SADC economies⁵⁴. There is still a deficiency in trade data of the region, in particular on intra-regional trade and on trade of poor countries. This results in an underestimate of intra-African trade (e.g. Sandrey, 2015). However, there is an ever-expanding wealth on global data on more and more aspects of development, also covering all the SADC states. This article does not aim to present this affluence of data. Instead, if not noted otherwise, the data presented are from the World Bank's World Development Indicator database (World Bank, 2017a) that is based on a multitude of databases and presents best comparable data.

The concluding section summarises findings and discusses some crucial issues for future REI in southern Africa.

2. Record of integration in Southern Africa

A key challenge for REI in SADC are not only the high number of MS, but also the high differences between their size (both in population and economy), and their welfare levels. Looking at size of population, by far the largest MS are Democratic Republic of Congo (DRC) (23% of SADC population), South Africa and Tanzania (17%), Angola (9%), Madagascar (7%), Zambia (5%), all others are below 5%.

Concerning the size of the economy, South Africa constitutes more than half of the SADC economy (51.3% of SADC GDP), followed by Angola (15.6%), Tanzania (8.3%), Zambia (3.4%) and Botswana (2.7%). All other SADC MS are below 2%. The richest SADC country is Seychelles (US\$15076 per capita income), 50 as much as that of the poorest member Malawi (US\$301), in 2016.

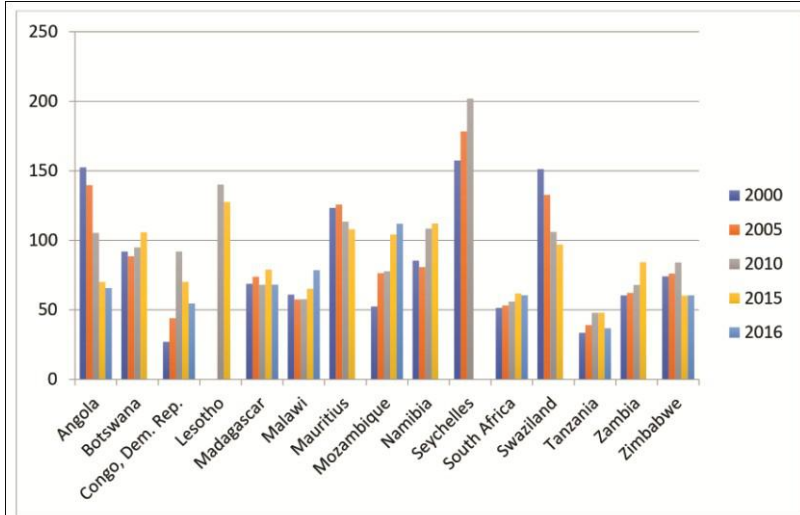
These are extraordinary differences. While the overall effects of REI should be positive, not all countries will benefit to the same degree. The integration of highly unequal economies provides both opportunities and risks. While there are possibilities for the poorer countries to catch-up, there is also a danger of polarisation with increasingly marginalised countries.

⁵⁴ Comoros is not included in the analysis, as it only joined SADC in August 2017.

Foreign trade

The most straightforward measure of trade integration is the extent of trade (exports plus imports) as percentage of economic product. Has the SADC economy been opening up as planned in the past 15 years (see figure below)?

Figure 1: Exports and imports as % of GDP (2000–2016)



Source: World Bank (2017a)

The figure shows nine countries increasing trade integration between 2000 and 2016 (Botswana, DRC, Malawi, Mozambique, Namibia, Seychelles, South Africa, Tanzania, and Zambia) –only three show unidirectional positive change (Mozambique, Seychelles, and Zambia). Two show the same pattern of negative growth (Angola and Swaziland). Nine countries show negative growth in the most recent period. Overall, the picture is very diverse.

Except for Mauritius, all the countries with declining trade integration are poor. This points to diverging development: The poorer countries have become more isolated and the region less economically integrated.

Exports

The role and importance of exports are important both for the dynamics of development and REI in particular. Export performance of SADC economies between 2000 and 2015 has been both highly volatile and disappointing for many countries (see figure below). Only four countries showed substantial growth in exports as % of GDP (DRC, Mozambique, Tanzania, and Zambia), the first two of these showing impressive growth. On the other hand, four countries export less now than 15 years ago. The development of Mauritius can be interpreted as a shift to domestic demand driven production as income raises. The export growth of South Africa and SACU has been extremely modest.

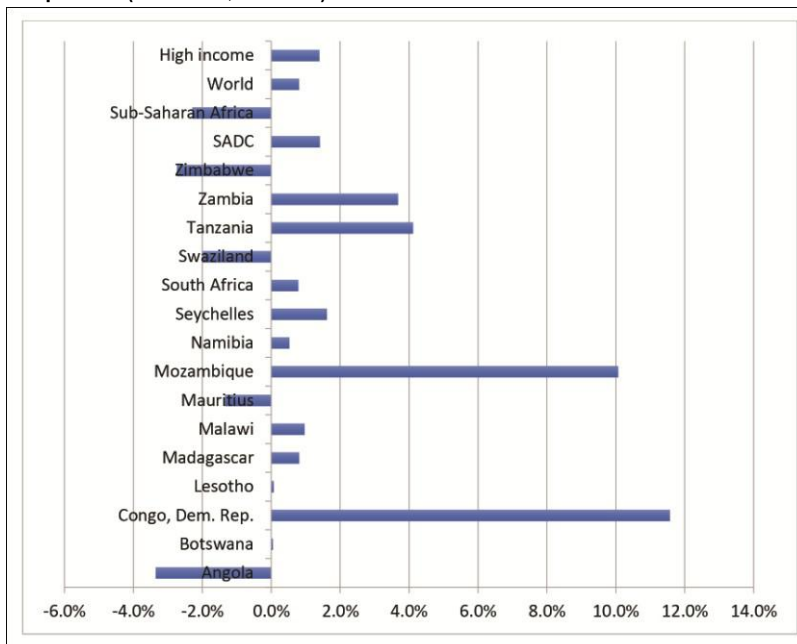
Table 1: Annual export growth of SADC countries (% of GDP, 2000–15)

Angola	-3.4%
Botswana	0.1%
DR Congo	11.6%
Madagascar	0.8%
Malawi	1.0%
Mauritius	-1.3%
Mozambique	10.1%
Namibia	0.5%
South Africa	0.8%
Swaziland	-2.0%
Tanzania	4.1%
Zambia	3.7%
Zimbabwe	-2.7%

Source: World Bank (2017a)

However, SADC export growth (average annual 1.4%) equals the global average and contrasts with that of a declining sub-Saharan Africa (-2.3% per year). In sum, the export growth of SADC is not below expectations.

Figure 2: Average annual export growth of SADC economies in global comparison (% of GDP, 2000–15)



Source: World Bank (2017a)

Intra-SADC trade

There are incomplete data on intra-SADC trade. As pointed out above, these present an underestimate, but nevertheless provide a sense of the state of REI. According to Chidede (2017), intra-SADC trade is only 10%, low compared to other regions like the south-east Asian nations (24%) and the European Union (40%). Intra-SADC trade was highly volatile in the first 15 years of this millennium, and in 2014 it was lower (14.8%) than in 2000 (16%). In fact, it was lower after the implementation of the SADC Trade Protocol than before. Mushonga and Ikhide (2017) attribute this low intra-regional trade to weak legal enforcement mechanisms of SADC's Trade Protocol.

According to Mbekeani (2013), intra-southern African regional trade reached a high of 22% of total trade in 2002 and since then steadily declined to less than 15% in 2008. Meanwhile, the contribution of South Africa to intra-

regional exports remained dominant with 51.4% in 2000 and 53.9% in 2008. Namibia (13.5%) and Botswana (10.7%) grew to next important intra-regional exporters in 2000.

Botswana and Namibia accounted for the largest proportion of intra-SADC imports, while South Africa, Botswana, Swaziland and Zimbabwe accounted for the bulk of intra-SADC exports, with South Africa alone accounting for around 50%. Keane and Kennan (2010) also found that South Africa was a dominant economy that accounts for a large proportion of the imports by other SADC countries.

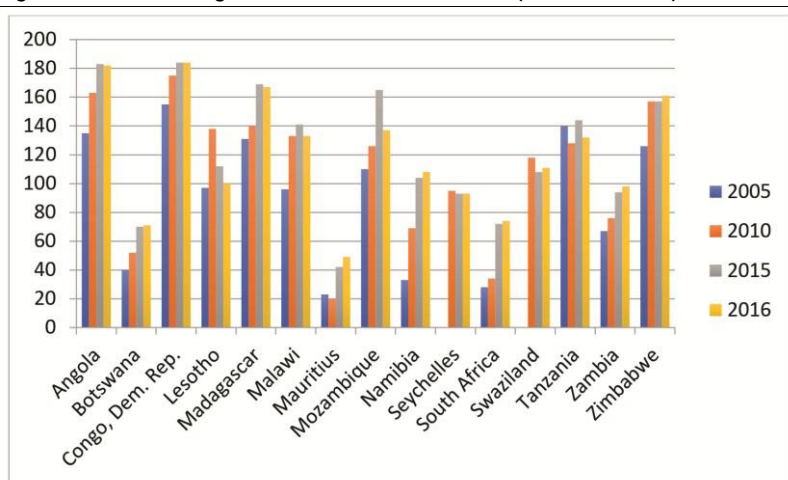
While SADC has reduced its tariffs, the structure remains complex and too high on intermediates. Other impediments make it costly and difficult to move goods but are at levels which are comparable with countries at similar levels of development. The structure of tariffs also varies substantially across SADC countries, remains complex in many countries and inhibits regional trade flows by necessitating complex rules of origin. Nevertheless, more complex and more important are the increasing multifarious non-tariff barriers.

Ease of doing business

Private business is at the heart of dynamic growth and REI. The ease of doing business is important for economic dynamics. Thriving business is also vital for sustainable REI. Conversely, a deepening regional market also gives a boost to business development.

The World Bank measures the ease of doing business in 10 dimensions: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. The following figure pictures the compounded index of these since 2000 (the higher the rank, the worst the business conditions).

Figure 3: Ease of doing business in SADC countries (ranks, 2005–16)



Source: World Bank (2017b)

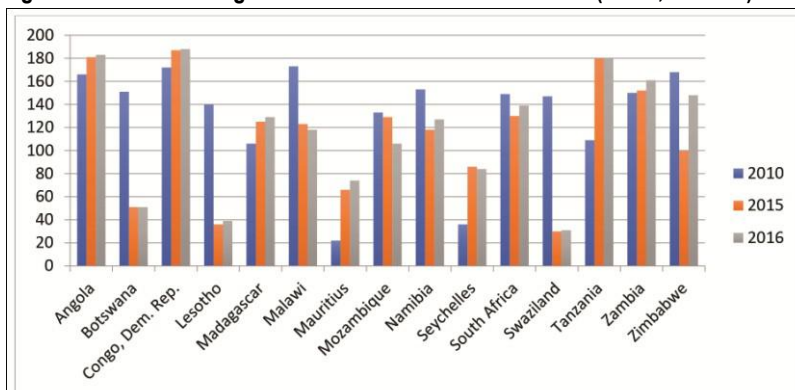
The picture is sobering: most countries show a clear trend of deteriorating environments for doing business. Only three countries improved business environment between 2005 and 2016, two of them very small (Tanzania being the other one).

There are huge national differences with Mauritius (49), Botswana (71) and South Africa (74) with rather positive ranks in 2016, while DRC (184), Angola (182), Madagascar (167) and Zimbabwe (161) belong to the world's most problematic countries for business to operate in. Three of these belong to the larger countries (population wise).

Ease of trade across borders

One of the sub-indices of the ease of doing business index measures the ease of trade across borders. REI is supposed to ease the movements of goods and services among the agreement members, and also with the wider world. Easing tariffs and NTBs is also on the agenda of SADC. The following figure displays the actual developments.

Figure 4: Ease of trading across borders in SADC countries (ranks, 2010-16)



Source: World Bank (2017b)

In only eight SADC members did trade across borders actually become relatively easier between 2010 (earliest data) and 2016 (in Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, and Zimbabwe), in four of these significantly so (Botswana, Lesotho, Malawi, and Swaziland). Among those with deteriorating ease of doing business, decline was often steep. Among the five biggest economies, only South Africa and Botswana improved.

Growth

RI brings gains resulting from the re-allocation of production and consumption generated by trade expansion. Furthermore, there are benefits from increased capacity utilisation made possible by the availability of critically important imports upon which domestic production depends. In addition to these static benefits, there are longer term dynamic technology-based productivity increases. In these ways, REI is expected to raise growth. GDPs of MS are also expected to converge, mainly by poorer countries catching-up.

In actual fact, the SADC average per capita incomes were far from the actual incomes of any MS in 2000. Six SADC members had, significantly, higher per capita incomes, while nine had very much lower incomes. In 2016, one more country had joined the richer group (Angola).

Between 2000 and 2016, six poorer SADC countries have been converging to the SADC average per capita GDP through slow catch-up growth. Two countries with a richer per capita GDP have also been converging through slower growth than the SADC group (South Africa and Swaziland). The other richer countries grew stronger than the group. Meanwhile, three poorer countries fell back further. All in all, rather than regional convergence, the picture shows differentiation.

In 2016, richest countries per capita GDP was 60 times as high as that of poorest member –in 2000 it was the same relation –the two countries were also the same (Seychelles and Malawi).

Because of the different growth rates, the relative size of some national economies in SADC changed. For example, the importance of Angola almost quadrupled (3.6 times as large), while the size of DRC was only two-thirds in 2015 of that in 2000. Other substantially growing economies are Tanzania and Zambia. Most notable is the relative decline of South Africa (51.3% in 2016, 64% in 2000). While the signs of economic decline in South Africa is a major concern not only for the country but also for the region by virtue of its mere size, the declining dominance is certainly positive.

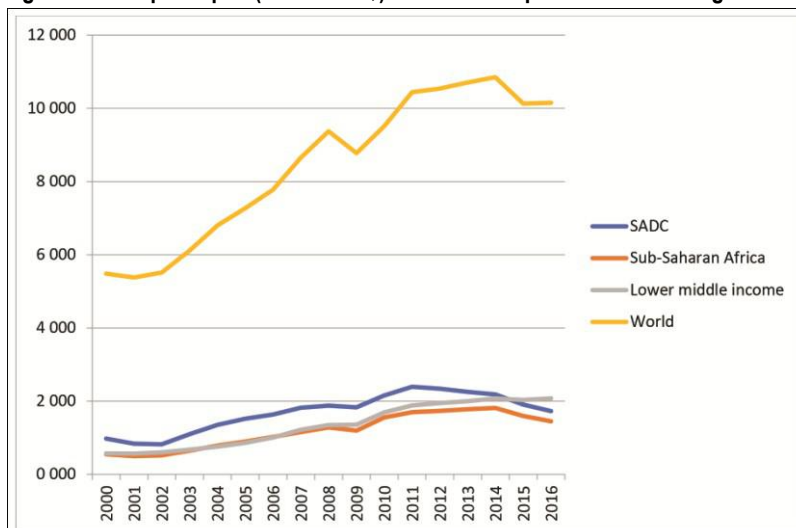
Table 2: Size of national economies (% of SADC GDP, 2000–16)

	2000	2005	2010	2015	2016
Angola	4.3%	7.5%	13.6%	16.7%	15.6%
Botswana	2.7%	2.7%	2.1%	2.3%	2.7%
DRC	9.0%	3.2%	3.4%	5.9%	6.1%
Lesotho	0.4%	0.4%	0.4%	0.4%	0.4%
Madagascar	1.8%	1.3%	1.4%	1.6%	1.7%
Malawi	0.8%	1.0%	1.1%	1.0%	0.9%
Mauritius	2.1%	1.7%	1.6%	1.9%	2.1%
Mozambique	2.4%	2.1%	1.7%	2.4%	1.9%
Namibia	1.8%	1.9%	1.9%	1.9%	1.8%
Seychelles	0.3%	0.2%	0.2%	0.2%	0.2%
South Africa	64.0%	68.8%	61.8%	51.5%	51.3%
Swaziland	0.8%	0.8%	0.7%	0.7%	0.6%
Tanzania	4.8%	4.5%	5.2%	7.4%	8.3%
Zambia	1.7%	2.2%	3.3%	3.4%	3.4%
Zimbabwe	3.1%	1.5%	1.7%	2.6%	2.8%

Source: World Bank (2017a)

In addition to regional convergence, REI and trade liberalisation also promise a global catch-up process –to bring the regions welfare closer to the global level.

Figure 5: GDP per capita (current US\$) of SADC compared with other regions



Source: World Bank (2017a)

As the figure above shows, SADC parallels the development of all sub-Saharan Africa: modestly increasing, and in this decade stagnating and declining. The region is slightly diverging from the world, rather than converging: in 2000 SADC's per capita income was 17.8% of global GDP; while slightly converging with a high of 22.7% in 2010, it was in 2016 only 17.0%.

Adult literacy and life expectancy

To give a fair view of human welfare, monetary income should be complemented by health and education indicators as adult literacy and life expectancy. These are both important inputs to RI and results of effective RI.

Most SADC countries gained in adult literacy over the period, some of them substantially (including South Africa). However, the values for Angola and Lesotho were higher in 2000 than in 2017, while those for Botswana remained stagnant, though at a high level. Overall, convergence is not discernible.

All of the SADC countries gained on life expectancy, some of them significantly. Importantly, all of them now exceed their high point prior to the

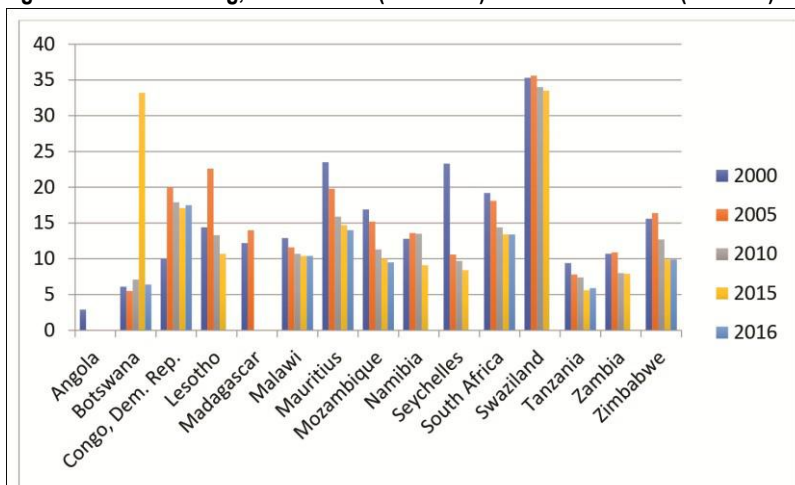
devastating HIV/AIDS catastrophe. While in 2000 only five SADC countries were exceeding the average of sub-Saharan Africa, in 2015 it was 11.

Structural change

The heart of sustainable development is structural change, change beyond the emphasis on low-productivity agriculture and the depletion of minerals, to industry and high-value services. Only such a change will create continuous productivity and welfare gains. At the core of structural development is the growth of manufacturing. This is also one of the SADC objective, albeit defined wider as 'industrialisation'.

As the figure below shows, the region is characterised by deindustrialisation. With the exception of only three countries (Botswana, DRC and Madagascar) all countries witnessed declining shares of manufacturing in GDP.

Figure 6: Manufacturing, value-added (% of GDP) in SADC countries (2000–16)



Source: World Bank (2017a)

Note: Angola only 2000 data; Madagascar only 2000 and 2005 data; 2016 data for only seven countries.

Competitiveness

The competitiveness of national economies is key to growth processes that are sustainable and productivity driven. RI contributes to higher competitiveness, while a higher integrated region is also able to become more competitive.

The World Economic Forum (WEF), a global public-private dialogue forum that publishes a global competitiveness report annually, defines competitiveness as the set of institutions, policies and factors that determine the level of productivity of an economy, which in turn sets the level of prosperity that the economy can achieve.

The Global Competitiveness Index (GCI), measured since 2005, combines 114 indicators that capture concepts that matter for productivity and long-term prosperity. These indicators are grouped into 12 pillars: institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication, and innovation. These pillars are in turn organised into three sub-indexes: basic requirements, efficiency enhancers, and innovation and sophistication factors.

Only since 2010 are figures comparable. Comparing 2010 and 2017, 6 out of 14 (no recent figures on Angola) are higher ranked now. This group includes some of the winner suspects, i.e. better performing economies as Botswana and Mauritius, but also some big poor countries. Notably, South Africa and Namibia slipped considerably. The development of many countries was volatile.

On the important institutional pillar, only four countries climbed higher, including Mauritius and Tanzania. Eight countries declined (out of 13 for which data are available), including Botswana and South Africa.

Infrastructure is the bone for development and particularly for effective RI. Six countries improved, including notably South Africa, Tanzania, and Zimbabwe, seven declined.

The macroeconomic environment, a basic factor for sustainable development and REI, declined in seven economies, in many cases steeply. South Africa

declined from 42 (2010) to 82 (2017). At the same time, others such as Madagascar, Malawi, and Tanzania improved significantly.

Goods market efficiency measures if firms produce the right mix of goods and services given supply and demand conditions and if these products are effectively traded. Almost all countries – 11 out of 13 – slipped on this. Lesotho and Mauritius were the only exceptions. This is a troubling sign, indicating failed attempts to improve economic performance by government muddling.

The size of the market affects productivity since large markets allow firms to exploit economies of scale. Traditionally, the markets available to firms have been constrained by national borders. In the era of globalisation, international markets have become a substitute for domestic markets, especially for small countries. Thus, exports can be thought of as a substitute for domestic demand in determining the size of the market for the firms of a country. Ten of 13 SADC countries increased their market considerably between 2010 and 2017.

Innovation is important for adding value by adapting existing technologies. This is crucial for rising beyond agricultural and mineral goods exporting. Only five SADC countries moved upwards, including South Africa and Tanzania. Overall, this is a troubling sign concerning perspectives for dynamic development.

Governance indicators

The importance of the quality of governance is no longer disputed. High governance is conducive for RI, while RI improves conditions for better governance.

Among the many concepts and measurements, the World Bank governance indicators are chosen here, because they are composite and based on many sources. Estimates of governance range from approximately –2.5 (weak) to 2.5 (strong) governance performance. Of the six sub-indicators, most important for REI are voice and accountability, political stability and absence of violence, and government effectiveness.

Voice and accountability

This reflects perceptions of the extent to which a country's citizens can participate in selecting their government, as well as freedom of expression, freedom of association and a free media. A participative RI negotiation and implementation process promise sustainable RI. By creating regional discussion and interaction, RI through SADC will also strengthen voice and accountability.

Table 3: Voice and accountability in SADC states (2000–16)

	2000	2005	2010	2015	2016
Angola	-1,46	-1,23	-1,12	-1,18	-1,17
Botswana	0,67	0,59	0,46	0,44	0,42
DRC	-1,73	-1,52	-1,41	-1,3	-1,39
Lesotho	-0,37	-0,21	-0,1	0,12	0,03
Madagascar	0,11	-0,12	-0,85	-0,38	-0,27
Malawi	-0,13	-0,53	-0,19	-0,01	0,04
Mauritius	0,98	0,83	0,79	0,82	0,86
Mozambique	-0,22	0,01	-0,12	-0,27	-0,39
Namibia	0,33	0,33	0,35	0,57	0,61
Seychelles	0,04	0,17	0,1	0,08	0,16
South Africa	0,75	0,65	0,6	0,65	0,64
Swaziland	-1,46	-1,49	-1,33	-1,4	-1,42
Tanzania	-0,47	-0,36	-0,13	-0,23	-0,18
Zambia	-0,41	-0,43	-0,24	-0,07	-0,3
Zimbabwe	-1,09	-1,67	-1,48	-1,17	-1,11

Source: World Bank (2017c)

Nine member states show improving voice indicators during the period. Seven of the worst performing (below 0) have improved. However, some of the richest and most advanced countries such as South Africa, Mauritius and Botswana show declining levels. But most of the big countries (both by population and GDP) have improved. Overall, the picture is mixed, and dominated by national, rather than regional issues.

Political stability and absence of violence/terrorism

This indicator measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism. This is a vital outcome indicator of development, as the control of violence is arguably the key task of low income countries (North et al., 2013). Only basically stable states are interested in and can commit to RI. Further, RI agreements and bodies can play a role in overcoming violence. RIA and SADC have mechanisms to reduce violence and increase stability.

Table 4: Political stability and absence of violence in SADC MS (2000-16)

	2000	2005	2010	2015	2016
Angola	-2.04	-0.89	-0.23	-0.5	-0.39
Botswana	1.07	1.06	0.99	1.04	1.09
DRC	-2.48	-2.13	-2.2	-2.15	0.21
Lesotho	0.1	0	0.46	-0.31	-0.25
Madagascar	0.16	-0.02	-0.98	-0.43	-0.4
Malawi	0.1	0.04	0.04	0.03	-0.06
Mauritius	0.76	1.03	0.64	1	1.05
Mozambique	-0.13	0.12	0.39	-0.51	-1.05
Namibia	-0.25	0.63	0.85	0.73	0.74
Seychelles	1.28	0.93	0.86	0.69	0.72
South Africa	-0.23	-0.16	-0.03	-0.21	-0.13
Swaziland	0.04	-0.4	-0.08	-0.48	-0.49
Tanzania	-0.7	0.01	-0.42	-0.42	-0.41
Zambia	0.03	0.11	0.52	0.15	0.18
Zimbabwe	-1.32	-1.27	-1.1	7.71	-0.61

Source: World Bank (2017c)

Nine MS showed higher indicators (less violence) in 2016 than in 2000, including all the major countries (both in terms of population and GDP), except for Madagascar. Although the picture is mixed, this is an overall positive development.

Government effectiveness

This indicator reflects perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies. Strengthening governance is a crucial step in institutional development. Government effectiveness sets a limit to the ability to implement RIA. Conversely, effective regional organisations and the process to strengthen them (as happens in SADC) will strengthen national government effectiveness.

Table 5: Government effectiveness of SADC MS (2000–16)

	2000	2005	2010	2015	2016
Angola	-1,46	-1,14	-1,12	-1	-1,04
Botswana	0,53	0,65	0,45	0,5	0,51
DRC	-1,88	-1,57	-1,74	-1,63	-1,51
Lesotho	-0,13	-0,14	-0,31	-0,68	-0,8
Madagascar	-0,58	-0,35	-0,96	-1,3	-1,17
Malawi	-0,34	-0,81	-0,41	-0,67	-0,73
Mauritius	0,42	0,61	0,87	1,05	0,96
Mozambique	-0,43	-0,52	-0,58	-0,75	-0,85
Namibia	0,16	0,02	0,07	0,25	0,17
Seychelles	0,06	0,14	0,2	0,42	0,36
South Africa	0,73	0,64	0,39	0,26	0,27
Swaziland	-0,66	-1,05	-0,54	-0,54	-0,56
Tanzania	-0,42	-0,41	-0,6	-0,61	-0,55
Zambia	-0,88	-0,94	-0,85	-0,56	-0,66
Zimbabwe	-0,8	-1,33	-1,51	-1,16	-1,16

Source: World Bank (2017c)

During 2000–16 six countries improved perception indices. Two of the better performers in economics and effectiveness – Botswana and Namibia – stagnated at a relatively modest level. They seem to be stuck in a 'middle-income trap'. The remaining seven countries deteriorated, including some of the larger countries: South Africa, Tanzania, Madagascar and Zimbabwe. This

is an alarming result, as both effective REI and sustainable growth are hardly conceivable in a context of low and declining government effectiveness.

UNECA's five dimensions of regional integration

The UN Economic Commission for Africa (UNECA) measures RI in five dimensions: trade integration, regional infrastructure, productive integration, free movement of people, and financial and macroeconomic integration (see following the table, UNECA 2016). The measurement is done in the form of 16 indicators. National economies and RI bodies are assessed.

Table 6: UNECA's five dimensions of regional integration (2016)

	overall classification	trade integration	regional infrastructure	productive integration	free movement of people	financial and macro-economic integration
Angola	0.281	0.488	0.435	0.268	0.050	0.166
Botswana	0.559	0.611	0.820	0.175	0.6	0.589
DRC	0.302	0.489	0.380	0.350	0.079	0.214
Lesotho	0.386	0.541	0.292	0.073	0.6	0.421
Madagascar	0.343	0.499	0.388	0.301	0.2	0.324
Malawi	0.367	0.491	0.466	0.280	0.6	0
Mauritius	0.466	0.513	0.444	0.257	0.664	0.664
Mozambique	0.483	0.530	0.503	0.465	0.586	0.333
Namibia	0.555	0.620	0.666	0.189	0.650	0.650
Seychelles	0.481	0.246	0.668	0.291	0.7	0.500
South Africa	0.741	1	0.591	0.551	0.650	0.915
Swaziland	0.520	0.549	0.584	0.394	0.7	0.372
Tanzania	0.364	0.329	0.389	0.383	0.521	0.197
Zambia	0.523	0.628	0.444	0.533	0.693	0.320
Zimbabwe	0.488	0.084	0.456	0.738	0.664	0.498
SADC average	0.457	0.508	0.502	0.350	0.530	0.397
EAC	0.540	0.780	0.496	0.553	0.715	0.156
COMESA	0.415	0.572	0.439	0.452	0.268	0.343

Source: UNECA (2015)

In overall terms, the East African Community (EAC) is the highest integrated region among the African RI bodies, followed by SADC and COMESA (ECOWAS and IGAD are also better performing than SADC). Within SADC, South Africa is most integrated, followed by Botswana and Namibia. Big countries such as Tanzania, Madagascar, DRC and Angola are trailing at the end.

In trade integration (measured by level of customs, shares of intra-regional exports and imports) South Africa is also leading, followed by Zambia. Tanzania, Seychelles and Zimbabwe are at the end.

In regional infrastructure (roaming costs, regional electricity trade, intra-regional flights), higher income countries are leading, while land-locked DRC and Lesotho are at the end.

In productive integration (measured by shares of intra-regional intermediate goods exports and imports, trade complementarity index), surprisingly Zimbabwe leads, followed by South Africa and Zambia. At the end are Namibia, Botswana and Lesotho.

In free movement of people, small economies such as Swaziland and Seychelles lead, while large countries like Madagascar, DRC and Angola trail at the end. Leading economies are in the middle.

South Africa and SACU members lead the field in financial and macro-economic integration (measured by currency convertibility and inflation). Worst performing economies form the end.

3. Conclusion and outlook: Results of REI in southern Africa and the way ahead

As this review has shown, the results of REI in the region has remained below expectations. Some development successes have been achieved, but the overall record is uneven and variable:

- Little sign of regional convergence in terms of incomes and growth is discernible. Economic policies and their results have also been very varied.

- Likewise, there is little sign of catch-up with the rich countries, of global convergence.
- Chief reason for low regional convergence is the limited achievements in actual REI. Intra-regional trade has hardly increased.
- While the development of the business environment has also varied greatly among countries, the overall trend has been disillusioning: most countries exhibited a clear trend of deteriorating environments for doing business.
- There remain textbook cases of success in terms of sustainable growth (most notably Mauritius and Botswana), but these are mainly due to luck and favourable national economic policies. Furthermore, even these countries are facing stumbling blocks, indicating that further growth and welfare increases will not be easy.

Without a new effort that goes beyond past approaches to economic development the hopes and expectations of the regional population will be increasingly frustrated. Such efforts must certainly include REI, simply due to the size, or lack of it, of most southern African countries.

Although international cooperation partners (ICP) can and should play a supporting role, this role has certainly been overestimated. The high ambitions of the Economic Partnership Agreements (EPAs) in terms of increased effectiveness of aid and of higher trade, for instance, have clearly not been met so far (Erasmus, 2017). In addition, the overall impact is mixed. On the negative side, in most cases, including southern Africa, regional organisations have not been strengthened as stipulated as a main motivation, but undermined, as EPAs have been signed with areas different from the existing bodies.

Efforts of ICP to coordinate and streamline their support to SADC and REI in southern Africa are at best at an infancy stage. While this remains a standard recommendation, the political economy of foreign aid will probably set narrow limits to this process.

As successful REI in other regions has shown, it depends primarily on the interest of its members, not on foreign aid. Regrettably, REI seems not to be high on the agenda, neither of South Africa which is preoccupied with

domestic issues and looks at new global partners in BRICS, nor of the small members that also concentrate on national issues.

Meanwhile, the institutional development and particularly the organisational development of the SADC Secretariat have remained weak. There appears an increasing gap between the rising dynamics of REI driven by economic as well as civil society actors, and the slow speed of REI on the institutional level – including, but not limited to SADC. However, a deeper REI will need a more empowered, capable and effective secretariat.

One area that remains at the margin of attention of both government actors and ICP is the inclusion of the private sector in planning and implementation of REI. This is despite the fact that private sector development is an inclusive part of all relevant SADC plans and declarations. Obviously private business must be a key actor in REI. At the same time, national business vested interests are often stumbling blocks to REI. These can only be overcome in a forward-looking way in a participative process.

A study for SADC in 2011 found that the involvement of the private sector in SADC REI processes were, despite obligations, very limited (TRADES 2011). While the interests to become more involved was manifest, relevant knowledge on part of business membership bodies was limited to basics. This state of affairs has not changed since. Although some sector regional business representative bodies exist, their capacity is limited and the alignment with national priorities weak. There does not seem to be an improvement in this regard since 2000 (Hansohm and Shimilela, 2000). A private sector desk established by the SADC Secretariat to facilitate communication and coordination with the private sector has been abolished.

As explained, a key challenge not yet systematically addressed is the dominance of South Africa. Even though its relative size has slightly declined, this has been the result of its deep economic and political structural factors, rather than the result of a natural growth process of the other SADC MS. If even the smaller and poorer countries were able to catch-up with the income level of South Africa, the extraordinary dominance of South Africa will not substantially change.

At the same time, South Africa is not taking a leading role in SADC. One reason is a hesitance and sensitivity towards the concerns of the small MS. Another one is South Africa's preoccupation with domestic issues, while a higher priority is given to international interests over the development of the southern African region. However, one lesson of successful REI is that it needs hegemonic leadership. This means, predominantly, that the one or few largest countries lead the region by representing the interest of all and by investing in the development of the lagging members. This would mean to look beyond the narrow national interest on the basis of an understanding that a prospering region will promote the interest of the hegemon.

Meanwhile, the concerns of the small countries have remained unresolved: These concern policy autonomy, credibility of commitments, adjustment costs, and risks, all of them reinforced by capacity differences. These had already been well formulated by Helleiner in 1996 as an explanation why the RI process has not been faster.

The development of institutional RI, notably competition and industry policies would be key instruments to balance regional development. Although there is now a stated emphasis on industrialisation, the planning and implementation capacity at SADC level is weak and the regional efforts do not seem to be well grounded in national needs and priorities.

The EU REI has been and still is a model for the integration of southern Africa. While much of this appears to be premature, as the EU MS are on a higher level of welfare and institutional development and the EU Commission is a supranational body, one element of EU integration policy will need more attention in SADC: substantial funds for the development of backward regions in poorer MS. Such funds, allocated through multiple windows, have achieved major development leaps, facilitated catch-up processes and were a successful instrument to counter negative and polarisation effects of deeper market integration. The real risk and fear of such effects appear as a major factor, slowing down REI in southern Africa.

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Chapter 6

How the systemic failure of energy cooperation in SADC has undermined regional integration

Mike Muller

1. Introduction

Southern Africa has diverse endowments of energy resources which have contributed to its economic and social development and offer potential for further development. However, this potential has not been fully realised. And indeed, despite the rich energy endowment, social life and economic activity in the region was significantly constrained in the first decade of the 21st century by widespread electricity shortages.

This was ironic since, from the time that formal development cooperation was first established between the region's sovereign states, energy matters generally and the development and management of electricity supply in particular, has been a priority. One reason for this is that electricity is essential for both economic activity and for a better quality of life for citizens. More specifically, energy products generally and electricity in particular are relatively easy to transport and therefore to trade. They offer opportunities for poorer countries to export to their richer neighbours, potentially fuelling regional trade, as well as for the region as a whole to reduce electricity costs and enhance its competitiveness.

Given its centrality in the economies of the region and the potential for cross-border initiatives, electricity should thus be an important dimension of regional integration. The failure to achieve greater progress on cooperative electricity projects and programmes offers some insights into the larger challenges of the integration process.

In particular, the size of the infrastructure projects required to make electricity available and the inevitable interface between public policy and private interests highlight some of the factors that constrain greater progress in regional cooperation and, more generally, integration. The linkages with climate policy and the extent of investments required also mean that the region's electricity industry, like the rest of the energy sector is of great interest to public and private institutions from other countries and regions which further complicates local political dynamics.

This chapter considers the history of cooperation in electricity generation and transmission in the southern African region and offers some tentative conclusions about the lessons that can be drawn from the experience.

2. Resource Context

2.1 Endowments

The energy endowment of the region includes (UNEP, 2017) substantial reserves of oil and gas off the coast of Angola, with very large gas fields now about to be developed off the coast of Mozambique and Tanzania. South Africa has globally significant reserves of coal and there are also large deposits in Mozambique and Botswana and locally significant commercial scale deposits in Tanzania and Swaziland.

There are substantial endowments of renewable resources that have traditionally been used to provide energy. Widely available biomass continues to be the most important source of household energy in most countries of the region. In addition, the region's surface water resources represent a substantial potential for the production of hydropower, which is already being tapped in those countries with significant water resources. In addition, southern Africa has many areas of high potential for solar power as well as considerable wind power resources, although these are more localised.

Finally, South Africa, which has the only nuclear power station in sub-Saharan Africa, and Namibia have historically important reserves of uranium and other potential nuclear fuels such as thorium.

2.2 Exploitation – current and future

The coal resource has been extensively exploited and continues to be a significant export for South Africa and Mozambique (metallurgical and high quality thermal coal). In addition, coal fired generation accounted for 62% of the region's installed electricity generation capacity in 2016 (SAPP, 2016). Angola has been a significant oil producer since the 1980s; deep water fields brought into production around 2000 made it Africa's largest oil producer although production has now plateaued.

Attention is currently focused on the development of Mozambique and Tanzania's gas reserves and Angola is also seeking to expand the share of gas in its hydrocarbon production. Earlier enthusiasm about the economic potential of these initiatives has been tempered by what appears to be a period of global over-capacity. Nevertheless, it is expected that gas-fired power stations will make a significant contribution to electricity production in the region and Mozambique, South Africa and Angola have all made, or initiated, investments in this regard. One issue is whether east African gas will be transported by a regional pipeline to energy market centres (as is already being done on a smaller scale between Mozambique and South Africa) or whether it will be liquefied (an expensive process) and transported by sea (which requires further investment in degasification facilities).

Nuclear power continues to make only a small contribution to the regions electricity supply. South Africa's Koeberg nuclear power station has been producing since the 1970s, accounting for about 4% of South Africa's capacity. Proposals to establish a large fleet (9 600 MW) of nuclear power stations to provide a zero carbon 'base-load' capacity in South Africa, as well as to resuscitate the country's capacity to enrich uranium to energy grades, are controversial and unlikely to proceed. This is not just due to the high initial capital cost of the proposed fleet and the uncertainty regarding the trends in South Africa's electricity requirements, but also because it may be cheaper, in lifecycle terms, to meet the region's needs in a more flexible manner through the use of a mix of renewables (hydro, solar, wind) and gas generation.

After coal, hydropower has been the main source of electricity in the region, accounting for 21% of installed capacity and the bulk of electricity generation in most countries in the region. Zambia and Angola have both recently invested in increasing hydropower capacity to supply their local needs while

Zimbabwe and Mozambique are also promoting hydropower projects that would supply regional as well as local markets. The Democratic Republic of Congo's (DRC) large Inga project has stalled (again) after failure to retain the support of the DFIs that had initially agreed to fund the development of the Inga III project. Other wind and solar renewables, mainly installed in South Africa, account for a very small proportion of electricity produced in the region although this contribution is expected to grow.

Biomass remains the primary source of energy for rural populations throughout the region, except South Africa, while charcoal is still an important fuel in many urban areas. Some bioethanol is produced in the region but is not a significant contributor to overall energy consumption. Aside from the relatively small-scale local use of waste material from sugar production, there is no significant electricity generation from biomass sources.

3. Regional policy approaches

3.1 Context

Cooperation in the area of energy and, specifically, electricity production was identified as an early priority when the Southern African Development Coordinating Conference (SADCC) was established. With Zimbabwe's independence, the priority for the region changed. Once the achievement of the goal of freeing the remaining colonies was in sight, the 1970s group of five 'Frontline States' was expanded. They reconstituted themselves in 1980 as the SADCC to address economic goals, specifically to reduce dependence of the region on South Africa.

SADCC's initial Lusaka Declaration located economic cooperation as an addition to previous strategies:

'Our urgent task now is to include economic liberation in our programmes and priorities.' (Emphasis in the original) (Nsekela, 1981)

The political objective was to achieve 'the reduction of economic dependence, particularly but not only, on the Republic of South Africa'. Its strategy would focus on transport and communication but also included other sectors such as trade, environmental protection (and food security and agriculture), mining, industry and energy. In background documents, particular attention was

focused on the potential for joint power projects to ‘exploit natural resources, in particular those of common hydrological basins’ (Nsekela, 1981).

The strategy of SADCC was based on a pragmatic and bottom-up approach. SADCC relied on a relatively informal country-based institutional approach in which responsibility for each of SADCC’s sectoral programmes was allocated to an individual member. The organisation’s economic work was organised in seven programmes, covering:

- energy conservation and development
- food, agriculture and natural resources
- industry and trade
- human resources development
- mining
- tourism
- transport and communications.

A political dynamic can be seen in the 1981 allocation of portfolios. Mozambique, which hosted a number of important transport corridors, was given the strategic area of transportation and communications; Zimbabwe, with its well-developed agriculture, took that sector; and Angola, with its rapidly developing oil industry, gained responsibility for energy conservation and development. Under this approach, progress was dependent on the enthusiasm and commitment of its promotor. With Angola’s government necessarily focused on an increasingly debilitating war against both internal opponents and their external supporters, it was not in a position to dedicate many resources to the task and only limited progress was made.

3.2 The SADC structure – from 1980 intentions to 1992 reality

These arrangements changed when the Southern African Development Community (SADC) was established in 1992. This followed Namibia’s independence in 1990 at a time when it appeared that the changes that were leading to the achievement of democracy in South Africa in 1994 were already irreversible.

This period also saw a dramatic change in the focus of southern African cooperation. While the origins of cooperation were primarily political, the approach adopted a decade later with the establishment of SADC marked the

formal initiation of efforts to promote southern African regional integration. Rather than the SADCC goal of ‘the reduction of economic dependence... on the Republic of South Africa’, the objective was to undo the structural consequences of the region’s previous history of colonialism and apartheid. Greater regional integration was seen as the strategy through which this could be achieved. The first objective of SADC was thus stated as to:

‘Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of southern Africa and support the socially disadvantaged *through regional integration.*’ (Emphasis added) (SADC, 1992)

The nature of this regional integration was unclear, particularly how tensions between national interests and integration processes would be resolved. As the focus shifted from resistance to development, there was often limited appetite amongst SADC’s members to consider the more difficult questions that now lay exposed. Specifically, how far were they prepared to sacrifice their hard-won national sovereignty and how would they deal with the continued economic dominance and wealth of South Africa now that it was part of the collective rather than its common enemy? While it was necessary for the focus to turn to the apparently less challenging area of economic integration, this brought internal contradictions to the fore. In its 2003 long-term strategic plan, the RISDP, SADC itself recognised that its:

‘... development integration approach ... allows member states to define the scope and sectors of cooperation and to identify appropriate strategies and mechanisms to overcome impediments to integration and to address regional imbalances between member states.’ (SADC, 2003)

A textbook approach produced a timetable that reflected the history of Europe’s integration rather than the dramatic asymmetry of southern Africa in which South Africa’s economy dominated the region. But it did not build on the initial political drivers of the SADC strategy, even though it was politics rather than economics that drove European integration. According to Schoeman (2002), the theory ‘... is based on the historical example of the development of the European Union, yet it completely discounts the fact that the European Union was first and foremost a political project’.

The consequence was that SADC’s strategy never adequately addressed the tension between regional and national interests. It can be argued that it treated

integration as a primarily technocratic activity. It failed to recognise the need for, and to provide, political mechanisms or binding rules that could enable tough decisions to be taken which reflected regional rather than national priorities.

4. Developing a southern African electricity sector

4.1 A foundation of colonial cooperation

The limitations of efforts to promote greater regional integration are well illustrated in the electricity sector. Since the states of southern Africa gained their independence or, in the case of South Africa and Rhodesia, established democratic governments, the development of their electricity industries has been a major concern. While initial efforts focused on meeting national needs, particularly expanding access to electricity for the majority of the populations, regional cooperation was already a fact of life.

As the Southern African Power Pool later recorded, cooperation predated independence:

‘One of the first bilateral cooperative projects was the construction of a line between Nseke in the Democratic Republic of Congo (formerly Zaire) and Kitwe in Zambia in 1958, to supply electricity to the Zambian copper mines.’ (SAPP, 1998)

Despite the political context at the time, the construction of the Kariba dam and associated power stations in Zambia and Zimbabwe, were also noted as examples of cooperation, paving the way for ‘the interconnection of the two countries’ power systems which continues to provide a backbone for regional power exchanges.’ The Cahora Bassa project between South Africa and Mozambique was also initiated in this pre-independence period.

4.2 Struggling under major constraints 1980–98

As indicated above, regional cooperation in the electricity sector had already been identified as a formal focus for SADCC in 1980, when it was recognised that cooperative approaches would be needed to develop and use the region’s energy resources to make electricity cheaply and reliably available, independently of South Africa. SADCC’s intervention in the sector had, however, faced immediate challenges. A 1985 review reported that:

‘Among the key objectives of the regional energy policy, as stated in a document entitled “Towards an Energy Policy for Southern Africa”, approved by the SADCC Council of Ministers in June 1982, were:

To develop regional electrification and extend it to the transport and agricultural sectors. To exploit the vast hydroelectric resources of the region in order to achieve this, and also to make use of small hydroelectric power stations throughout the rural areas;

To promote the interconnection of the national grid systems to ensure that production and distribution capacity is utilised on a more efficient basis between the various states in the region.’(Bhagavan, 1985)

However, the review came to some dire conclusions. After a decade of economic crisis, the countries faced many challenges and found themselves with virtually no financial capacity to address these strategic objectives. And indeed, little progress was made in the 1980s as the region went from one crisis to another.

In 1990, SADCC established the Electricity Sub-Committee (ESC), a forum for the regional power utilities to discuss and plan the improvement of regional electricity supply, yet another step towards cooperation and collaboration. The role of this subcommittee was regarded as crucial to ensure power supply to countries that faced shortages during the 1992 drought. However, it was also from this sub-committee that plans emerged for the establishment of a more strategic approach.

SADC members, minus South Africa, had already made progress towards the establishment of the Southern African Power Pool (SAPP) which promised to begin the process of translating policy and strategic intention into practical action. SAPP was established in August 1995 with a straightforward objective: ‘To provide a reliable and economical electricity supply to the consumers of each of the SAPP members, consistent with the reasonable utilisation of natural resources and the effect on the environment.’

The strategy to achieve the objective was dramatically ambitious:

‘To meet this objective, the members of the SAPP have undertaken to create a common market for electricity in the SADC region and to let their customers benefit from the advantages associated with this market, such as

lower prices resulting from economies of scale and better reliability of supply.’ (SAPP, 1998)

Further progress appeared to have been made by the newly established SADC when, in 1996, member countries agreed on a common approach to energy, embodied in the SADC Protocol on Energy (SADC, 1996). This Protocol entered into force in April 1998, the first technical protocol of SADC to do so. Aside from the general commitments to seek to harmonise national and regional policies, strategies and programmes, the Protocol also confirmed formally the concept of ‘energy pooling’ defined as ‘cooperation amongst parties or entities in development transmission, conveyance and storage of energy in order to obtain optimum reliability of service, economy of operation and equitable sharing of costs and benefits’.

As in other SADC sectors, a hierarchical structure was established with a committee of Ministers, another of senior officials and a Technical Unit. Work would be undertaken in sub-committees supported by part-time programme managers.

Work would be done in these sub-sectors – of which electricity was one. The Protocol itself gave only woolly responsibility to the sub-sectors, stated primarily to ‘enhance the provision of energy cooperation and integration’. However, for electricity, a sub-committee was already in place and its larger ambitions were reflected in the Annex to the Protocol which stated that the electricity subsector would strive ‘towards an integrated power system’. To this end, it would, amongst other things, promote electricity trading and power pooling, **‘integrated resource planning to take advantage of economies of scale and optimisation of investment and equitable sharing of benefits’ and ‘coordinate the development and regular updating of a regional electricity master plan’**. (Emphasis added).

This was a hugely ambitious agenda for a new institution within a new regional organisation. It reflected the more practical focus of SAPP whose members are operational, national utilities rather than governments but did not identify the challenge that lay ahead of persuading national politicians to act in the region’s collective interest.

In the event, the initial work of SAPP focused on more mundane matters – collecting data and ensuring that there were common approaches to operations, with a number of utilities agreeing to use common software packages. Preliminary agreement was also reached on payment for ‘wheeling’ electricity – transmitting from one member to another using the transmission lines of a third party. An early insight was gained into some of the challenges which lay ahead when the SAPP Environmental Sub-Committee held its inaugural meeting in 1996. In meetings with the World Bank, it discovered that environmental issues might present challenges to the promotion of the region’s key hydropower projects. This warning came at a time when the Bank was under intense pressure from environmental groups and some of its shareholders to stop lending for water resource projects such as dams and hydropower.

It was also soon recognised that the primary problem facing SADC was different to the one that had confronted SADCC in the previous decade. With South Africa’s entry into the regional system, the immediate issue was not generation capacity but the transmission of available power. This was a result of South Africa’s substantial investment in new capacity in the 1980s, attributed variously either to poor planning or to the anticipation that economic sanctions might constrain future expansion. The consequence was that, as SAPP concluded:

‘It is generally recognised that the focus must be on the building of new interconnections in preference to new power stations, as there is presently an excess of generating capacity in the southern African region; any additional generating capacity built will in any event require transmission lines to distribute power.’ (SAPP, 1998)

This was what transpired, with a 400 kV line built to connect Zimbabwe to a major South African power station at Matimba in 1996; in 1997, another 400 kV line was built linking Cahora Bassa in Mozambique to Zimbabwe while in 1998, a 400 kV interconnector was built linking South Africa, Swaziland and Mozambique, primarily to supply the MOZAL aluminium smelter in Maputo. Coming on the heels of earlier 1992 emergency work to extend the DRC links from Zambia to Zimbabwe, these developments began to turn the vision of a connected region into a reality. Meanwhile, the dream of building links to enable the region to tap the huge potential of the Inga scheme in the DRC saw considerable attention paid to developing an electricity corridor to South

Africa via Angola and Namibia. In 2004, an inter-governmental memorandum on the so-called Westcor project was signed in South Africa, followed by the shareholders' agreement signed by the national electricity companies and an initial pre-feasibility study was completed the following year.

4.3 From feast to famine 1998–2008

Amidst all this activity around transmission, problems were looming. A period of strong economic growth in the region saw electricity consumption rise without a concomitant development of generation capacity to meet the growing demand. It was a slow onset crisis.

SAPP's member utilities had repeatedly identified the growing risks of a regional shortfall in electricity production in 2004 (News24, 2004). They 'warned that the region faced serious power shortages if capacity was not increased' and that 'by 2008 the SADC electricity demand will surpass the installed capacity leaving a shortage of supply'.

In response, SADC Ministers constituted a Ministerial Task force to address the projected decline and deficit in power shortfalls in the region (SADC, 2013). The member Ministers, from Angola, Namibia, South Africa and Zimbabwe, assisted by their utilities, the SADC Secretariat and SAPP, agreed to develop a road map, in consultation with all the SADC member states, to address the projected deficit in power supply in the region. They made little progress, and by the time they met for the third time in 2008 to approve the documents produced, it was too late to avert a crisis.

At the 2008 meeting, the Task Force made a number of recommendations that were then approved by the full Council of Ministers. Reflecting the consequences of delay, the first was for a regional programme on power conservation and efficient use of electrical energy. SADC and the SAPP were enjoined to assume direct responsibility for coordinating and monitoring project implementation; and efforts were renewed to mobilise funding for cross-border projects and to accelerate private sector participation and investment. And, once again, it was agreed that the region should 'work towards the harmonisation of national electricity policy frameworks, and to accelerate the pace of electricity supply industry reforms to improve governance and performance'. (SADC Today, 2008)

This period marked an important transition back to a focus on electricity generation and use, rather than simply on the establishment of transmission networks and a trading framework. But this raised questions about the ability of SADC and SADC institutions like SAPP to influence decisions of their national governments:

‘Although the initial SAPP trading activities were based on excess generation capacity that was available for various historical reasons, it was recognised from the outset that the major benefits would come from coordinated investment in new generation and transmission facilities. The Planning Subcommittee was given the responsibility of developing a coordinated development plan, known as the SAPP Pool Plan, to serve as a tool for investment promotion. It is important to note that the SAPP Pool Plan was regarded as being for indicative purposes only and was not intended to be binding on member states. In the event, no new capacity expansion project of any significant size was implemented anywhere in SADC in the first 10 years of SAPP’s existence.’ (ECA, 2010)

The supply shortage could only be addressed through large investment projects with a long lead time. The immediate impact was thus constrained supplies for many of the countries of the region. A 2012 review (undertaken as part of a larger review of SADC’s infrastructure development plan), reported that:

‘The region is currently facing a critical shortage of power and this situation is expected to persist until the year 2014. As of May 2011, the region had a total installed capacity of 56 GW out of which 50 GW was available. According to the forecast, peak loads are expected to rise to 77 GW by 2020 and 115 GW in 2030. The supply/demand situation reflects a deficit and commissioning of new generation capacity is lagging behind the target schedule.

The SAPP Plan shows that the whole SADC region has a supply deficit of 608 MW and the SAPP interconnection grid has a deficit of 204 MW. The supply deficit however varies by country and is most significant in Zimbabwe (–994 MW) and Zambia (–548 MW) while only South Africa (625 MW) and Mozambique (1 632 MW) had excess capacity. In 2010, nearly 1 300 MW could not be commissioned as was targeted.’ (SADC, 2012)

Ironically, the global economic crisis of 2008 helped to reduce the impact of the shortfall, as growth slowed in the region. But the deficit was aggravated by delays in the completion of major generation projects in South Africa. These led to cost overruns that, in turn, caused the cost of electricity to rise faster than expected, further dampening economic growth.

The failure of regional coordination and cooperation to avoid this crisis has led to a new phase in which individual SADC countries have decided, explicitly or implicitly, to develop national electricity strategies to ensure security of supply. In these strategies, regional cooperation inevitably takes a back seat.

4.4 2008 to the present: National sovereignty, with a regional cherry on the top?

This new focus was confirmed in 2014 by a group of SAPP authors:

‘For several countries, the benefits of interconnection are evident in that their sales exceed their generation. However, the fact that they are now having to load shed, because the supplying countries are unable to export enough to meet demand, has highlighted the need for importing countries to increase investment at national level in order to become more self-sufficient.’ (Mangwengwende et al., 2014)

This comment was included in a book on the energy/water/climate/food nexus, (initially) titled *Sovereign Security with a Cherry on Top*, a reference to the evident turn from regional to national strategies.

The existence of a need does not automatically produce a response. During a mid-term review of SADC’s Regional Indicative Strategic Development Plan, the CEO of the SAPP warned that the region’s power deficit would still worsen. He estimated that the regional capacity shortfall at the beginning of 2013 was over 7000 MW. Other key messages were that fear of climate change was a concern for the region’s hydropower potential, but financing was the major challenge for the development of new generation projects.

However, it was also noted that, while South Africa accounted for nearly 80% of installed generating capacity in SADC, investments in new generation saw South Africa account for only 60% of new capacity between 2014 and 2018.

This illustrated a trend towards developing local capacity and reducing reliance on South Africa.

This trend is continuing, and the deficit of 2013 has rapidly swung into surplus as a new generation of projects has been commissioned, with others getting underway. The rapidity of the swing from deficit in 2014 to substantial surplus in 2016 is documented in the SAPP's annual reports. Meanwhile, one joint study with SADC suggests that the amount of new generation capacity due to come on line by end 2017 would be more than half the total required over the next 20 years.

'More than 24000 MW of new generation capacity is expected to be commissioned between 2014 and 2017. A number of rehabilitation and new generation projects are being undertaken to address the generation supply gap. The SAPP Pool Plan indicates that 57000 MW would need to be commissioned in the next 20 years.' (SADC/SARDC, 2016)

This expectation is almost certainly exaggerated and, in many cases reflects intent or desire rather than actual implementation. However, the structural nature of the swing from deficit to surplus was confirmed by South Africa's ESKOM when it stated its intention to sell more power into the region. Its CEO was quoted as saying that the company had 'adopted an "aggressive" plan to improve volume sales by encouraging annual growth of 2.1% in local demand and an 8% improvement in export sales over the next five years.' (Reuters, 2017)

Further confirmation comes from ESKOM's transmission development plan for 2018 to 2027. This includes a focus on regional transmission lines and explicitly states that 'it is one of Eskom Transmission Group's strategic objectives to increase the capacity of these interconnections to allow for greater volumes of electricity to be traded to reduce upward pressure on tariffs and improve security of electricity supply in South Africa in the longer term'.

As a result, developments in South Africa, the dominant supplier in the market, are once again set to undercut and undermine potential regional projects. This has not gone unobserved and, in a presentation of results by SOE Electricidade de Mozambique, it was stated bluntly that 'Low export prices (dumping)' are amongst the challenges that company faces. (EDM, 2017).

5. Discussion

This history illustrates some of the fundamental challenges facing SADC as it tries to promote regional integration through cooperation, coordination and technical optimisation processes. While these could boost economic activity across the entire region, they often confront national agendas driven by political priorities at national, local and personal level.

This challenge was clear from the outset in the limited **political** ambition of the 1996 Energy Protocol which notably avoided suggesting that there would be regional planning and prioritisation and focused instead on enhancing cooperation and integration. This was in marked contrast to the more ambitious **technical** ambition, which was to ‘promote integrated resource planning in the electricity subsector to take advantage of economies of scale and optimisation of investment and equitable sharing of benefits’.

This gap between the political and technical levels of ambition was implicitly acknowledged in the 2012 process to design the energy component of SADC’s Regional Infrastructure Development Master Plan. The first critical factor identified for the successful implementation of the Energy Sector Plan was:

‘Member states commitment: member states must show their commitment to cooperate in regional projects and put funding towards improving the functioning of the SADC institutions. Member states should commit to signing off regional priority projects for SAPP to implement.’

The limits of this vision were in turn demonstrated by the bureaucratic mechanisms proposed to achieve it. Amongst the actions identified to address the ‘challenge of national interests overriding regional planning’ were for ‘Heads of state to commit to the SADC RIDMP; Energy ministers to make a commitment through an MoU for the identified SAPP priority projects; and members, where projects, identified should take the lead in the project marketing and should include these in their national development plans.’ (SADC, 2012).

The relative success of national investment programmes in Angola and Zambia to develop and implement generation projects, illustrates the counterfactual: it has proven relatively easy for projects that are nationally focused to proceed. Angola’s 2 060 MW Lauca, 2 170 MW Caculo Cabaca and 700 MW Campambe expansion projects will shortly provide about 70% of the country’s

total electricity supply requirements. Zambia's expansion has been driven largely by demands from its mining sector which have supported the completion of the 120 MW Itezhi Tezhi project, with construction of the Lower Kafue Gorge project (750 MW) recently started and a range of privately promoted projects under consideration. The progress on South Africa's large domestic investment process reinforces this point.

This also suggests that it is unlikely that South Africa, still the dominant player in the region, will cooperate in regional projects given pressures to promote local projects. Although South Africa's wind and solar renewables programme is temporarily stalled, there is also pressure to open its IPP market to further gas generation. Further, there is also political pressure from the current political leadership to adopt a long term nuclear power option. Cooperative gas-fired generation projects with Mozambique are driven by the domestic agendas of both countries – South Africa's SASOL hydrocarbon company has to meet requirements for local value add as part of its development of Mozambican gasfields. In this confused domestic political economy, it is unlikely that a regional agenda can gain much traction.

Even the initial involvement of heads of state has failed to achieve commitment, as was demonstrated by the fate of the politically led Westcor project which collapsed 'when the countries failed to agree on the formula for sharing benefits and other conflicting interests'. (Mangwengwende et al., 2014). The failure was not least because the scale of political ambition was outweighed by the technical challenges involved – and the fact that Angola, as demonstrated by its domestic hydropower development, had little to gain but was expected to support the development of transmission across the length of the country. If the political and market commitment made by South Africa to trigger WESTCOR had instead been reserved for one of the regional projects located closer to demand centres (such as the Zimbabwe-Zambia Batoka Project or Mozambique's Mphanda Nkuwa), it might have been more successful but there was clearly less incentive for grand political gestures in these cases.

The issues could, of course, also be framed in terms of larger conceptual frameworks. The development in the region of electricity production and its associated transmission links was closely associated with the evolution of the region's mining industry. It could thus be considered merely as a component

of the ‘Minerals-Energy complex’ and questions raised as to whether the development of this capacity served to provide energy for development or power for exploitation. Electricity certainly served to support the development of the mining industry. And, as illustrated in the very name of the Victoria Falls Power Company, the precursor to South Africa’s ESKOM, there was a regional as well as a colonial dimension to the development of South Africa’s electricity sector from the outset.

This does raise the question of whether the impact of South Africa’s market dominance to date was part of a grand apartheid strategy. Some commentators have identified a long-term strategy of the apartheid government of promoting imports of cheap hydropower from the region (ECA, 2010) – ‘The Cahora Bassa hydroelectric scheme was the first of many such projects that South Africa expected to be developed to supply its market.’ The promotion, with the Portuguese colonial government, of the Cahora Bassa project was certainly seen in this light. But here there are two competing explanations – either the Pretoria regime sought to bolster the Portuguese regime or, more strategically, it sought to strengthen the already strong ties of dependency of a future, independent Mozambique.

In the event, neither strategy was successful since, for over a decade, the sabotaged Cahora Bassa line aggravated the debt of the Portuguese metropolitan government and provided no income, but thus no dependency, for Mozambique. A more likely framework to explain the continued promotion of South Africa’s national interests over those of its neighbours is thus that it reflects a limited commitment to the potential benefits of stronger regional integration and the expansionist aspirations of ESKOM as a dominant state-owned enterprise keen to suppress potential competition and willing to abuse of market processes to do so.

From the perspective of the SADCC however, the reverse was true:

‘During the apartheid era, there were interconnection projects that were developed to reduce the dependence of what were known as the frontline states on imports from South Africa. These interconnectors, between Zambia, Zimbabwe and Botswana, have become part of the backbone of the SAPP grid (ECA, 2010).’

It was noted, however, that Eskom was already involved and active, for instance, in resolving the 1991/92 drought-induced power crisis in Zimbabwe and Zambia. It was suggested that ‘apart from the immediate market opportunity, Eskom’s motivation was to initiate the realization of its long-term dream to create a regional power grid that would allow South Africa to access power from the hydroelectric potential of its northern neighbours’.

When concerns were raised about the strategic risks that this might pose to South Africa, the response at the time was often that, since normal practice was to maintain a 15% contingency capacity in the system, this would provide a sufficient buffer to minimise this risk. Nonetheless, current energy officials still sometimes refer to this risk and to the ‘rule of thumb’ that South Africa substantially restricts the quantum of regional imports that may be included in SA’s generation mix (SABCN, 2017), specifically that the country would not want to import more than 2% of its electricity because of this risk.

From these perspectives, it becomes obvious that SADC and its institutions are relatively weak players and that they have failed to provide convincing alternatives or to counter political pressures at national level. As a consequence, there has been a turn to national self-sufficiency which is resulting in surplus capacity at a regional level and in sub-optimal investments.

This has lessons for the wider process of regional integration. If cooperation in a flagship area such as electricity cannot be achieved, despite the potential for mutual benefits, what chance will there be for more difficult sectors?

Among the milestones agreed in the electricity sector was the strengthening of centralised planning by SAPP which would involve analysis of national IRPs, their amalgamation and then agreement on prioritisation (SADC, 2012). But this technical vision failed to provide a roadmap to guide the political process that would be required for decision making about large projects in a sector of strategic importance. This provides a helpful insight into the state of integration.

There is still limited coordinated planning for the sector’s future and a strong divergence between the regional vision and the separate and different visions of the national partners. A review that compared national electricity

development plans to those recommended by a SAPP study which sought to optimise investments found stark differences:

‘Angola’s plan does not appear to see any role for SAPP, and yet it is potentially the second biggest importer. Zimbabwe is shown as potentially the biggest net importer, significantly surpassing Botswana, which is the biggest net importer according to the national plans. Some countries such as Namibia and South Africa see themselves as net exporters when the plan shows them as potentially significant net importers. Zambia plans to be a major net exporter but the plan shows them in a more or less break-even position. Some of the countries that see themselves as major exporters, notably Mozambique and DRC, are shown as grossly underestimating their export potential (ECA, 2010).’

The review warned of the danger of over-capacity due to this lack of coordination; its forecast for 2017, still eight years away, proving to be prescient: Considering the planned and available capacity considered under the various growth projections, the planned capacity will only be adequate for a maximum demand (inclusive of the 10% reserve margin) in the 3% growth scenario. The planned generation capacity will exceed the maximum demand by nearly 5 GW in 2017, 6 GW in 2022 and 14 GW in 2027.

This is in part a consequence of the slowdown in the South African economy and the cooling of the global commodities boom, highlighting the need for a more agile strategy, to achieve and maintain an appropriate balance between investments in transmission and generation.

‘Depending on which RIDMP scenario is adopted, additional capacity may be needed to meet demand. It is, however, not easy to know what additional transmission lines would be required at this time. This will require a study to determine additional transmission capacity should SADC economies grow at 5% or 8%, after which a study will be required to assess where the additional generation capacity would come from and the related transmission capacity required (SADC 2012).’

6. Conclusion

Energy is a resource that is relatively easily transported and traded amongst neighbours and electricity is a convenient and efficient medium through which this can be done. So, the electricity sector had the potential to be an early leader in the process of regional cooperation and integration in SADC and an indicator of the success of that process.

Historically, SADC in general as well as South Africa in particular, were helped by low cost energy to achieve competitive advantage for their mining industries. In addition, the region has an incentive to develop its energy resources in order to maximise the opportunities for local beneficiation as well as to attract other energy intensive industries.

However, despite a great deal of interaction at regional level, there has been limited progress towards substantive regional integration. While there has been cooperation on increasing the capacity for electricity transmission between countries, this has not been accompanied by the development of cost-effective regional generation which would take advantage of the new connectivity. In almost all cases, immediate national interests have taken precedence over regional priorities, even where these could have led to benefits such as cheaper electricity.

This trend has been reinforced by the historical dynamics of SADC's electricity sector. In 1995, South Africa's electricity surplus allowed South Africa to dominate supply and reduced the incentive for the other SADC states to invest in new generation. South Africa's subsequent failure to plan and implement an expansion of its electricity production then impacted on its regional customers. It is relevant that Angola, which has still not established significant transmission links to its neighbours and was least affected by this process, subsequently led the region in the development of new generation capacity.

To the extent that South Africa engaged in and promoted regional schemes such as Inga, this was related more to regional politics than to energy sector strategy. When the Inga project stalled (once again) that share of the market was not offered instead to other SADC members even as South Africa's power shortages cascaded into the region.

It may have suited neighbouring countries to rely on ESKOM rather than to expend the limited investment capital that they had available on developing their own generation capacity. But, aside from the risks of failure of supply from South Africa, the result has been the promotion of a poorly coordinated set of national projects which is now having the predictable effect of producing a surplus of relatively high-cost electricity. Meanwhile, countries such as Mozambique, Zambia and Zimbabwe still cannot develop projects that could meet regional needs more cost-effectively.

The electricity sector had offered SADC an opportunity to take a further step towards regional integration through a political intervention, a decision to promote a prioritised regional programme of investment. This would still have been a step away from formal rules-based market integration. But it would have provided a practical example of how regional economic integration could achieve regional benefits, in this case, cheaper electricity.

This highlights the essential conclusion: SADC has yet to demonstrate that it has a strategy that can translate its grand vision of an efficient, competitive regional electricity system into operational reality. It is evident that the principal obstacle lies not in its technical planning and management capacities but in the absence of political action to put in place a framework through which regional priorities can be translated into collective action. And this remains the primary challenge for southern African integration.

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Chapter 7

Contribution of regional integration in the SADC to electoral conflict management: lessons from Zambia's 2016 general election

Phineas Bbaala

1. Introduction

In the 1970s, a group of newly independent southern African countries (Angola, Botswana, Mozambique, Tanzania and Zambia) formed a diplomatic coalition called the Front-Line States (FLS) committed to ending apartheid in South Africa and Rhodesia. Following Zimbabwe's joining of the movement at independence in 1980, only South Africa and its colony, Namibia, had remained under minority rule (Bowen, 1990). The movement's main objectives were to build a common regional front against the apartheid regime in South Africa and to mobilise support for the liberation movement in the region. The FLS played a critical role in foiling the successful implementation of the Constellation for Southern African States (CONSAS), a regional organisation that had been formed by the apartheid South African regime to secure its political, military and economic interests in the region. In this constellation, apartheid South Africa had hoped to be joined by its Homeland 'states' of Transkei, Bophuthatswana and Venda, Botswana, Lesotho and Swaziland, Malawi, Zimbabwe and possibly, Mozambique (Geldenhuys. 1981. Cited in Evans, 1984/5). To prevent Zimbabwe from falling under CONSAS, during the Rhodesia-Zimbabwe war (1964–1979), the FLS rendered support to the African independence movements there, mainly the Zimbabwe African National Union Patriotic Front (ZANU PF) and the Zimbabwe African People's Union (ZAPU). Recognising that political independence could not be achieved without cutting off the region's continued dependency on the imperial system and its geopolitical satellites like the apartheid South Africa, members of the FLS found it necessary to promote

coordinated socio-economic development in the region through regionally planned policy interventions, programmes and projects. In July 1979, leaders of the FLS meeting in Arusha sought to counter the threats posed by South Africa's CONSAS project by issuing the Arusha Declaration calling for the formation of the Southern African Development Coordination Conference (SADCC). On 1 April 1980, during a regional Summit in Lusaka, leaders of southern African countries adopted a Declaration, 'Southern Africa: Towards Economic Liberation' (Thomas, 1993,116-135). This declaration was signed by ten countries to formerly transform the FLS into SADCC. These countries were: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe (Bowen, 1990).

While recognising that SADCC's main end was the acceleration of independence of countries still under colonial rule in the region, and to free South Africans from apartheid, its explicit objectives included the need to reduce the member states' dependence, particularly but not only, on apartheid South Africa, and to implement projects and programmes with national and regional impact. Other objectives were to mobilise member states' resources in the quest for collective self-reliance, and to secure international understanding and support (Bowen, 1990, 29-45). During the independence era (1960-1980) different member countries of the FLS were tasked with the development of particular sectors of the economy depending on their comparative advantages and other factors. However, SADCC could not achieve much as it was only a loose association of countries with quasi-legal personality. As a body merely charged with the responsibility of coordinating sectoral development among member countries, SADCC realised that it had no legal capacity to play a deeper role of inciting growth and development, peace and security, democratisation and observance of human rights in the region. SADCC had no treaty and no central authority. Its administrative apparatus lacked a strong institutional framework. Further, although the organisation promoted regional trade, it was not intended to serve as a common market. Another important observation is that at the time of the formation of SADCC, member states were keen not to endanger their newly earned sovereignty by engaging into deeper political or economic integration (Bowen, 1990). Following the neo-liberal political and economic reforms that came with the structural adjustment programmes (SAPs), particularly in the early 1990s, there was a need for member states to reengineer the model of regional integration in southern Africa. With most of the countries in the region independent, emphasis was

shifting towards deepening regional integration and promotion of free trade and democratic values. Democratic governance and political stability were increasingly identified as sine qua non factors for economic progress and deeper all-round regional integration.

On 17 August 1992, at a Summit in Windhoek, member states signed the SADC Declaration and Treaty transforming SADCC into SADC. The Treaty, which entered into force in 1993, has seen amendments in 2001, 2007, 2008 and 2009 culminating in the Consolidated Text of the Treaty of SADC of 2011 as amended in 2014 (SADC, 2011; SADC, 2014). Articles 4 and 5 of the Treaty lay down the SADC Principles and Objectives, respectively. Of the five Principles, in Article 4, (b), (c) and (e) relate to peace and security, and human rights, democracy and rule of law. The organisation has eleven objectives which reflect its main areas of endeavour. These range from the promotion of ‘sustainable and equitable economic growth and socio-economic development’ to gender mainstreaming. Key to this chapter is objective (b) under Article 5 which reads: ‘promote common political values, systems and shared values which are transmitted through institutions which are democratic, legitimate and effective’ (SADC, 1992). Today, SADC is the largest regional grouping of countries in southern Africa with 16 member states. These are: Angola, Botswana, Comoros, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania,⁵⁵ Zambia and Zimbabwe. Since its formation, SADC has implemented a number of policy initiatives aimed at deepening integration among its member states. These include the formation of the SADC free trade area (SADC-FTA) in 2008. Meanwhile, there have been continuous efforts to implement the SADC customs union after failing to meet the 2010 deadline. To ensure a clear integration roadmap, SADC came up with the Regional Indicative Strategic Development Plan (RISDP) with an implementation plan (Thomas, 1993).

In order to effectively discuss electoral conflict management under the SADC Principles and Guidelines, the three sections that follow examine SADC and

⁵⁵ Although Tanzania is geographically an eastern African country, it is a member state of the SADC on account of its various forms of interaction within member countries of this region. SADC also remains strategic to Tanzania’s political, economic and other interests.

Zambia's legal and institutional frameworks for electoral processes management vis-à-vis the execution of Zambia's 2016 general election.

2. SADC's legal and institutional framework for election management

Realising the complex nature of human development, SADC has set for itself objectives that cut across many areas of regional concern but are also fundamental to the member states. To systematically pursue its objectives, SADC has developed many legal instruments and institutional mechanisms. Key among the legal instruments are the Protocols which enshrine the aims and codes of procedure and practice on numerous matters as agreed by member states. One of these is the Protocol on Politics, Defence and Security Cooperation (2001). The Protocol provides that SADC shall 'promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the Charters and Conventions of the Organisation of African Unity' (OAU) which is now African Union (AU), and the United Nations (UN). The Protocol on Politics, Defence and Security Cooperation is supported by Articles 4 and 5 of the SADC Treaty (1992). Article 4 (a) of the Treaty stipulates that 'human rights, democracy and the rule of law' are principles guiding the acts of its members. Article 5 (1) (b) commits the member states to 'promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective'. Article 5 (1) (c) further commits member states to 'consolidate, defend and maintain democracy, peace, security and stability in the region' (SADC, 1992).

In order to counter some of the challenges of deepening the integration in the region, SADC undertook some reforms that culminated in the SADC Treaty Amendment (2001). Article 9 of the Treaty Amendment established the following eight institutions: 1) Summit of Heads of State; 2) Organ on Politics, Defence and Security Cooperation; 3) Council of Ministers; 4) A Secretariat; 5) A Tribunal; 6) The Troika; 7) Standing Committee of Officers; and 8) The SADC National Committees. In addition, the amendment of the Treaty led to the RISDP of 2003 which defines the Community's strategic direction vis-à-vis its projects, programmes and activities. At the time, a revised RISDP 2015–2020 was in effect.

The Organ on Politics, Defence and Security Cooperation was created in 1996 to enhance acceptability of election results by all contesting parties through entrenchment of democratic values. However, this Organ could not operate effectively as it lacked clear objectives and a legal framework until the Protocol on Politics, Defence and Security Cooperation was passed in August 2001. The Protocol was signed by 14 member states, including Zambia, on 14 August 2001 in Blantyre. In Article 2 (1), the Protocol seeks ‘to promote peace and security in the region’. In terms of specific objectives, Article 2 (2) (b) of the Protocol seeks ‘to promote political cooperation among State Parties and the evolution of common political values and institutions’ (SADC, 2001). In Article 2 (2) (g), the Protocol commits to:

‘Promote the development of democratic institutions and practices within the territories of Member Parties and encourage the observance of universal human rights as provided for in the Charters and Conventions of the Organisation of African Unity and United Nations, respectively (SADC, 2001).’

To ensure effective and timely implementation of the Protocol, from 2004, there was the Strategic Indicative Plan for the Organ on Politics, Defence and Security (SIPO I), which is the implementation framework for the Protocol on Politics, Defence and Security Cooperation. A Harmonised Strategic Indicative Plan for the Organ (SIPO II) was developed in 2010 and launched in November 2012. SIPO II sought to build on the lessons learnt from the implementation of SIPO I to improve implementation, monitoring and evaluation.

To further consolidate values of democratic governance in member states, the Ministerial Committee of the Organ (MCO) on Politics, Defence and Security Cooperation promulgated Principles and Guidelines Governing Democratic Elections in 2004. These were revised in 2015 in Pretoria. Following the initial adoption of the Principles in 2004, SADC sought ‘to create additional institutional mechanism which would ensure that electoral observation became a fundamental component of democratic processes in the region’ (SADC, 2015). The MCO, with support from the Electoral Commissions’ Forum of SADC Countries (ECF-SADC), created the SADC Electoral Advisory Council (SEAC) during the Heads of State Summit in Gaborone in 2005. This followed the abandonment of the earlier decision to establish the SADC Electoral Commission (SEC). Hitherto, the formation of SEAC, ECF-SADC

existed as a formation of national Electoral Management Bodies (EMBs) in the region. SEAC's structures, rules and procedures were established in March 2009. Consequently, SEAC was constituted in 2010 and inaugurated in April 2011 in Gaborone. SADC (2015) thus states:

‘SEAC is, henceforth, the official electoral advisory body of the SADC whose aims include advising the regional economic community on elections and conflict mitigation; ensuring the implementation and review of the SADC Principles and Guidelines Governing Democratic Elections; and providing guidance to member states on elections and the enhancement of democracy and good governance.’

A large part of SEAC's mandate is executed by the SADC Electoral Observation Missions (SEOMs). At the invitation of a member state, a SEOM delegation is expected to enter the electoral station 90 days prior to the day of election. Its terms of reference include checking the levels of a member state's compliance with the SADC Principles and Guidelines Governing Democratic Elections, and to write a report at the end of the Mission.

3. SADC principles and guidelines governing democratic elections

By endorsing the revised principles, member countries committed themselves to upholding the following ‘Principles for Conducting Democratic elections’ in the furtherance of democratic elections in the SADC:

1. Encourage the full participation of all citizens in democratic and development processes.
2. Ensure that all citizens enjoy fundamental freedoms and human rights, including freedom of association, assembly and expression.
3. Ensure that the date or period of elections is prescribed by law. The date or period of elections shall be based upon the legal framework and applicable constitutional provisions.
4. Take all necessary measures and precautions to prevent corruption, bribery, favouritism, political violence, intolerance and intimidation.
5. Promote and respect the values of electoral justice which include integrity, impartiality, fairness, professionalism, efficiency and regularity of elections.
6. Promote necessary conditions to foster transparency, freedom of the media, access to information by all citizens; and equal opportunities for all candidates and political parties to use state media.

7. Guarantee an environment of open contest with no undue exclusion and restrictions on anyone to vote as well as the right of eligible and qualified citizens to stand as candidates in any election.
8. Encourage regular reviews of the participation of citizens in the diaspora in national elections.
9. Uphold and guarantee the impartiality and independence of the judiciary, the EMBs, and all other electoral institutions.
10. Ensure that voter education capacitates and empowers all eligible citizens; as well as fostering ownership off the electoral process and the democratic political system.
11. Ensure the adherence to a binding Electoral Code of Conduct.
12. Ensure the acceptance of the election results by all electoral stakeholders as proclaimed to have been free, fair, transparent, credible and peaceful by the competent and independent electoral authorities in accordance with the respective laws of the land.
13. Condemn and reject unconstitutional change of government and non-acceptance of results, after due process, as announced by the legally competent authorities (SADC, 2015, 1).

To understand SADC's jurisdiction in the democratic governance of its member states, one also requires recognising these countries' membership to the UN and the AU. For this reason, the legal instruments of regional economic communities (RECs), like SADC, tend to reflect those of the higher multilateral institutions that their State Parties have ratified. The United Nations' Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (ICCPR) are among the key international legal instruments to which most of the SADC member states, including Zambia, are party to. Continentally and regionally, the major Pan-African multilateral instruments to which Zambia is a party are the AU's 2007 African Charter on Democracy, Elections and Governance (ACDEG) and SADC's 2004 (revised in 2015) Principles and Guidelines Governing Democratic Elections. Out of ACDEG's 11 chapters, of key relevance to democratic governance are Chapter Four (Democracy, Rule of Law and Human Rights), Chapter Five (The Culture of Democracy and Peace), Chapter Six (Democratic Institutions) and Chapter Seven (Democratic Institutions). Since the conduct of democratic institutions is key to electoral processes management, Article 17 of Chapter 7 of ACDEG is as important. It stipulates as follows:

‘State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principles Governing Democratic Elections in Africa. To this end, State Parties shall:

- 1) Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
- 2) Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.
- 3) Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
- 4) Ensure that there is a binding code of conduct binding legally recognised electoral stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them in through exclusively legal channels (AU, 2000,7-8).’

Although the ACDEG remains binding on State Parties, particularly those that have ratified it like Zambia, the electoral instruments under the enforcement of the RECs like the SADC are expected to offer closer peer reviews while national laws and institutions in member states should provide operational mechanism for adherence.

4. SADC’s electoral conflict management methods, remedies and sanctions

Based on its own electoral Principles and Guidelines, SADC defines free and fair elections as follows:

Free (elections) means ‘fundamental human rights and freedoms are adhered to during electoral processes, including freedom of speech and expression of the electoral stakeholders; and freedom of assembly and association; and that freedom of access to information and right to transmit and receive political messages by citizens is upheld; that the principles of equal and universal adult suffrage are observed, in addition to the voter’s right to exercise their franchise in secrecy and register their complaints without undue restrictions or repercussions.’

Fair (elections) means ‘electoral processes that are conducted in conformity with established rules and regulations, managed by an impartial, non-partisan professional and competent EMB; in an atmosphere

characterised by respect for the rule of law; guaranteed rights of protection for citizens through the electoral law and the constitution and reasonable opportunities for voters to transmit and receive voter information; defined by equitable access to financial and material resources for all political parties and independent candidates in accordance with the national laws; and where there is no violence, intimidation or discrimination based on race, gender, ethnicity, religious or other considerations specified in these SADC Principles and Guidelines Governing Democratic Elections (SADC, 2015).’

The succinctness of the SADC Principles and Guidelines is derived from the fact that the Protocol on Politics, Defence and Security Cooperation is a legally binding legal instrument on State Parties. Moreover, for any SADC Protocol to enter into force, it must be ratified or signed by a majority of member states thereby making it legally binding on member states by way of committing them to its objectives and procedures. Article 22 (4) of the SADC Treaty requires that ‘each Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the member states’. Further in Article 22 (5), the Treaty provides that ‘once a Protocol has entered into force, a member state may only become a party thereto by accession’ (SADC, 2001). In Article 11 (2) (b), the SADC Protocol on Politics, Defence and Security Cooperation states that: ‘the Organ may seek to resolve any significant intra-state conflict within the territory of a State Party...’. Further, the Protocol lays down what is considered as ‘significant intra-state conflict’. This includes ‘large-scale violence within the population... and gross violation of human rights’ (SADC, 2001).

The Organ seeks to manage and resolve conflict by peaceful means which include ‘preventive diplomacy, negotiations, conciliation, mediation, good offices, arbitration and adjudication by an international tribunal’ (SADC, 2001). The Organ also commits to engaging in early warning systems to prevent and manage conflict before its escalation. Where peaceful means of conflict resolution fail to yield positive results, the Chairperson of SADC, on the advice of the Ministerial Committee, may recommend to the Summit for enforcement action to be taken against one or more of the disputant parties. The Summit may resort to enforcement only as a last resort and in conformity with Article 53 of the UN Charter, upon authorisation by the Security Council. Article 11 (4) (d) of the Protocol provides for both proactive and reactive

methods of conflict resolution. The Organ's intervention could be a result of a request for mediation in an intra-state conflict by a State Party or a result of the Organ's own decision where no request has come forth (SADC, 2001).

In the backdrop of rising political disputes and tension in Zambia, arising from the country's contentious 2016 general election, the chapter now examines the extent to which the SADC Principles and Guidelines Governing Democratic Elections inform both the work of the SEOM and the management of the electoral processes in member states holding elections.

5. Zambia's legal and institutional framework for election management

Although Zambia had held elections under British colonial rule, as Northern Rhodesia, its first major election was the one held from 20 to 21 January 1964. This is the election that ushered in a black majority government to pave the way for the country's independence on 24 October in the very year. In the post-independent era, Zambia is a country with a chequered electoral history spanning over a period of half a century of political experiments. This period has seen the country move from multi-party to one-party politics in 1972 and back to a multi-party electoral system in 1991. Zambia's independence political party, the United National Independence Party (UNIP) under the leadership of Kenneth David Kaunda, ruled the country during this period. Having held the 1964 election under a multi-party political system, post-independent Zambia has held national elections of one form or another in 1968, 1973, 1978, 1983, 1988, 1991, 1996, 2001, 2006, 2008, 2011, 2015 and 2016. The elections held from 1964 to 1988 were under the one-party electoral system, while all those held from 1991 to date have been under the multi-party political regime.

Under Zambia's one-party political system, electoral processes management was restricted to organs of the ruling party, UNIP. The supremacy of UNIP over state institutions was provided for in Chapter 1, Article 1 (2) of the party constitution which stipulated that: 'the Party guided by the Philosophy of Humanism is the militant organisation of revolutionary peasants, workers and intellectuals and shall exercise supreme authority over all State organs' (UNIP Constitution, 1973). In Article 55 (A) (d), for instance, the party constitution required that 'laws, regulations and rules applicable to Security Forces are

formulated and enforced in accordance with the ideals and aspiration of the Party' (UNIP Constitution, 1973). Therefore, the return to multiparty politics came with the promise of public institutional reform (including electoral reforms) for improved (democratic) governance.

To entrench multiparty and good governance values, the period leading to the 1991 general election saw a number of changes to the country's laws and institutions. Among the most important was the replacement of the one party constitution with the Constitution of Zambia Act, 1991, which removed the Constitution of Zambia Act, 1973. In Article 4, the latter had outlawed the existence of political parties other than UNIP. Article 76 of the Constitution of Zambia Act, 1991 gave the Zambia President power to establish an Electoral Commission to supervise the registration of voters and conduct of Presidential and Parliamentary elections and to review constituency boundaries. This Constitution was followed by the promulgation of the Electoral Act, 1991, which inter alia, gave the Commission a great deal of functional autonomy. The Commission promulgated regulations which provided for procedure and manner of conducting elections. It clearly recognised that the reintroduction of the multiparty system required the maintenance of new standards of impartiality (Commonwealth, 1991). The country has also implemented public service reforms, including reforms to the security and defence forces, judiciary and the legislature.

Today, the body responsible for managing elections in the country is the Electoral Commission of Zambia (ECZ). The ECZ was established in 1996 under Article 76 of the Constitution of the Republic of Zambia as an autonomous electoral body charged with the responsibility of managing elections. To strengthen the body further, the Electoral Commission Act 2016 was promulgated into law soon after the 2016 elections. The Commission is headed by a chairperson appointed by the President of the Republic of Zambia, and can be removed by him. A chief electoral officer appointed by the Commission serves as the chief executive officer. The Commission can also constitute committees to help it execute some of its functions (Government of Zambia, 2016).

In terms of resources, the Commission's main source is the funds allocated to it by parliament. However, subject to the approval of the President, the Commission can accept grants or donations from any local or foreign sources

or obtain funds through loans or any other sources to finance its activities. Subject to the President's approval, the Commission can also raise money by investing any funds for which it has no immediate use (Government of Zambia, 2016).

Prior to 2016, Zambia conducted its elections under the provisions of the Electoral Act No. 12 of 2006 which had replaced the Electoral Act, 1991. To strengthen this Act, with regard to regulation of the conduct of electoral stakeholders, the Electoral (Code of Conduct) Regulation, 2011, was enacted under Statutory Instrument No. 52 of 2011. Section 19 (3) of the Electoral Code of Conduct of 2006, required conflict management committees to mediate in electoral disputes and encourage amicable settlement of electoral disputes within twenty-four hours of receipt of a formal complaint. To improve its electoral processes management, Zambia promulgated new electoral laws and created new electoral institutions in 2016. These included the new Constitution and the Electoral Processes Act 2016, both enacted and effected before the election, and the ECZ Act 2016. In particular, Part V and Article 101 of the amended Constitution deal with electoral systems and process. In Article 45, the amended Constitution stipulates, inter alia: the electoral process and system of administering elections shall ensure: a) that elections are free and fair b) that elections are free from violence, intimidation and corruption. Articles 47 and 101 require the winner of the Zambian presidential ballot to garner a minimum threshold of 50% plus one vote of the total presidential ballots cast. Articles 48 and 49 provide for the prescription of the electoral process and system that should guide the conduct of elections while Articles 54 and 56 provide for a code of electoral conduct and prescribe the date for holding general elections. Section 110 of the Electoral Processes Act, 2016 also provides for a code of conduct, and constitution of conflict management committees (CMCs). The members of the CMCs are appointed by the ECZ for the purpose of resolving electoral disputes. All these are in line with the SADC electoral requirements. Article 101 further prescribes the legal recourse available to the loser of a presidential election. Particularly, it provides for the right of the loser to petition the presidential election in the Constitutional Court which, itself, is a creation of Part VIII of the same Constitution (Government of Zambia, 2016). Generally, the contents of the key electoral laws Zambia promulgated before and after the contentious 2016 election had many points of compliance with the SADC electoral framework.

For this reason, major opposition parties expressed happiness with the national legal framework going into the election (Zambia Daily Mail, January 7, 2016).

6. Zambia's 2016 general election vis-à-vis the SADC Principles

The 11 August 2016 general election in Zambia was the largest in the country's history as it combined presidential, parliamentary, local government, mayoral/council chairperson and referendum ballots on a single day of voting. The electorate sought to, inter alia, choose their president, legislators in a 156-member national assembly and over 1 600 local councillors. For the first time in the country's history, following an amendment to the republican Constitution in the election year, mayor and council chairpersons had to be elected directly through universal adult suffrage. The holding of a referendum on the bill of rights alongside the election of representatives followed a long period of disagreements among stakeholders. The opposition and civil society were against the holding of the referendum vote jointly with the election of representatives. For this reason, they urged voters to ignore the referendum as they viewed it as an exercise meant to slow down the voting and counting of results and facilitate rigging of the election. Consequently, the referendum failed as it could not garner the minimum support threshold of 50% of citizens eligible to vote. The election had 6 698 372 registered voters with a total of 3 781 505 voters actually casting their ballot papers on the day of election (ECZ, 2016). The election took place within 19 months after the country had held a presidential by-election following the death of President Michael Chilufya Sata on 28 October 2014. Although nine political parties contested the presidential election, the competition was between the governing Patriotic Front (PF) and the leading opposition, the United Party for National Development (UPND). The fierce competition between the parties had been carried over from the previous year's presidential by-election in which Hakainde Hichilema of the UPND narrowly lost to Edgar Chagwa Lungu of the PF by 1% equivalent to a paltry 27 000 votes (ECZ, 2016).

At the invitation of the Zambian government, the SEOM launched its presence, as an observer, in the 2016 general election in Zambia on 30 July 2016. It was headed by Honourable Oldemiro Baloi, Minister of Foreign Affairs and Cooperation of the Republic of Mozambique. When the SEOM delegation visited the Department of Political and Administrative Studies of the University of Zambia to obtain expert opinion about the political situation, days prior to the election, the author was privileged to be among the

discussants. The concerns discussed included the political playground, human rights situation, political violence and the performance of governance institutions ahead of the polls. The events records in the succeeding sections of this chapter obviously indicate that the team arrived in the country at the height of the political campaign when some of the key electoral conflicts were in full manifestation.

Notwithstanding the role of the SEOM and the many legal and institutional mechanisms Zambia had put in place to comply with the SADC electoral framework, many will remember the 2016 election not only as the most viciously contested in the country's history, but also the bloodiest and most disputed election ever. Apart from failing to adhere to the SADC Principles, the election grossly violated statutory and constitutional provisions within the Zambian electoral legislative framework in a fashion tantamount to the electoral lawlessness seen in the 2008 Zimbabwean election. Due to these shortcomings, electoral conflicts were pervasive throughout the periods before, during and after the election. The chapter now identifies and discusses some of the key areas of electoral shortcomings.

7. Fundamental freedoms and human rights

Contrary to SADC's requirements that a member country ensures citizens' enjoyment of their fundamental human rights, including the freedom to associate, assemble and express themselves freely, the Zambia Police used the Public Order Act to limit opposition party leaders and supporters' enjoyment of these freedoms without doing the same to members of the governing PF. Section 5 of Zambia's Electoral Code of Conduct also guarantees individuals of the rights 'to canvass freely for membership and support from voters...and to campaign freely' (Government of Zambia, 2011). The Public Order Act, Cap 104, Section 5 (4) of the Laws of Zambia requires groups intending to hold public meetings and processions to notify the Zambia Police seven days beforehand. Ironically, during the 2016 election campaign period and the period after the election, Police repeatedly denied members of the UPND, their right to hold rallies, even after notifications. However, members of the governing party freely held their public meetings and processions, usually without notifying the Police. When queried by the media as to why his office was selective in its application of the Public Order Act, Northern Province Police Commissioner, Bonny Kapeso, said that 'only the PF is allowed to hold campaign meetings without notifying the police because they are part of

system' (The Post, February 12, 2016). In essence, he believed that the Act could only apply to the opposition.

Addressing Zambians living in Italy, in February 2016, President Lungu stated that: 'the Public Order Act comes in handy, because without the Public Order Act, there would be mayhem in the country' (The Post, February 8, 2016). On 14 January 2016, police in Central Province's Kapiri Mposhi District had stopped Rainbow Party members led by National Coordinator for Mobilization, Robert Chikwelete, from having lunch at Novotel Lodge because they had no permit to do so. The team which had gone to the district to launch their party were forced to leave the area (The Post, January 16, 2016). Section 12 (c) of the Electoral Code of Conduct requires the police to 'refrain from disrupting any political campaign, rally or meeting which is legally convened by any political party' (Republic of Zambia, 2011).

When attempts by the opposition to dialogue with the police could not yield results, opposition leaders resorted to suing the police each time they were denied their right of assembly. 'The police needed to be challenged in court because it was working against the Constitution by applying the Public Order Act unfairly,' (The Post, February 23, 2016) said UPND member, Bob Sichinga. Southern Province based veteran politician and freedom fighter, Daniel Munkombwe, echoed Sichinga's remarks when he urged the opposition to 'constitute a formidable legal team to challenge the application of the Public Order Act by the police' (The Post, March 12, 2016). This resolve was acted upon by the UPND Secretary General, Stephen Katuka who sought judicial review to challenge police action to cancel the party's campaign rally scheduled for Freedom Park in Kitwe on 14 May 2016 (The Post, May 16, 2016). In June, police fired live ammunition to disperse UPND supporters who were a part of Hichilema's campaign procession in Lusaka's Mandevu area. During the police operation, four UPND members were reportedly arrested (The Post, June 17, 2016). The scale of police brutality on opposition members seemed to rise as the day of election neared. On 1 February 2016, heavily armed police officers broke into the campaign mobilisation offices of the UPND in Lusaka's Thorn Park Area around 4 a.m., claiming to be looking for offensive weapons. After failing to find any weapons, they allegedly destroyed some campaign materials and arrested seven party members (The Post, July 3, 2016). A cruel incident during this period was the shooting to death by police of a youthful member of the UPND, Mapenzi Chibulo, on 8

July 2016. This occurred when police fired live ammunition to disperse members of the opposition who were in a procession to Chawama where their party intended to hold a campaign rally. This drew wide condemnation from stakeholders including the Law Association of Zambia and the country's Human Rights Commission (The Post, July 13, 2017). Narrating the killing of his daughter, Douglas Chibulo narrated:

‘My girl tried to run for her life but very unfortunate [sic], a police officer aimed directly at her and shot her in the head, they fired again and shot her in the stomach... I am very sad. My daughter was very fit, the only offense was belonging to an opposition political party.’(The Post, July 12, 2016)

Earlier, independent media had carried a story in which President Lungu had allegedly instructed the Inspector General of police to use force to sort out the opposition. On 19 July, just weeks before the election, Council of Elders of the Zambia Elections Information Center Chairperson, Father Leonard Chiti, observed that ‘currently, the application of the Public Order Act is largely seen as selective and unfair, and affecting the playing field. A credible election begins with free and fair campaigns,’ (The Post, July 19, 2016). Meanwhile, a few days earlier, executive director of the Southern African Council for Constructive Resolution of Disputes (SACCORD), Boniface Chembe, had accused the police and ECZ of favouring the PF. He noted that ‘the two bodies have abandoned their true core values of serving Zambians and have resorted to serving a political party’ (The Post, July 13, 2016).

On 15 December 2016, following the disputed election, police in Lusaka fired teargas and live ammunition at UPND supporters who had assembled on the High Court premises to demand the hearing of the presidential petition. In the same episode, female police officers brutally beat a helpless female supporter of the UPND (The Mast, December 18, 2016).

8. Political violence, intolerance and intimidation

The 2016 Zambian election was the most violent since the country's independence in 1964. Most of the incidents of violence occurred during the election campaigns and the period after the declaration of results. Important to note were the concerns among major electoral stakeholders about what seemed like President Lungu's reluctance to strongly condemn the violence. A part of the violence that characterised the 2016 election seemed to stem from the tight 2015 presidential by-election which left the country deeply divided on ethno-

regional grounds. The short period within which the two elections occurred meant the absence of an electoral hiatus moment necessary for quenching electoral tension. Among the earliest reported cases of electoral violence involved the assault of a fourth year University of Zambia student member of the Rainbow Party, Dickson Lungu, by known supporters of the PF (The Post, November 23, 2016). In February 2015, Grayzer Matapa, a well-known functionary of the UPND, was murdered by suspected supporters of the PF in Lusaka's Mtendere area. This followed attacks on opposition elements by ruling party cadres soon after their presidential candidate, Edgar Lungu, had been declared winner. Consequently, in February 2016, the Lusaka High Court sentenced to death five supporters of the PF namely Mwewa Yampanshi, Billy Semani Kansanya, Moses Lungu, Maxson Phiri and Albert Mainsa for the murder (The Post, February 5, 2016).

Towards the 2016 election, violence started reaching unprecedented levels in the country. As a result, veteran politician and freedom fighter, Vernon Johnson Mwaanga, alleged that the President's silence on political violence was a part of a conspiracy to cause an atmosphere of terror ahead of the election. Mwaanga was reacting to an incident in Shiwang'andu area in the country's northern region where swift action by police dispersed PF cadres who threw stones, machetes and other objects at opposition leader, Hakainde Hichilema's helicopter to prevent it from landing at a venue for the party's campaign rally (The Post, June 15, 2016). A similar event occurred at the Simon Mwansa Kapwepwe International Airport in Ndola, on 23 January 2016, where PF cadres besieged the runway to intercept and attack Democratic Front (DF) leader, Miles Sampa who was scheduled to hold campaign meetings in the area (The Post, April 13, 2016). Later, an editorial column of The Post, Zambia's leading independent news tabloid, carried a lead comment headed: 'it seems the PF is ready to kill over these elections' (The Post, May 25, 2016). '*Iyi manje ninkhondo yamene ba PF bayamba*⁵⁶' remarked some irate UPND cadres on 2 June 2016, after the ruling party supporters allegedly vandalised the headquarters of the opposition party and injured several people and caused damage to some motor vehicles on the premises. The incident occurred just after President Lungu had filled his presidential nomination at the Mulungushi International Conference Centre in Zambia (The Post, June 3,

⁵⁶ In the Zambian Chinyanja language, this means: "This is now war that the PF have started"

2016). This attracted a challenge from a senior member and former minister in the PF government, Wilbur Simuusa, to the entire PF leadership to ‘speak strongly against violence because the party was associated with it’ (The Post, June 8, 2016).

On 2 June 2016, the Rainbow Party’s candidate for Chingola Central constituency, McDonald Mulongoti, had written to the ECZ’s Electoral Conflict Management Committee and the area’s district electoral officer to complain about the PF cadres’ unruly conduct against members of the opposition. ‘I find their conduct at variance with the Electoral Code of Conduct,’ he complained. This followed an incident on 31 May 2016 in which PF cadres had blocked the Chiwampala road leading to the Civic Centre where Mulongoti was scheduled to file his parliamentary nomination papers (The Post, June 7, 2016). Much earlier, on 12 March 2016, UPND members and a photojournalist from the independent newspaper, The Post, David Kashiki were assaulted by the ruling party supporters while Vice-President, Inonge Wina, watched during youth day celebrations (The Post, Monday 14 2016). Commenting on the increased political violence, opposition Forum for Democracy and Development (FDD) Spokesperson, Antonio Mwanza accused President Lungu of perpetrating it. Meanwhile, the Council of Churches in Zambia (CCZ), a respected consortium of Christian organizations, petitioned President Lungu to end political violence. This was in a confidential letter to the President dated 5 June 2016, signed by the organisation’s general secretary, Suzanne Matala (The Post, June 6, 2016; The Post, June 17, 2016). Although President Lungu was generally condemned for not strongly speaking against electoral violence, he came under the spotlight for saying that ‘if police cannot stop this violence, we shall ask them to step aside and let us work’ (The Post, February 25, 2016), a statement which drew condemnation from the Law Association of Zambia through its president, George Chisanga. The President’s remark was understood as an open invitation to the ruling party’s cadres to usurp the functions of the police. On February 17, Geoffrey Bwalya Mwamba, the Vice-President of the UPND, claimed that ‘there is an obvious indicator that [the] roles of the Zambia Police are being executed by a PF police force’ (The Post, February 17, 2016).

Despite the calls to end violence, the situation continued to deteriorate especially in the period leading to 11 August, the day of the election. During this period, the wearing of the campaign regalia for the UPND became one of

the riskiest acts, especially in the slums, markets and bus stations as these had been turned into bases for the PF's notorious youthful militia. This is notwithstanding some isolated reports of PF supporters coming under attack in UPND's strongholds. According to the government owned broadsheet, the Zambia Daily Mail (August 3, 2016), one such incident was in Mazabuka where police had reportedly apprehended five members of the UPND for allegedly killing a man who was in the company of a woman wearing campaign regalia. In the same area, police were also reported to have arrested and charged with assault. The 2016 election defied the traditional pattern where victims of violence were those straying in another party's stronghold. For instance, on 16 July 2016, in the UPND north-western stronghold of Solwezi, the party's campaign team came under strong attack from alleged PF members in the Kimasala area. This incident left Lukeshi Kalepa, a UPND campaign team member, with a broken skull and battling for his life (The Post, July 20, 2016). On 10 August 2016, barely a day before the election, 'a horde of unruly PF cadres' in Lusaka's Mtendere slum attacked a UPND campaign bus, destroying it and injuring eight opposition supporters' (The Post, August 10, 2016). Earlier, on account of electoral violence, the ECZ had to invoke its powers under Section 28 (2) of the Electoral Processes Act No. 35 of 2016 to suspend election campaigns in Lusaka Province and Namwala District in Southern Province (ECZ, 2016). Earlier, in reaction to escalating violence, the UPND launched what they dubbed, 'Operation Watermelon'. Featuring on a special interview on privately owned, Radio Phoenix, on 11 July, Sylvia Masebo of the UPND said:

'Children, women are all at risk. Now that the situation is bad on the ground, UPND has coined a new strategy. You know a watermelon is green outside but red inside. Green represents the PF uniform [dominant party colour] and the red inside represents UPND. So, stay green outside but inside remain red so that you are not shot dead by the police. We are calling this one 'Operation Watermelon', everyone will avoid being attacked by being a watermelon.' (The Post, July 13, 2016)

However, this strategy of wearing PF campaign regalia by UPND members had its own setbacks. Most importantly, the PF leadership used it to refute the violent acts committed by its supporters, arguing that violence was being perpetrated by the watermelons – UPND supporters in PF regalia. When he addressed a campaign rally in Nakonde, on 28 July 2016, President Lungu gave credence to this argument when he said: 'I have been briefed about

UPND wearing green and committing crime. Arrest them, fear no one regardless of their status' (Times of Zambia, July 29, 2016). The President issued a similar statement on 1 August 2016 when he addressed a campaign rally in Ndola's Chifubu area on the Copperbelt Province. 'The UPND are using their so-called 'operation watermelon' to commit crimes in the name of PF. They want to destroy our peace,' (Zambia Daily Mail, August 2, 2016) said President Lungu. Throughout the period of campaign, several UPND members, including the top leadership, became targets of arbitrary arrests and detentions.

On its part, the ECZ attempted to end political violence by organising a peace accord for political parties about a month to the election. 'However, only five out of the nine political party leaders contesting the general elections signed the peace accord. The remaining four leaders refused to sign' (Times of Zambia, July 29, 2016). Those who signed the accord were: President Edgar Lungu of the Patriotic Front, Edith Nawakwi of the FDD, Maxwell Mwamba of the Democratic Assembly, Andyford Banda of the People's Alliance for Change and Tilyenji Kaunda (represented by his Vice-President, Njekwa Anamela) of UNIP. Hakainde Hichilema of the UPND, Wynter Kabimba of the Rainbow Party, Peter Sinkamba of the Green Party and Saviour Chishima of the United Progressive Party (UPP) refused to sign the accord. Hakainde Hichilema argued that the accord was a public relations ploy, on behalf of the PF, by the ECZ. He also demanded amendments to the accord so that PF could be clearly identified as perpetrators of the electoral violence.

In October 2016, after what seemed like a lack of commitment to strongly deal with acts of violence, President Lungu appointed a 15-member commission of enquiry to probe causes of political violence before and after the 2016 election. The commission was also to investigate the causes of the ethnic pattern of voting that characterised the country's recent elections (Zambia Daily Mail, October 22, 2016). More than anything else, the appointment of this commission seems like an effort meant to appease other electoral stakeholders. There was also concern that the appointment of the commission could be a scheme to cleanse the PF of its role in the electoral violence and find the opposition the guilty party.

What was of interest was SEOM's report about the scale of electoral violence during the 2016 election period. In its Preliminary Statement released on 13

August 2016, SEOM claims that ‘stakeholders expressed concerns about isolated acts of inter-party violence allegedly perpetrated by members of the two major political parties’ (SEOM, 2016). In the same statement, SEOM reports that 21 incidents of violent acts had occurred in the period 21 May to 22 July 2016 alone. Surely, President Lungu would not appoint a commission to investigate causes of ‘isolated acts of violence’ during the election. As shown earlier in the chapter, Article 4 of the SADC Treaty identifies the observance of human rights, democracy and rule of law as principles guiding the acts of member states. In many respects, the execution of Zambia’s 2016 general election violated Article 2 (2) (g) of the Protocol on Politics, Defence and Security Cooperation which commits member states to the observance of universal human rights as provided for in the Charters of the UN and AU. Zambia Police’s denial of the opposition the right to hold rallies and processions was a gross violation of the SADC Principles and Guidelines Governing Democratic Elections. The Principles require that citizens enjoy fundamental freedoms and human rights, including freedom of association, assembly and association. The Police’s apparent partisan handling of disputes and other electoral engagements with the opposition was a violation of the Principles’ requirement for impartiality and professionalism of electoral institutions. Moreover, Section 29 (1) of Zambia’s Electoral Processes Act, 2016, requires that ‘A public officer and public entity shall give equal treatment to candidates’. In its Principles, SADC commits ‘to take all necessary measures and precautions to prevent... favouritism, political violence, intolerance and intimidation’ (SADC, 2015). In addition, the SADC Principles require adherence to a binding Electoral Code of Conduct which should regulate the actions of all electoral stakeholders. However, both the magnitude and frequency of electoral violence, during the election, suggest laxity on the part of both SADC and the Zambian authorities.

With the opposition threatening to report the Zambian government to the International Criminal Court (ICC) for alleged atrocities against humanity during the election period, there was a failed attempt by the Zambian government to withdraw from the ICC. This followed failure by government to garner enough support from citizens who submitted oral and written submissions to a hastily arranged commission of inquiry in 2017.

9. Impartiality and independence of governance institutions

In order to uphold the integrity of the electoral process, Article (5) (1) (b) of the SADC Protocol on Politics, Defence and Security Cooperation commits member states to promoting common political values through institutions that are democratic, legitimate and effective. Most of SADC's Electoral Principles also commit member states to ensuring impartiality, independence and professionalism of institutions involved in the electoral process. These include equal opportunity access for all candidates and political parties to public media, and independence of the judiciary and the EMBs. This is also in line with the provisions of the ACDEG, particularly in Chapter 5, which seeks to promote strong democratic institutions. However, as revealed in the succeeding sections of the chapter, Zambia's governance institutions largely failed to uphold both the SADC and national electoral values. This section discusses the performance of the key electoral institutions during Zambia's 2016 general election.

Although the preceding sections have already dealt with the conduct of the police during the electoral period, it is important to also acknowledge fears by sections of stakeholders that PF cadres had infiltrated the Zambian Police. This came amid rising reports that cadres had resorted to wearing police uniform. An incident in Lusaka where police caught a PF cadre, who was clad in police uniform, seemed to justify the fears. In a widely circulated video, 27-year-old Kelvin Chitanda told the police that he wore the police uniform to enable him to travel to the tourist Capital, Livingstone without difficulty (The Post, July 13, 2016). Such incidents seemed to validate the complaints by opposition about lack of impartiality by the Police. Later, UPND's Charles Kakoma accused the police of 'taking sides in condemning political violence'. This followed condemnation of the UPND by police and PF after cadres from the opposition party had blocked President Lungu's convoy in Hichilema's home area in Bweengwa. The President had held a political meeting in the area (The Post, February 17, 2017).

On 4 March, the United Nations Resident Representative to Zambia, Janet Rogan, warned against the wearing of paramilitary regalia by political party cadres (The Post, March 6, 2016). However, Rogan herself had become a subject of heated discussion, especially after the election following allegations by opposition that she took part in the manipulation of the electoral process on behalf of the PF. The UPND's Hichilema and Sean Tembo, President of the

Patriots for Economic Progress (PeP) party, had publicly complained about the conduct of the UN's chief envoy to the country, demanding her recall (News Diggers, April 10, 2018). However, the key institutions in the Zambian electoral process whose conduct came under heavy public criticism were the executive machinery, ECZ, defence and security forces, public media and judiciary. The performance of these institutions during the election period is now discussed in detail.

The Executive Machinery

The country's intelligence services, popularly known as the OP (Office of the President), was among the civil service institutions that were accused of misconduct during the election. It faced public condemnation over its alleged link to an Israeli firm known as Timor Consulting which the opposition thought was working with the PF to rig the election. Just two months to the election, the UPND had warned that 'President Lungu's plan to rig elections with help from the OP will be enough ground to petition the results' (The Post, January 6, 2016). Earlier, Alliance for Democracy and Development (ADD) President, Charles Milupi had warned that since people were desperate for change, there would be turmoil if government refused to give up power after losing the election. He added that it was against the constitution for the OP to work with the ruling party to swing the results of the election (The Post, January 5, 2016). Later, the opposition FDD challenged the former chief of intelligence, Martin Mwanambale, whom President Lungu had appointed Zambia's ambassador to Israel before the alleged engagement of Timor Consulting, to explain his role in the deal (The Post, January 7, 2016). The failure by the ECZ to address the accusations, created an atmosphere of suspicion with potential to erode confidence in the integrity of the entire electoral process. The Presidency, as a governance institution with significant electoral influence was, itself, at the centre of conflict throughout the election period. For instance, the UPND and other stakeholders had alerted the public about an allegation that there was a team of foreigners comprising a Ugandan, some Israelis and an American, working with the PF and State House to rig the election (The Post, April 19, 2016). These allegedly included Adi Timor, one of the executives of the controversial Israeli firm, Timor Consulting. Some news media had accused President Lungu of using his aides to sign the deal between Timor Consulting and the intelligence. 'Edgar [Lungu] had to ask Amos Chanda, his press aide, to order the Chief of Intelligence, on his behalf, to sign a contract with Timor Consulting,' (The Post, January 9, 2016).

The Presidency came under further scrutiny over the use of public resources for party campaigns. Contrary to the provisions of the new Zambian Constitution and the Electoral Code of Conduct, the President allowed ministers and deputy ministers to stay in office after the dissolution of parliament. This allowed the ministers, most of whom were re-contesting their positions as members of parliament, to use public resources including vehicles and free fuel for party campaigns. Citing Article 116 (1) as read together with Article 72 of the Constitution, the Law Association of Zambia, challenged the government over the decision (The Post, May 11, 2016). Section 7 (1) (b) of the Electoral Code of Conduct empowers the ECZ to ‘ensure that political parties do not use state resources to campaign for the benefit of any political party or candidate’ (Republic of Zambia, 2011). However, towards the end of the campaign period, the ministers and deputy ministers were forced out of their positions by a Constitutional Court ruling. Interestingly, although deputy ministers had been retained after dissolution of parliament, the new Constitution had actually abolished their position. Another source of conflict during the election campaigns was the launch by President Lungu of a presidential empowerment fund targeting politically influential but vulnerable socio-economic groups such as market shop owners, street vendors, and bus and taxi drivers. The appointment of Chanda Kabwe, a permanent secretary and civil servant, to manage and disburse the funds during a campaign period, drew further criticism from the opposition. Realising that the program could politically advantage the ruling party, the UPND warned that the people involved in the management of the fund could face prosecution after the election (The Post, March 29, 2016). Related to this were the accusations by some political commentators that the state-owned ‘Zambia Electricity Supply Corporation (ZESCO) and other state institutions were being used as ATMs [automated vending machines] to fund Patriotic Front campaigns ahead of the August 11 general election’ (The Post, January 11, 2016).

Electoral stakeholders also had an issue with the Ministry of Local Government. This followed a leaked video in which the Minister of Local Government and Housing, Stephen Kampyongo and his Permanent Secretary, Amos Malupenga, were allegedly plotting to recruit electoral agents to help in rigging the election. To this effect, ADD’s Milupi challenged the ECZ to explain how they planned to handle the rigging scheme by the Ministry of Local Government and Housing (The Post, July 20, 2016). Note that the ECZ relied on the Ministry of Housing and Local Government to perform a number

of its electoral functions including voter registration and conducting of the actual vote on the day of election. Hence, the reluctance by the ECZ to investigate the reports and take corrective measures did not go down well with the other electoral stakeholders.

Other than the SADC principles and guidelines, the country's Electoral Code of Conduct prohibits civil servants from involvement in partisan political activities. Section 5 (2) of the Electoral Code of Conduct reads: 'A public officer shall not engage in any active partisan political activity... whilst holding public office' (Republic of Zambia, 2011).

The Electoral Commission of Zambia

Way before the campaigns reached the boiling point, Vernon Mwaanga had alerted the opposition about the likelihood of rigging, especially at the tallying stage of the votes (The Post, January 9, 2016). Soon after, police summoned him, together with The Post's Editor-in-Chief, Fred M'membe, Managing Editor, Joan Chirwa and reporter Kombe Mataka for questioning (Daily Nation, January 19, 2016; The Post, January 16, 2016) after a Copperbelt based MMD turned PF member, Bowman Lusambo had reported him to police (The Post, January 12, 2016; The Post, January 15, 2016). Mwaanga later revealed that the PF had asked him for help to get over the election (The Post, January 16, 2016). By any standards, the conduct of the ECZ throughout the election period left much to be desired. For this reason, there was a general feeling among opposition members that the commission was not committed to deliver a free and fair election. Notwithstanding stakeholders' complaints about what seemed like the concentration of voter registration in PF's ethno-regional strongholds, the most contentious issue at the stage of voter registration was the reported registration of some Malawians as voters. The issue of the foreign voters first came to the fore when the Post newspaper carried a story titled: 'ECZ registers foreign voters' (The Post, May 16, 2016). In the story, the ECZ was alleged to have connived with the PF to register thousands of Malawians to vote in the Zambian election. The registration of the voters was said to have been done between November and December 2015. The foreigners registered to vote included police officers and teachers. 'Also registered are villagers from Mozambique' (The Post, May 16, 2016). Astonishingly, and contrary to electoral laws, the foreign voters were eligible to vote in more than one constituency. Alina Banda was one of the verified foreign voters from Malawi. Banda, who possessed both a Malawian and

Zambian national registration cards and voter's card, was eligible to vote in Vubwi and Chadiza constituencies. The verification by The Post newspaper involved the use of the ECZ's mobile voter verification method of dialling the code *214# and entering the national registration number. By entering these voter's details on the mobile phone, one would know whether or not they were validly registered to vote, and the constituency they would vote from (The Post, May 16, 2016). A Malawian village headman, Chisamba and his *Induna*,⁵⁷ Chilima Yamikani later told reporters that nothing would stand in their way to go and vote in the Zambian election. He thus added:

*'... Tonse ndife okonzeka ukavota ndipo tilibe mantha chifukwa dinfe oloedwa ndiboma la Zambia utengako mbali m'musankho. Tilinso ndimapepala oyenekela, ndipo ndi ufulu wathu ukavota'*⁵⁸, (The Post, May 24, 2016).

Despite the Post's publication of the details, including images of voter's cards belonging to Malawians, on 16 May 2016, the ECZ and Zambian government continuously denied the reports without showing any eagerness to investigate them. The Post had based its revelations on investigations it had conducted over a period of six months involving named PF officials' facilitation of registration of thousands of Malawians, Mozambicans, Angolans, Congolese as well as Tanzanians to take part in the election (The Post, May 17, 2016). These revelations triggered sharp reactions from the opposition, accusing the ECZ of assisting the PF in rigging the election. The Copperbelt based opposition United Democratic Front (UDF)'s Johnston Mpundu warned the ECZ against playing 'Tom and Jerry games over revelations of foreigners registering as voters', adding that 'failure by the ECZ to investigate revelations of registered foreign voters is a recipe for anarchy ahead of the August 11 general elections' (The Post, May 29, 2016). 'There will be consequences for rigging,' warned the opposition FDD President, Edith Nawakwi, amid admissions by some Malawians that they had registered and would come to vote in Zambia (The Post, May 25, 2016). Earlier, after the publication of what seemed like overwhelming evidence of registered foreign

⁵⁷ In Zambian Chinyanja language, an *Induna* is an administrative assistant to a village headman or chief.

⁵⁸ In the Malawian Chinyanga language, this means: "We are all ready to come and vote and we are not afraid because we have been permitted by the Zambian government to vote. We also have the required documents and it is our democratic right" (The Post, May 24, 2016).

voters, the opposition demanded, in futility, for the immediate resignation of the ECZ Chairperson, Essau Chulu and Director, Pricilla Isaac. Meanwhile, the UPND lodged a formal complaint at Lusaka's Woodlands Police against the ECZ and the Ministry of Home Affairs' Department of National Registration for issuing Zambian national identity cards to foreigners (The Post, May 17, 2016) against the laws of Zambia. The issuance of the national registration cards, which commenced in May 2015 (Times of Zambia, March 19, 2015), was intended to prepare citizens for securing voter's cards ahead of the election. According to a complaint filed at Woodlands Police by UPND's Garry Nkombo and Sylvia Masebo on 13 May 2016, over 500 000 foreigners had obtained Zambian national registration cards and had registered as voters for the August 11 election (The Post, May 25, 2016). Despite all these grave concerns by key electoral stakeholders, the election was held without either the ECZ or the Zambian government undertaking an investigation. Instead, the ECZ refuted registering foreign voters, calling The Post's revelations as cooked images while admitting that the ECZ had no capacity to screen whether a voter was a Zambian or underage. The Commission's Pricilla Isaac added that for as long as one was able to produce a Zambian national registration card and their face matched the one on the identity card, the Commission went ahead to issue them with the voter's card. She further said that at each voter registration centre there was an objection form which genuine Zambian voters could have used to protect against known foreigners from registering (The Post, May 18, 2016). This of course could not in any way be an effective method of rectification given that the number of the alleged foreign voters stood at over half a million. In reaction, The Post, in its editorial column of 18 May 2016, lashed out at the ECZ's arrogance and lack of respect for stakeholders other than the PF. Further, the paper argued that:

'The registration of foreign voters "was something the Patriotic Front on its own could not have done. They needed the cooperation of other state agencies like the Ministry of Home Affairs, the intelligence services and indeed the Electoral Commission of Zambia itself"' (The Post, May 18, 2016).

In the wake of the revelations, police arrested some journalists working for The Post for falsely alarming the nation. Police also summoned The Post's investigative journalist, Peter Sukwa following his stories on the registration of foreign voters (The Post, 25 May 2016). Earlier, Sukwa had testified before Vubwi Magistrate Court on how PF cadres Michael Tembo and Jay Banda

wanted to use petrol to burn him alive when he went to cover the story of Malawians registering as voters in Chikota area of Vubwi. After failing to find match sticks to light him, they severely beat him up and later urinated in his mouth, leaving him unconscious (The Post, February 25, 2016).

The other conflict involving the ECZ was the printing of ballot papers. This followed revelations by independent media that the ECZ had awarded the tender to print the ballot papers to a Dubai based company called Al Ghurair Printing and Publishing LLC at a cost of US\$ 3 million. The choice of Al Ghurair raised eyebrows as opposition sought explanation as to why the ECZ was abandoning the Universal Print Group (UPG) of South Africa which had printed the country's 2011 election materials and whose tender to print the ballot papers for the August 11 election was reportedly far below that of Al Ghurair. At a stakeholders meeting convened by the ECZ on 5 May 2016, stakeholders from various political parties expressed their anger at the ECZ's decision to print the election materials in Dubai without their consent (The Post, May 6, 2016). Of particular concern, were the reports that Al Ghurair had also printed the election materials for Uganda's 2016 controversial election. Some stakeholders observed that the Electoral Commission of Zambia's arrogance over the printing of ballot papers in Dubai had taken away confidence from the institution (The Post, May 25, 2016). Even amid this standoff, the government owned media seemed to distort facts with headlines like: 'ECZ commended for picking Al Gurair' (Times of Zambia, July 25, 2016). Meanwhile, President Lungu and the PF were full of praises for the ECZ. Speaking on his arrival in the tourist capital Livingstone on 6 May 2016, President Lungu advised that 'political parties who [sic] are uncomfortable with the work of the Electoral Commission of Zambia should boycott the coming elections' (The Post, May 7, 2016). He described the ECZ as one of the best EMBs in Africa, which had never been found wanting. This was a view shared by Davies Chama, the General Secretary of the PF who regretted the opposition's criticism of the ECZ, arguing that it was impossible for elections to be rigged at the stage of ballot paper printing (The Post, April 19, 2016). However, opposition parties feared possible manipulation of the election materials. This was the cause of a stir in Livingstone on 1 August 2016 where UPND cadres impounded eight trucks belonging to the ECZ. However, their suspicion that the trucks were ferrying pre-marked ballot papers drew a blank. In the ensuing melee, police shot and wounded one person (Zambia Daily Mail, August 2, 2016).

In an attempt to manage the conflict relating to the printing of ballot papers, the ECZ flew representatives of the key stakeholders to Dubai to witness the printing of the electoral materials (Times of Zambia, July 25, 2016). They also invited them to witness the arrival of the materials at Kenneth Kaunda International Airport in Lusaka. Despite these efforts, stakeholders remained suspicious, particularly given the way the printing company was selected. On 19 August 2016, before the announcement of full election results, police arrested and charged UPND member and former Lusaka Province Minister, Obvious Mwaliteta and five others with aggravated robbery after they stormed Lusaka's City Airport where a Zambia Air Force (ZAF) plane carrying ballot papers had allegedly landed with PF and State House officials on board. The argument by police and the PF was that the plane was carrying electoral materials that included records of proceedings (Form 18) and announcement of poll results (Gen 12, commonly called G12 form) (Zambia Police, August 19, 2016). However, the alleged accompanying of election officials by the Deputy Secretary General of PF, Mumbi Phiri and some State House officials were enough grounds for anyone to be suspicious.

As full election results were being awaited, the UPND claimed victory based on its own system of parallel voter tabulation (PVT). 'Since the voting closed at 18:00 hours on Thursday 11th August, we have been operating a highly effective PVT system. It is our clear understanding that we have won the presidential vote by a clear margin,' (Sunday Post, August 14, 2016), claimed the party's secretary general, Stephen Katuka on 13 August 2016. In line with this claim, the UPND repeated its warning to ECZ to refrain from manipulating the election results. However, when the official results produced President Lungu as the winner with 50.3% of the ballot and Hichilema as a runner-up with 47.6% (ECZ, 2016), there was a strong justification for rejecting the results. One most important event that seemed to vindicate the opposition's revelations and fears was the catching and arresting of a Ugandan information and communication technologies (ICT) specialist, Samuel Chavula from a computer desk in a highly secured room where results from around the country were being electronically tallied, live on camera. Despite the opposition's demand for justice, after the arrest, Chavula never appeared in any court of law, and immediately vanished from public domain. An official in the ECZ's information department, who had allegedly facilitated Chavula's entry into a room where access was only possible by a password aided electronic card, was forcibly separated from the organisation. This was

followed by mounting pressure for the resignation of all of the ECZ's top officials.

Yet another electoral ailment was the ECZ's failure to avail the crucial G12 form used to validate the authenticity of the results at the polling station before they are relayed to a central totalling centre. Strangely, in the whole of Lusaka, the ECZ could not make the G12 forms available (The Post, August 16, 2016). A request by Hichilema and UPND to have the announcement of the results for Lusaka delayed until they had been verified were rejected by the ECZ without any convincing reasons. Clearly, the fact that the top officials of the ECZ were presidential appointees seemed to undermine the independence and impartiality of the Commission.

Notwithstanding ECZ's numerous omissions and the conflicts it sparked, the SEOM report does not pinpoint these ailments as a departure from the SADC electoral principles.

Defence and security forces

Other than the Police and the intelligence, the Zambia Air Force (ZAF), a public institution hitherto unknown for partisan politics, also came within the firing range. This followed some remarks by its Commander, Eric Chimese that his institution would apply maximum strictness in granting flying permits during the campaign period in order to prevent the abuse of the country's air space by those he described as 'perpetrators of violence' (The Post, May 30, 2016). Speaking at an event graced by President Lungu, Chimese said:

'We as service chiefs, Your Excellency, are seriously concerned with the carelessness and lack of patriotism, hooliganism and total indiscipline that has been observed over the past few months from some of our citizens. We have openly seen them inciting violence, especially through the media. These individuals have been justifying their acts of violence or rather of their followers in the name of retaliation or indeed self-defence... Your Excellency, the Zambia Air Force, in conjunction with the Civil Aviation Authority, has resolved to exercise strictness in the management of the air space. We are timely advising all our partners who are intending to fly around the country this time to religiously adhere to laid down procedure of acquiring air space to seek clearance.' (The Post, May 30, 2016).

This warning by Chimese was followed by substantial grounding of the opposition campaign aircrafts, leading to questions about ZAF's involvement in the electoral politics of the time. Former head of the Zambian public service, Sketchley Sacika expressed worry that an air commander could take political sides, describing his statement as 'highly political, inflammable and war-like... highly irregular and most worrying'. Opposition UPND, FDD and other parties followed in admonishing Chimese's alleged seemingly partisan conduct, especially that the PF's air movements did not seem affected by the new strict procedure (The Post, May 30, 2016). In any case, the Commander should have known that most of the reported cases of violence implicated members of the PF more than anyone else. On 18 July 2016, ZAF ordered UPND's Vice-President, Geoffrey Bwalya Mwamba to leave Luapula Province (The Post, July 20, 2016), in the country's northern region where he had gone for campaigns. This was on the premise that President Lungu was scheduled to visit the province though not the same district. Several similar incidents were reported, especially as the country drew closer to the election.

The media environment

Section 13 of the Electoral Code of Conduct stipulates various rules governing the conduct of media outlets to ensure fair, balanced and accurate coverage of the election and the political parties. 'All print and electronic media shall – (a) provide fair and balanced reporting of campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period' (Republic of Zambia, 2011). Further, Section 8 (1) of the Schedule of the Code of Conduct of the Electoral Processes Act (Act No. 35, 2016), requires public media to give all political parties and candidates equal coverage (Government of Zambia, 2016). However, the 2016 election, then no other hitherto, saw a monopoly of public media by the ruling party and harassment of the private ones that tried to balance their reportage of the election events. As a starting point, one should state that both the public and private media did not find the electoral environment conducive for fair and factual reporting of the election events before, during and after the election. Commenting on the stakeholders' condemnation of the public media for their biases, People's Party President, Mike Mulongoti contended that 'it would be unfair to judge the puppet without questioning the puppeteer' (Sunday Post, July 3, 2016). On 9 March 2016, the Parliamentary Committee on Information had admonished the directors of the Zambia National Broadcasting Corporation (ZNBC) and Times of Zambia, Richard Mwanza and Beston

Ng'onga, respectively for their unfair coverage of the opposition (The Post, March 10, 2016). Later, the Media Institute of Southern Africa (MISA) Zambian chapter and the Press Freedom Committee (PFC) of The Post newspapers, petitioned the Constitutional Court over PF's abuse of state-owned media. The media bodies cited an incident where some senior government officials who included the Minister of Information at the time, Chishimba Kambwili, had stormed ZNBC's newsroom and ordered staff to remove from the news script a story about the UPND's rally at Kanyama's Twashuka grounds in Lusaka (The Post, April 13, 2016). On 21 December 2015, the Media Liaison Committee (MLC), another regulatory body for journalists, revealed its intention to sue ZNBC, Times of Zambia and Zambia Daily Mail for the failure of the three public media to give equal coverage to political players during the campaign period (The Mast, January 11, 2016). This followed the elapsing of a ten-day ultimatum the body had given to the public media to show improved coverage.

For the coverage of their election campaigns, the opposition mostly relied on private television, newspapers, radio stations and the social media. However, private media came under the severest threat since their revival following the adoption of the neoliberal policies in the 1990s. The closure of the country's most prominent independent news outlet, The Post by the Zambia Revenue Authority (ZRA) on 21 June 2016, following a tax dispute (The Post, June 25, 2016), was essentially an unequivocal announcement of the pig-headedness government was prepared to employ in controlling the content of information reaching the electorate before, during and after the election. Before the closure of the newspaper, its journalists had come under severe threat for their investigative journalism. The attack on Sukwa, discussed earlier, is just one example. Earlier, following threats from named PF leaders and cadres, Radio Mano, a community broadcaster in Kasama had to suspend its operations (The Post, March 18, 2016). On 5 April 2016, Chief Government Spokesperson, Chishimba Kambwili warned that government would resort to statutory regulation of the private media since they had allegedly failed to regulate themselves (The Post, April 12, 2016). His statement attracted criticism from stakeholders, including the International Press Institute's Director of Press Freedom Programmes, Scott Griffen (Sunday Post, April 10, 2016).

In the immediate aftermath of the election, due to the disputes that ensued, regulatory bodies increased their grip on the private media. Consequently, on

22 August 2016, the Independent Broadcasting Authority (IBA) announced the closure of the country's second largest television station, Move TV and two other privately-owned broadcasting outlets namely; Komboni and Itezhi Tezhi radio stations in Lusaka and Namwala, respectively on allegations of breaching Section (I) (ii) of the IBA Amendment Act 2010 (IBA, 2016).

However, the SEOM's Preliminary Statement on the access to the media seems to emphasize the alleged polarization of the media without bringing out the key stakeholders' concerns regarding the monopoly of the public media and the victimisation of the private news outlets and reporters.

The judiciary

Based on a myriad of complaints from stakeholders about the poor handling of the electoral complaints by the ECZ and government, minister for the Copperbelt region at the time, Mwenya Musenge had predicted that the election would be followed by many electoral disputes. 'During this period, the people of Zambia will look to the judiciary to resolve the so many disputes that will arise from campaigns and elections,' (The Post, January 12, 2016) said Musenge. He, however, added that like any other arm of government, the judiciary had suffered many operational challenges. Due to his many critical comments, Musenge was expelled from the PF in 2017. Despite coming under immense pressure from major political players, the judiciary showed some noticeable resilience until Hichilema and his running-mate, Mwamba petitioned President Lungu's re-election on 19 August 2016. Their petitioning of the presidential ballot was pursuant to Article 101 of the Constitution which, inter alia, provided for the right of a losing presidential candidate to petition the Constitutional Court for the nullification of the election within seven days. Article 101 (5) stipulates that: 'The Constitutional Court shall hear an election petition filed in accordance with clause (4) within fourteen days of the filing of the petition' (Republic of Zambia, 2016). The constitution further stipulates this requirement in Article 103 (2) of the Constitution which reads: 'The Constitutional Court shall hear an election petition relating to the President-elect within fourteen days of the filing of the petition' (Government of Zambia, 2016). However, the Hildah Chibomba-led Constitutional Court bench of five judges could not hear the petition due to confusion regarding the interpretation of the fourteen days constitutional period for hearing a petition. While UPND understood the fourteen days as excluding weekends and public holidays, PF thought otherwise. Although the judges had earlier agreed with

the UPND's interpretation and had come up with a schedule for hearing the petition beyond fourteen calendar days, they later changed their mind and abandoned it prematurely. This followed sustained protests at court premises by PF members clad in regalia written: '14 Days is 14 Days'. A recognisable figure among the protesters was Chanda Kabwe, who at the time held a senior civil service position as District Commissioner for Kitwe. The refusal by President Lungu to hand-over power to the speaker of the national assembly after the filing of the election petition, as required in Article 104 (3) of the Constitution severely undermined the electoral justice system. Article 104 (3), states:

'Where an election petition is filed against the incumbent, under Article 103 (1), or an election is nullified, under Article 103(3) (b), the Speaker shall perform the executive functions, except the power to – (a) make an appointment; or (b) dissolve the National Assembly (Republic of Zambia).'

Ironically, the Zambian judiciary went ahead to swear President Lungu as duly elected. Immediately thereafter, members of the PF, including the Minister of Home Affairs, Stephen Kampyongo, whose ministry controlled the security agencies, including the police, announced that the UPND would only be allowed to enjoy their freedom of assembly if they first recognised President Lungu as duly elected. They even warned that any police officer who would allow UPND to hold a meeting would be seen as refusing to recognise the President just like the UPND had done. The arrest and imprisonment, without conclusive trial, of Hichilema and other party members on controversial treason and other serious charges over road rage, was seen as an attempt at coercing the opposition to recognise President Lungu as duly elected. The independence and impartiality of the Zambian judiciary remained a matter of debate given that court judges were presidential appointees with parliament only rubberstamping the appointments.

However, more than a year after the Constitutional Court's refusal to hear the petition, the country's Judicial Complaints Commission (JCC), a statutory body that reviews the conduct of judicial officers, ruled that the five judges had wrongly interpreted the fourteen days' timeframe for hearing a presidential petition (The Mast, October 17, 2017).

10. Conclusion

Generally, the 2016 Zambian election is remembered for the numerous unresolved electoral conflicts that left deep interparty and interethnic divisions in a country once known for the peaceful coexistence of its over 72 ethnic groupings. The CMCs, established under the Commission to mediate in electoral conflicts, did not perform to expectations. However, many conflicts such as the issue of foreign voters, application of the Public Order Act, electoral violence, abuse of state resources, misconduct by civil servants and biased reportage of the public media remained unresolved despite stakeholders reporting them to the CMCs.

Most of the materials reviewed in this chapter indicate that the conduct of the 2016 Zambian election significantly failed to adhere to the SADC Principles and Guidelines Governing Democratic Elections. In most cases, the election also failed to adhere to the country's own electoral legal framework such as the Electoral Code of Conduct and the Constitution. Public sector institutions that play an important part in the country's electoral processes management did not perform satisfactorily. Among these, the presidency, ECZ, courts of law, Police and the air force were frequently cited for misconduct. The Political violence, intolerance and intimidation that characterised the election were the major points of departure from the regional Principles. The rest of the electoral ailments were the result of failure to guarantee citizens of their fundamental freedoms and human rights. As a result, the conduct of Zambia's 2016 election could clearly not meet most of the SADC Principles and Guidelines Governing Democratic Elections. SADC's apparent reluctance to invoke provisions of Article 11 of its Protocol on Politics, Defence and Security Cooperation and ensure effective conflict prevention, management and resolution, gave impunity to perpetrators of electoral misconduct, especially individuals and institutions linked to the ruling party and the state.

From the afore discussed, it is clear that SADC can boast of well-defined legal and institutional frameworks which have even helped member states like Zambia to develop their own new electoral governance legislation and institutions. However, little has been done to ensure that elections are conducted in accordance with the Community's prescriptions or even member states' own laws. As a result, the role of the SEOM and the efficacy of the SADC Principles in entrenching democratic values and intra-state peace and

security have become questionable in the aftermath of Zambia's 2016 general election.

11. Way forward

Electoral conflicts as witnessed in Zambia before, during and after the 2016 elections primarily point to increased failure of state institutions established to promote democratic governance, national and regional peace and security. Secondly, they bring into question the efficacy of regional integration in electoral conflict management. Mismanagement of elections in the SADC region does not only endanger the Community's efforts towards deeper integration, but effectively open the door for the region's return to the old days of political instability and insecurity. The failure by the electoral systems to provide a genuine democratic mechanism for political participation and change could lead to the use of unconstitutional methods of political participation which could plunge the region into political instability and economic malaise. While in one of the Principles and Guidelines Governing Democratic Elections, SADC condemns and rejects unconstitutional change of government, there is also a need to reject unconstitutional continued stay-in-power by the incumbent leaders who serve by manipulating the electoral process.

Despite the identified failures by the Community, in managing electoral conflicts, the solution, nevertheless, lies in deeper integration. This should come through amendments to the SADC Treaty to actualise the aborted SEC. The body should takeover the management of elections in member states. Its composition can be worked out to ensure both country and regional representation. This regional electoral body, if properly constituted, and curved could raise stakeholder confidence in the electoral process. To ensure an effective mechanism for electoral conflict management, a SADC electoral court of appeal could be established. This should allow candidates who cannot be fairly heard due to the patronage system in the member states to seek regional justice. The constitution of the court could also determine its impartiality. In the absence of these suggested mechanisms, the Organ on Politics, Defence and Security Cooperation, through the SEAC and SEOMs, should play a more proactive role in electoral conflict management in member states. For instance, the SEOMs should not wait for invitation by the member states and should transform into electoral conflict management missions as opposed to the passive role they played at the moment.

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Chapter 8

Policy Making in SADC: The Missing Link to Advancing Integration

Kizito Sikuka

1. Introduction

The main motivation behind regional integration is that when countries form a larger grouping, they naturally become better placed to work together to achieve sustainable development and resolve conflicts that may arise among themselves. Hartzenberg (2011) concurs and argues that in the African continent, regional integration is a rational response to address challenges such as the existence of small national markets, as well as an innovative strategy to allow landlocked countries to establish relations with those that have access to the sea and means of production. In this regard, the formation of the Southern African Development Coordination Conference (SADCC) in 1980 and its transformation to the Southern African Development Community (SADC) in 1992 raised huge expectations among citizens of a peaceful, better, united and prosperous regional community.

However, the slow pace at which countries in SADC have integrated and benefited from working together is a puzzle that confronts most scholars of regional integration. For example, despite the launch of a Free Trade Area in 2008, intra-SADC trade is still very low, accounting for just about 10% of the total trade (Chidede, 2017), while a number of non-tariff barriers between countries continue to hinder the smooth movement of goods, services and people across the region. Scholars have come up with various assumptions to explain the challenges affecting regional integration in SADC. Tanyanyiwa and Hakuna (2004) argue that one of the challenges is the unwillingness of member states to give up their sovereignty, while Ngwawi (2016) puts the blame on limited financial resources which has seen the region heavily depend on external partners to fund its own development programmes. Moyo and

Manyeruke (2015) further note that the ineffectiveness of the SADC Secretariat to coordinate and implement regional programmes has affected the pace of integration in southern Africa.

One other salient challenge that has stalled regional integration in SADC is lack of a systematic and formalised policy making process, particularly a weak policy formulation process that articulates the various strategies that are needed to address any particular problem or challenge faced by the region. In this regard, this paper is a departure from the usual stance that tends to link the slow pace of regional integration in SADC to limited resources or ineffectiveness of the SADC Secretariat to implement regional programmes. Rather, the central argument of this paper is that poor policy making processes have greatly affected the integration agenda, and as such, there is need to review the way SADC formulates its policies so that all relevant stakeholders contribute in articulating regional policies and not just implement decisions that they did not play a part in sharpening. In fact, this paper postulates that a ‘false start’ in formulating a policy tends to face inevitable challenges in its implementation stages, hence the need for SADC to get it right at the very beginning of the policy cycle.

2. Problem statement: Weak policy making process

SADC has not only embraced regional integration as a priority for sustainable development, but is also cognisant of the fact that achieving integration is not an easy task nor is it a responsibility for SADC governments alone. For example, to ensure that the objectives set out in the 1992 Declaration and Treaty that established SADC are attained the region agreed that there is need to ‘encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of programmes and projects of SADC.’ However, the reality on the ground is that the integration agenda of SADC is singlehandedly managed by national governments and does not involve Non-State Actors (NSAs). As a result of this, formulation of policies in the region and the rest of the African continent tend to be muddled with politics and implementation bottlenecks (Imurana et al., 2014). In fact, this situation has led to the formulation of overambitious policies that usually lack ownership, which in turn compromises sustainability since the policies cannot realistically be implemented, hence gather dust.

For example, since its transformation from SADCC into SADC in 1992, SADC has developed a total of 33 protocols that have been signed by member states to push forward the regional integration agenda. However, not all of these protocols have been ratified to advance the regional laws from being stated intentions to actual application. In fact, only 26 protocols have entered into force, while seven have not yet come into force (SADC, 2016.) According to the SADC legal statutes, any signed regional protocol should be ratified by member countries for it to enter into force at national level in the 16 member states. At least two-thirds of the member states (10 countries) are required to ratify a protocol for it to enter into force. The process of approval of a regional legal instrument requires, first, signing, and then ratification – a process that differs from country to country, with some requiring approval of parliament.

The mismatch between policy formulation and implementation highlights a huge gap in the policy making process since all policy processes are intertwined and should be adhered to and accorded equal attention instead of only focusing on one cycle of the process such as implementation. As such, there is need to review the policy making process in the region to ensure that it is systematic and inclusive. Hai (2010) notes that an inclusive policy making process has the capacity to improve the transparency, quality and effectiveness of policies as well as establishing the legitimacy of the policy, while Ross and Thania (2015) argue that when people are consulted in the formulation of policies that affect their lives they tend to develop a sense of belonging and respect for such initiatives.

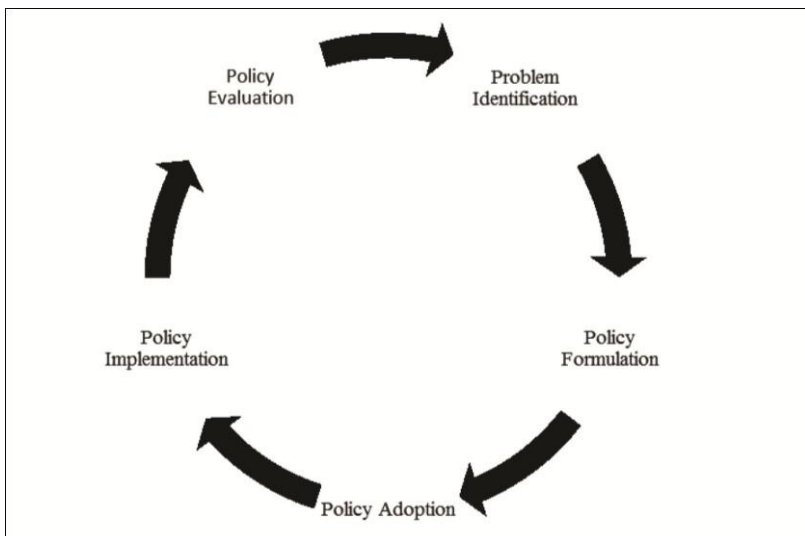
3. Understanding policy making

The term policy has generally been used to describe a deliberate system of principles to guide decisions and achieve rational outcomes. For example, after realising that many countries in the region are getting very little in return from their resources since most of the value-addition and beneficiation is taking place outside the region, SADC has come up with a deliberate policy – the SADC Industrialisation Strategy and Roadmap of 2015 – to develop its industries and increase comparative and competitive advantages of economies of the region. In this regard, the industrialisation drive by SADC could be regarded as a policy intent since it seeks to address the imbalances of its trade structure, which favours outside partners instead of internal members, as well as to ensure that the regional integration is beneficial to its 16 member states. However, coming up with that policy intent is a complex and dynamic

procedure that involves a number of activities which are closely linked together to address a range of related actions in a given area or period.

As depicted in Table 1, the policy making process involves a number of cycles which include problem identification, policy formulation, adoption, implementation and evaluation. These cycles are intertwined, implying that for the process to be deemed successful, all the stages should be adhered to, and not only focusing on one cycle of the process such as implementation or adoption. For example, for SADC to come up with a policy, there should be a need for such a policy to be formulated. In other words, there should be a problem that deserves such an intervention or attention. Once the problem is identified, the strategies are then formulated and adopted to ensure their legitimacy or legality. Thereafter, interventions are implemented to address the problem. The last stage of the process is evaluation, where an attempt is made to determine how appropriate the policy is to the problem. In fact, evaluation usually informs problem identification, denoting that the policy making process is a virtuous circle that does not necessary start or end with one particular stage, hence the need to pay equal attention to all the various stages of policy making as well as involving all stakeholders.

Table 1: Policy making process



4. Brief overview of policy making in SADC

The SADC Governance Structure provides a clear indication of the policy making process in the region. The SADC Secretariat, based in Gaborone, Botswana, is the principal executive institution of the regional bloc that is responsible for strategic planning, facilitation and coordination and management of all regional programmes and is involved in the day to day running of the SADC integration agenda. However, as indicated in the introduction, the SADC Secretariat is incapacitated to effectively carry out its mandate due to a variety of factors including limited resources and the fact that member states have not ceded all their power to the Secretariat. To improve its effectiveness, several restructuring exercises have been made in recent years with the latest one being completed in 2017. However, like other previous restructuring exercises, it was met with some discontent, particularly on the decision to merge the Gender Unit with another Directorate (Kampilipili, 2017). Previously, the Gender Unit was a stand-alone unit that was able to independently carry out its mandate.

Even though the SADC Secretariat is charged with the responsibilities to coordinate the implementation of regional programme, it does not have any power or authority to make political and policy decisions on regional development and integration. These decisions are usually taken by the SADC Summit of Heads of State and Government, and/or by the SADC Summit Troika of the Organ (Southern African Research and Documentation Centre (SARDC, 2014). In fact, SADC leaders, who make up the SADC Summit are responsible for the overall policy direction and control of functions of the community, ultimately making the SADC Summit the supreme policy-making institution of SADC. Therefore, the SADC Summit adopts decisions regarding SADC, determines the organisational structure of the region, elects the rotating SADC chairperson each year and appoints the executive secretary, and these decisions are made based on the consensus principle (SADC, 2017). The SADC Summit is made up of all the 16 SADC Heads of States or Government of member states and is managed on a Troika system that comprises the current SADC Summit chairperson, the incoming chairperson (the deputy at the time), and the immediate previous chairperson. The Troika System of the Summit vests authority in this group of three leaders to take quick decisions on behalf of SADC that are ordinarily taken at policy meetings scheduled at regular intervals, as well as providing policy direction to SADC institutions between the regular SADC Summits. It is important to note that

other member states may be co-opted into the Troika as and when necessary to make certain decisions or provide policy direction. The Troika system operates at the level of the Summit, the Organ on Politics Defence and Security Cooperation, the Council of Ministers, and the Standing Committee of Senior Officials. The Organ is tasked to support the achievement and maintenance of security and the rule of law in the SADC region. The SADC Summit and the Organ are mutually exclusive, and the chairperson of the Organ does not simultaneously hold the chair of Summit (SARDC, 2017).

At the country level, there is also another crucial governance structure called the SADC National Committees (SNCs), which was established to provide inputs at national level in the formulation of regional policies and strategies, as well as coordinate and oversee the implementation of programmes at national level (SARDC, 2017). The establishment of these committees is provided for the SADC Declaration and Treaty. The committees comprise key stakeholders from government, private sector and civil society in each member state, and are responsible for the initiation of SADC projects and issue papers as an input into the preparation of regional strategies. The SNCs can establish technical sub-committees to deal with sectoral and specialised issues. There is a provision for civil society organisations and NGOs to serve on these technical sub-committees and provide input into programme and policy issues.

5. A critique of the SADC policy making process

One of the critique levelled against the SADC is that its governance structure does not show a strong linkage between the various structures of policy making in southern Africa. For example, the structure does not explicitly show or explain how the SNCs feed into the SADC Summit. In fact, available information suggests that SNCs in SADC countries are in most cases virtually non-existent, or poorly constituted, managed and capacitated (Nzewi and Zakwe, 2009). As a result of this, the SNCs are passive participants in the regional policy making process, yet as representatives of non-state actors they should be playing a key role in regional integration. This weak correlation between the SNCs and the SADC Summit, has meant that citizens have limited power to influence regional decisions, since their interaction with the policy makers is not structured or even formalised. Kasambala and Zakeyo (2014) concurs and note that while policy dialogue between the SADC Secretariat and NSAs may occasionally take place, the engagement is often ad hoc, not well-coordinated and at the discretion of the SADC Secretariat.

This ad hoc nature of engagement with the NSAs may help to highlight the ladder of citizen participation in the SADC policy making process where the Secretariat mostly only engages the citizens as a mere formality, and not necessarily to grant them an opportunity to shape the integration agenda of SADC. This scenario has seen most NSAs calling for the need to create viable mechanisms that ensure active participation of all stakeholders in defining the integration agenda of SADC. The tendency to overlook or by-pass NSAs in policy making is evident in other African Regional Economic Communities (RECs) and helps to explain some of the problems that confront the continent in its pursuit of deepening integration (European Centre for Development Policy Management (ECDPM), 2017). In fact, Zondi (2009) argues that the weakness and non-existence of SNCs means that their potential remains largely untapped, hence national-regional coordination is often ineffective.

Another critique of the SADC governance structure is that engagement between SADC governments and NSAs has mainly been at programmatic level at the SADC Secretariat and not at the ministerial or Heads of State level (Kasambala and Zakeyo, 2014). As such, this arrangement reinforces the point that the policy making process is biased towards a few elite at the expense of the majority. This is because the ministerial or Heads of State level of SADC is the key institutions that make the final decisions yet NSAs do not have direct contact with these institutions to contribute their input. Furthermore, the nature of decision making where decisions are reached by the principle of consensus does not guarantee that the views of NSAs will be taken care of since that decision is usually made in solidarity or sentiment. While this kind of decision making process has its advantages, it also has a tendency to force smaller countries to follow the lead of the bigger and more developed countries, hence, withholding their views on the matter at hand.

Another shortcoming of the current policy making process is that the SADC Secretariat is incapacitated to advance the integration agenda. For example, while the Secretariat was established to take responsibility of formulating and coordinating the regional integration agenda, its responsibility is not in practice since member states continue to fully enjoy their sovereignty over internal matters, hence the challenges of ensuring that decisions made at the regional level are implemented at member states level. In this regard, Chirisa (2011) notes that the issue of sovereignty usually leads to scenarios where national self-interest takes precedence over the common good, implying that

some decisions are usually made or not made to protect the sovereignty of member states and not for the common goal of the SADC region, hence they cannot be fully implemented by member states.

6. Why an inclusive policy making process is important in SADC

It goes without saying that before the establishment of SADC, policies that affected citizens of the 16 individual countries were made by their respective countries. However, with the emergence of SADC in 1980, the regional body is now increasingly assuming some power to make policies on behalf of its member states, thus directly affecting the lives of all citizens in SADC. This is despite the fact that national governments have not transferred all their power to the regional bloc since the member states still enjoy their sovereignty. However, it should be noted that SADC still yields substantial influence on what member states should do. In this regard, it is critical to come up with the right mechanisms for SADC citizens to actively contribute towards decision making in the region. For example, the social distance between SADC and the rest of its citizens is naturally big compared to the distance between citizens and their government, and as such, if that distance is not well managed, the policy making process can easily deteriorate to the formulation of overambitious policies that lack ownership and thus cannot be implemented.

In light of this, it is crucial for SADC to adopt an open and inclusive approach to policy making since such an approach is usually transparent, evidence-driven, accessible and responsive to as wide a range of citizens as possible (Organisation for Economic Co-operation and Development (OECD), 2017). Furthermore, a more inclusive policy making process has the capacity to strengthen trust in government, thereby contributing to sustainable development. In the case of SADC, this situation where the trust in governments is attained is important particularly when one considers that most citizens are broadly unaware of the benefits of SADC integration. In fact, once SADC citizens lose their confidence in the ability of policy makers to solve their challenges or see value in belonging to a shared community of SADC, then the whole integration agenda becomes impractical and will therefore fail to achieve its intended objectives of promoting socio-economic development. This above assertion is supported by the functionalism theory, which states that the regional integration agenda is a collective effort that needs all stakeholders to work together towards a common goal, hence the need for an

inclusive policy-making process that ensures the voice of all stakeholders is heard and taken into consideration in shaping SADC integration.

An inclusive policy-making process also has the capacity to produce the most desirable results since the whole aim of the process is not only to shape policy but to also bargain different ideas between various actors (Kritzinger, 2006). Thus, an inclusive approach to policy making is a condition for effective governance where policy is of the people, made by the people, and for the people. Therefore, in order to ensure the successful implementation of policies, participation from all the stakeholders including NSAs is required while creating regional policies in SADC.

7. Recommendations and way forward

A number of policy options could be considered to improve as well as create a platform that encourages the inclusion and active involvement of all stakeholders in determining and shaping the form and direction of the SADC regional integration agenda. One major policy option for member states is the need for each country to establish a vibrant and viable platform that promotes regular interactions between policy makers and citizens on how to deepen regional integration. Such interactions are critical in affording NSAs an opportunity to actively input their contribution in all stages of policy making. To this end, there is need for member states to strengthen the SNCs to ensure that their views are heard on how SADC could work together to achieve its longstanding goal of a united, prosperous and integrated region. It is also critical for member states to take the lead in educating citizens about some of the basic initiatives of integration including notable practical achievements that SADC has attained over the years, including the vision and history. Such education has the capacity to make sense of the meaning of integration, thereby encouraging stakeholders to be part of the integration agenda. At present, most citizens are broadly unaware of the opportunities of belonging to a shared community of southern Africa.

At the regional level, the Secretariat should strive to formalise the participation and engagement of NSAs with SADC by creating a number of mechanisms. These mechanisms could include convening regular structured consultations between its directorates and NSAs to discuss emerging issues, facilitate greater NSAs participation at the SADC Summits and other regional events. Such mechanisms will allow the NSAs to actively take part in all

stages of policy making in the region. The Secretariat should also be strengthened to ensure it is able to effectively carry out its mandate. This capacity could be achieved by making sure there is enough resources, both financial and human, to coordinate the regional programme. According to a recent study commissioned by the SADC Secretariat (Ngwawi, 2017), the region has the potential to raise more than US\$1.2 billion annually from alternative sources such as introducing export and import tax, tourism levy, a financial transaction tax, a lottery system, philanthropy, and income from the hosting of regional events. Such resources are critical to address the problem of too much dependency on external resources to fund its own development programmes.

A major policy consideration for NSAs is the need to adopt a ‘constructive’ rather than a ‘confrontational’ approach when dealing with the national governments on matters of regional integration since by its very nature integration is a complex topic that involves issues of sovereignty. This is in light of studies which show that most NSAs are vigorous and confrontational in their call for citizen participation in regional integration. Katera (2016) notes that this approach has strained the relationship between the state and NSAs, hence each partner usually adopts an individualists approach rather than a collective one. In fact, this antagonism between the two could be the reason why most governments usually exclude NSAs in the policy making process. Kasambala and Zakeyo (2014) also state that it is critical for NSAs to have a common agenda since most of them do not necessarily speak with one voice when engaging with the government.

8. Conclusion

Although governments in SADC countries remain the leading actors in advancing the regional integration agenda, other stakeholders such as NSAs are also important players in influencing the shape and form of integration. In this regard, there is need to ensure that their views are heard as well as incorporated in all stages of the policy making process. This is in light of the fact that the policy making process is currently in the hands of a few selected stakeholders, particularly the SADC Summit. As such, it is critical to review the governance structure in SADC to ensure that the structures are geared towards supporting the integration agenda and not national country interests.

Furthermore, the participation of NSAs in the integration agenda should not be a mere formality. Rather, stakeholders should actually be empowered to take an active role in controlling the policy making process. Through this way, the SADC integration agenda will be taken to the people and will thus be citizen centred and driven. In the long run, the citizens will begin to enjoy the benefits of belonging to a shared community of southern Africa, and thus feel the importance of working together towards a common goal since they will be aware of the various benefits of belonging to a shared community of SADC.

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Chapter 9

Impact of road network on the regional trade in Africa

Hanaa Ghoniem and Sameh Zaghloul

1. Introduction

The gravity model has been in use to analyse international trade flow since the early sixties of the past century. The gravity model has become one of the main tools used to analyse foreign trades, international trade flows and foreign direct investments [Zarzoso, 2003]. The gravity model for international trade follows the same concept of Newton's 'Gravitation' and 'Law of Gravity', which hypothesises the inverse-square law of universal gravitation, as follows:

$$F = G \frac{m_1 m_2}{r^2}$$

Where,

F is the force between the two objects interacting
 m_1 and m_2 are the masses of the objects interacting
 r is the distance between the centres of two objects
 G is the gravitational constant.

In the early stages of applying this equation to international trade between two countries or regions, the parameters of the equation were converted to simulate the gravity between two objects as follows:

1. Force (F) simulates the trade between two countries or regions
2. Masses (m_1 and m_2) simulate the size of the economic sizes of the two countries or regions in terms of GDP or GNP
3. Distance (r) simulates the geographic distance between the two countries or regions.

Therefore, the simplest form of the gravity model when it is applied to international trade between two countries or regions would be:

$$T_{AB} = \frac{\text{Const} * (\text{GDP}_A) * (\text{GDP}_B)}{(\text{Dist}_{AB})}$$

Where,

T_{AB} is the trade between countries or regions A and B

GDP_A and GDP_B are the General Domestic Product of Countries or Regions A and B, respectively

Dist_{AB} is the distance between Countries or Regions A and B

Const is a constant

The equation of the gravity model for economic analysis has evolved with time and more parameters have been added to improve the predictions of the gravity models. The existence of a common border, being members of one or more economic organisations, having a trade treaty in effect and the import/export structure of each country is among the parameters used to improve the predictions of the gravity model when it is used in analysing international trade flows.

In a previous study (El Sayed, 2012), a form of an evolved gravity model was used to investigate the trade flows between Egypt and some economic blocs. The scope of the study was limited to the Arab Free Trade Area (AFTA) and the agreements of the Common Market for Eastern and Southern Africa (COMESA) and the European Union (EU). The major results of the study confirmed the efficiency of the model in explaining Egyptian trade flow for the three blocs. A log-linear form of the gravity model was used in this study, as follows (El-Sayed, 2012):

$$\begin{aligned} \text{Log}(M_{ij}) = & \beta_1\beta_2\text{Log}(\text{GNP}_i*\text{GNP}_j) + \beta_3\text{Log}(\text{GNPC}_i*\text{GNPC}_j) + \\ & \beta_4\text{Log}(\text{DISTANCE}_{ij}) + \beta_5\text{Log}(\text{INEQGNPC}) + \beta_6\text{PARTNER} + \beta_7\text{COSINE}_{ij} + \\ & \beta_8\text{POLFACT} + \beta_9\text{Log}(\text{XRC}_i) + \beta_{10}\text{Log}(M_{ji}) + \beta_{11}\text{ATFD81} + \beta_{12}\text{BORDER} + \\ & \text{CONSTANT} \end{aligned}$$

Where,

M_{ij} : Flow of imports of country j from country i, in millions of U.S. dollars.

GNP: Gross National Product of country i or j in millions of U.S. dollars.

GNPC: GNP per capita in millions of U.S. Dollars.

DISTANCE: Distance in kilometres between the capitals of countries i and j.

BORDER: Dummy variable taking the value of unity if i and j share a common border and zero otherwise.

PARTNER: Dummy variable taking the value of unity if i and j are members of at least one economic organisation and zero otherwise.

INEQGNPC: Measure of GNP per capita inequality between countries i and j and used for a given variable x as: $1+[x\log(x)+(1-x)\log(1-x)]/\log(2)$ and falls between zero and one (Balassa, 1986; Balassa & Bauwens, 1987; Bergstrand, 1990)

POLFACT: Dummy variable taking the value of unity in case of border closing, political disagreement or event affecting normal diplomatic and commercial relations between countries i and j.

COSINE: Measure of trade correspondence between the export structure of country i and the import structure of country j. The cosine measure indicates the cosine of the angle between the export vector of country i and the import vector of country j and is given by:

$$CONSINE_{ij} = \frac{\sum_k E_{ik} M_{jk}}{\sqrt{\sum_k E_{ik}^2 \sum_k M_{jk}^2}}$$

Where,

E_{ik} stands for exports of commodity k by country i and M_{jk} for imports of commodity k by country j

2. Development of gravity model equations

Statistical analysis was performed to develop the gravity model equations that describe the trade among member countries of COMESA, African Development Community (SADC) and East African Community (EAC). Data available from these three organisations, the African Union and the United Nation was gathered for the period from the years 2000 to 2013 and used in the analysis.

2.1 Countries considered in the study

Initially, all the member countries of the three organisations, COMESA, SADC and EAC, were considered in the study. Figures 1 to 3 show the member countries of each of the three organisations, respectively, while Figure 4 shows the member countries of the three organisations. Table 1

shows the list of the countries that are members of one or more of the three organisations, along with their affiliation.

As can be seen from these figures, there are four member countries that are islands (Seychelles, Comoros, Mauritius and Madagascar). These four countries were excluded from the study since the scope of the study was limited to roads and there are no roads linking these four countries to the rest of the member countries. Also, as can be noticed from Table 1, there are some countries that are members of two of the three organisations, such as Uganda and Tanzania. However, there is no single country that is a member of the three organisations.

Figure 1: Member countries of COMESA



Source: tralac (2018)

The current members of COMESA are: Burundi, Comoros, Djibouti, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tunisia Uganda, Zambia and Zimbabwe.

Figure 2: Member countries of EAC



Source: tralac (2018)

Current EAC countries include: Burundi, Kenya, Rwanda, Tanzania, South Sudan and Uganda.

Figure 3: Member countries of SADC



Source: tralac (2018)

Current SADC member states are: Angola, Botswana, Comoros, DRC, Lesotho, Madagascar, Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Table 1: Member countries of COMESA, SADC and EAC

Country Code	Country Name	Organisation (s)	Considered in the study
1	Ethiopia	COMESA	Yes
2	Eritrea	COMESA	Yes
3	Sudan	COMESA	Yes
4	Democratic Republic of Congo	SADC	Yes
5	Angola	SADC	Yes (but excluded because of the data availability)
6	Uganda	COMESA and EAC	Yes
7	Botswana	SADC	Yes
8	Burundi	COMESA and EAC	Yes
9	Tanzania	SADC and EAC	Yes
10	South Africa	SADC	Yes
11	Djibouti	COMESA	Yes
12	Rwanda	COMESA and EAC	Yes
13	Zambia	COMESA and SADC	Yes
14	Zimbabwe	COMESA and SADC	Yes
15	Swaziland	COMESA and SADC	Yes
16	Kenya	COMESA and EAC	Yes
17	Libya	COMESA	Yes
18	Lesotho	SADC	Yes
19	Malawi	COMESA and SADC	Yes
20	Egypt	COMESA	Yes
21	Mozambique	SADC	Yes
22	Namibia	SADC	Yes
23	Seychelles	COMESA and SADC	No
24	Comoros	COMESA	No
25	Mauritius	COMESA and SADC	No
26	Madagascar	COMESA and SADC	No

2.2 General form of the gravity model equation

The gravity model function considered in the analysis estimates the volume of trade between countries A and B (T_{AB}) as a function of:

- General Domestic Product of countries A (GDP_A) and B (GDP_B)
- Physical distance between the capitals of countries A and B ($Distance_{AB}$)
- Volumes of exported goods of country A from country B ($Exports_{AB}$)
- $Language_{AB}$ a parameter to indicate whether or not both countries are sharing the same language
- $Border_{AB}$ a parameter to indicate whether or not both countries are sharing a common border
- $Affiliation_{AB}$ a parameter to indicate whether or not both countries are members of the same organisation (COMESA, SADC, ECA)
- $Treaty_{AB}$ a parameter to indicate whether or not at least one of the two countries is an Arab country.

A log-linear form was used in the analysis, therefore the general equation considered in the analysis is:

$$\text{Log}(T_{AB}) = a_0 + a_1 \log(GDP_A \times GDP_B) + a_2 \log(Exports_{AB}) + a_3 \log(Distance_{AB}) + a_4 \text{Border}_{AB} + a_5 \text{Language}_{AB} + a_6 \text{Affiliation}_{AB} + a_7 \text{Treaty}_{AB}$$

Where,

$\text{Log}(T_{AB})$ = logarithm of the volume of trade between countries A and B, denoted as 'Trade'

$a_0, a_1, a_2, a_3, a_4, a_5, a_6$ and a_7 = model coefficients

$\log(GDP_A \times GDP_B)$ = logarithm of the product of the actual General Domestic Product of countries A and B, denoted as 'GDP'

$\log(Exports_{AB})$ = logarithm of the volume of exported goods to country A from country B, denoted as 'Exports'

$\log(Distance_{AB})$ = logarithm of the physical distance between the capitals of countries A and B (measured on the existing roads between the two cities), denoted as 'Distance'

$Language_{AB}$ = a dummy parameter equal to (1) if both countries are sharing the same language, otherwise equal to (0), denoted as 'Language'

Border_{AB} = a dummy parameter equal to (1) if both countries are sharing a common border, otherwise equal to (0),denoted as ‘Border’

Affiliation_{AB} = a dummy parameter equal to (1) if both countries are members of the organisation, otherwise equal to (0),denoted as ‘Affiliation’

Treaty_{AB} = a dummy parameter equal to (1) if both countries are Arab countries, otherwise equal to (0),denoted as ‘Treaty’

The simplified form of the equation would be:

$\text{Trade} = a_0 + a_1 \text{ GDP} + a_2 \text{ Exports} + a_3 \text{ Distance} + a_4 \text{ Border} + a_5 \text{ Language} + a_6 \text{ Affiliation} + a_7 \text{ Treaty}$

2.3 Data used in the model development

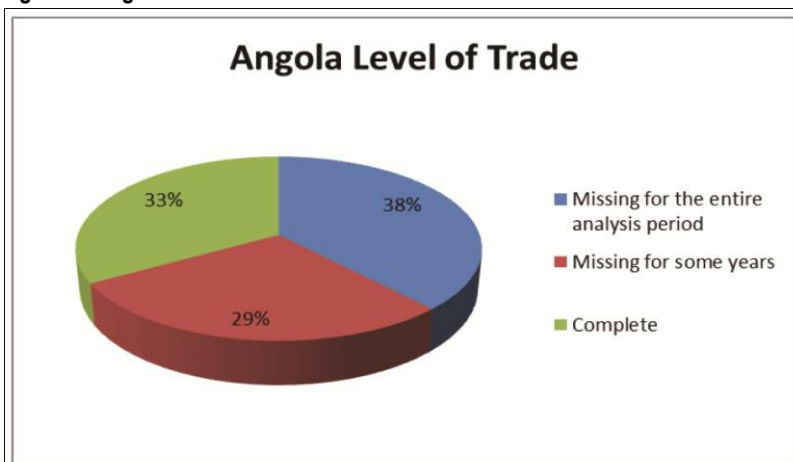
The General Domestic Product (GDP) of the 22 countries considered in the study, along with the volume of the pairwise exports between the 22 countries for the period of 2000 to 2013, was collected from different sources, such as the statistical reports of COMESA, SADC and EAC, the African Union published statistics reports and the United Nation Commodity Trade Statistics Database (UN COMTRADE), which was used for verification purposes. The collected data was reviewed and checked for reasonableness. The reasonableness checks were performed on two steps, which are data coverage and random data verification.

The data coverage looked in missing data, either for the entire analysis period (2000–2013) or only for some years. For example, data coverage for the level of trade between Angola and the rest of the 22 countries is shown in Figure 5. As can be seen, the level of trade data is complete only for 33% of the cases, i.e. 7 countries out of 21 countries, while the level of trade data is either missing for the entire analysis period or some of the years of the analysis period for 67% of the cases (14 countries out of 21 countries). Figure 6 shows an example of the level of trade between Angola-Sudan and Angola-Malawi. The level of trade data for both cases is incomplete. The impact of the missing data would be significant on the statistical analysis; therefore, Angola was excluded from the analysis.

The random data verification was performed by comparing some of the data used in the statistical analysis with similar data from other sources. For example, the level of trade between Egypt and Sudan for 2012 was reported in Reference ‘Global Edge’ based on UN COMTRADE (2012) to be about \$536

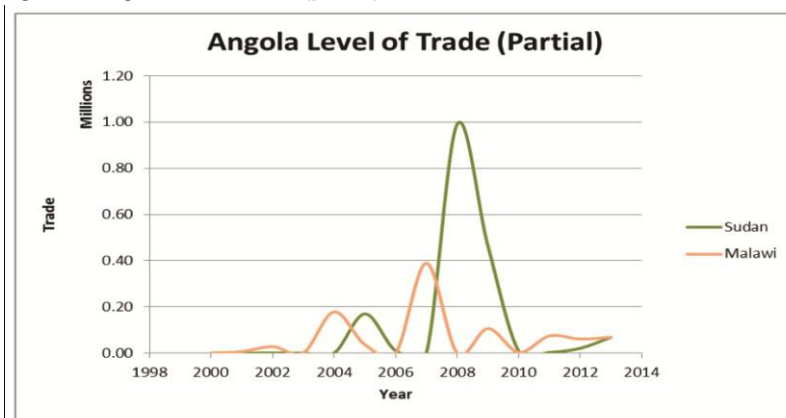
million, while the corresponding number that was used in the statistical analysis is \$598 million, which was considered reasonable.

Figure 5: Angola level of trade



Source: Ghoniem (2016)

Figure 6: Angola level of trade (partial)



Source: Ghoniem (2016)

Table 2 shows a sample of the data used in the analysis. In this table, the data for the trade between Tanzania (country A) and Zimbabwe (country B) is shown.

Similar data was used for Tanzania (country A) and the rest of the other countries considered in the analysis, resulting in a total of 21 tables similar to Table 2. In total, 441 tables similar to Table 2 were used in the analysis. However, it was found that the data available for Angola wasn't suitable for the model development. Therefore, it was excluded from the analysis. As a result, only 21 countries were considered in the study out of the 26 countries that are members of one or more of the three organizations (COMESA, SADC and EAC), as shown in Table 1.

Table 2: Sample Data (Tanzania – Zimbabwe)

T _{AB}	C _A	C _B	Y	GDP _A (million)	E _{AB} (million)	D _{AB} (km)	B _{AB}	L _{AB}	T _{AB}	A _{AB}
9.55	T	Z	2000	10185.79	3.10	2441	0	1	0	1
2.00	T	Z	2001	10383.56	0.44	2441	0	1	0	1
7.90	T	Z	2002	10805.60	1.40	2441	0	1	0	1
2.88	T	Z	2003	11659.13	4.55	2441	0	1	0	1
3.67	T	Z	2004	12825.80	0.79	2441	0	1	0	1
4.63	T	Z	2005	14141.92	5.23	2441	0	1	0	1
3.55	T	Z	2006	14331.23	2.44	2441	0	1	0	1
32.06	T	Z	2007	21501.40	3.03	2441	0	1	0	1
1.97	T	Z	2008	27282.21	3.46	2441	0	1	0	1
1.60	T	Z	2009	28596.27	3.03	2441	0	1	0	1
2.80	T	Z	2010	30917.38	3.84	2441	0	1	0	1
9.05	T	Z	2011	33316.88	4.30	2441	0	1	0	1
6.01	T	Z	2012	38733.98	4.49	2441	0	1	0	1
9.99	T	Z	2013	43646.75	4.73	2441	0	1	0	1

Source: Ghoniem (2016)

T_{AB} = Trade_{AB}, C_A = Country_A (T = Tanzania), C_B = Country_B (Z = Zimbabwe)
 Y = Year, Exports_{AB} = E_{AB} , D_{AB} = Distance_{AB}, B_{AB} = Border_{AB}, L_{AB}
=Language_{AB}
 Tr_{AB} = Treaty_{AB}, A_{AB} = Affiliation_{AB}

2.4 Statistical analysis

The purpose of the statistical analysis is to determine the model coefficients ($a_0, a_1, a_2, a_3, a_4, a_5, a_6$ and a_7) that result in the best-fit model. The analysis included the following:

- analysis to study the significance of each parameter on the trade flow
- multiple regression analysis to determine the best fit model and its coefficients
- hypothesis test
- residual analysis.

Tables 3 to 6 and Figure 7 show sample results of the statistical analysis for one of the countries included in the study.

Table 3: Significance of parameters

Affiliation	Treaty	Language	Border	Distance	Exports	GDP	Trade		
.051	.283	.424	.237	-.159	.686	.251	1.000	Trade	Correlation Coefficient
-.067	.033	-.029	.003	.046	.099	1.000	.251	GDP	
.126	.319	.286	.454	-.130	1.000	.099	.686	Exports	
-.245	.194	.027	-.093	1.000	-.130	.046	-.159	Distance	
.292	.612	.328	1.000	-.093	.454	.003	.237	Border	
.316	.059	1.000	.328	.027	.286	-.029	.424	Language	
-.206	1.000	.059	.612	.194	.319	.033	.283	Treaty	
1.000	-.206	.316	.292	-.245	.126	-.067	.051	Affiliation	
.263	.000	.000	.001	.023	.000	.001		Trade	Significance
.203	.340	.357	.487	.283	.108		.001	GDP	
.057	.000	.000	.000	.051		.108	.000	Exports	
.001	.007	.369	.122		.051	.283	.023	Distance	
.000	.000	.000		.122	.000	.487	.001	Border	
.000	.230		.000	.369	.000	.357	.000	Language	
.005		.230	.000	.007	.000	.340	.000	Treaty	
	.005	.000	.000	.001	.057	.203	.263	Affiliation	

Source: Statistical analysis tests

Table 4: Fitted models

Durbin Watson	Significance	F-Test	Adjusted Coefficient of Determination	Coefficient of Determination	Correlation Coefficient
1.774	.000	48.619	.603	.615	.784

Source: Statistical analysis tests

Table 5: Hypothesis Test

CoV	Significance	Test	Beta	St. Error	Beta	Model
	0.000	9.109		0.775	7.057	Constant
1.335	0.000	10.805	0.628	0.05	0.544	Exports
1.230	0.000	6.387	0.356	0.596	3.808	Language
2.138	0.000	-5.285	-0.389	0.556	-2.938	Border
1.908	0.000	4.849	0.337	0.518	2.514	Treaty
1.169	0.1	-3.473	-0.189	0.000	0.000	Distance

Source: Statistical analysis tests

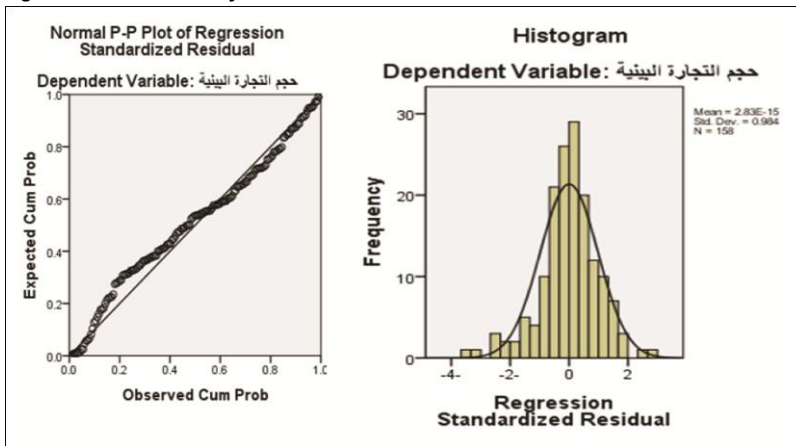
H_0 : Beta Coefficients = 0, H_1 : Beta Coefficients \neq 0 – conclusion Reject H_0 ,

Table 6: Model coefficients

Model Coefficients	Option 1	Option 2
a0	7.057	0
a ₁ (Exports)	0.544	0.628
a ₂ (Language)	3.808	0.356
a ₃ (Distance)	0.001	-0.189
a ₄ (Treaty)	2.514	0.337
a ₅ (boarder)	-2.983	-0.389
a ₆	0	0
a ₇	0	0

Source: Statistical analysis tests

Figure 7: Residual analysis



Source: Statistical analysis tests

2.5 Results of statistical analysis

Table 7 shows the parameters that were found to have significant impact on the trade flow of each country (21 countries, excluding Angola).

Table 7: Parameters with significant impact on trade flow

Country	Exports	GDP	Distance	Border	Language	Treaty	Affiliation
Ethiopia	Yes	No	Yes	Yes	Yes	Yes	Yes
Uganda	Yes	No	No	No	Yes	No	No
Botswana	Yes	No	Yes	No	No	No	Yes
Burundi	Yes	No	Yes	Yes	No	No	Yes
Rwanda	Yes	No	Yes	Yes	Yes	No	No
Zambia	Yes	No	No	Yes	Yes	No	No
Zimbabwe	Yes	No	Yes	Yes	No	Yes	Yes
Lesotho	Yes	No	No	Yes	No	No	Yes
Malawi	Yes	No	No	Yes	No	No	No
Eritrea	Yes	No	Yes	No	Yes	No	No
Sudan	Yes	No	Yes	Yes	No	Yes	No
Congo	Yes	No	Yes	No	No	No	Yes
Angola	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tanzania	Yes	No	Yes	Yes	No	No	No
South Africa	Yes	No	Yes	Yes	Yes	No	Yes
Djibouti	Yes	No	No	No	No	Yes	No
Swaziland	Yes	No	Yes	No	No	No	No
Kenya	Yes	No	No	No	Yes	Yes	No
Libya	Yes	No	No	Yes	Yes	No	Yes
Egypt	Yes	No	Yes	No	Yes	No	Yes
Mozambique	Yes	No	No	Yes	No	No	Yes
Namibia	Yes	No	No	Yes	No	No	No

Source: Statistical analysis tests

As can be seen from this table, for a country such as Uganda, only two parameters, Export and Language, were found to have significant impact on the trade flow between Uganda and the other 20 countries. On the other hand, countries such as Ethiopia, Sudan and South Africa, all parameters except GDP were found to have significant impact on trade flow between each of them and the rest of the 21 countries. In the case of Uganda, the Trade Flow will be expressed using the following formula:

$$\text{Trade}_{\text{Uganda}} = a_0 + a_2 \text{ Exports} + a_5 \text{ Language}$$

Multiple regression analysis was performed to fit a regression model between the trade and the parameters which showed that they have significant impact on 'Trade'. The correlation coefficient (R^2) was used to evaluate the best of fit of the model. It was found that R^2 ranges from 0.414 to 0.973, as shown in Table 8.

For example, the regression model developed for Uganda would be:

$$\text{Trade}_{\text{Uganda}} = 0.826 * \text{Exports} + 1.018 * 1 \quad R^2 = 76\%$$

where, Trade and Exports are expressed in million US dollars.

Table 8: R^2 of the developed models

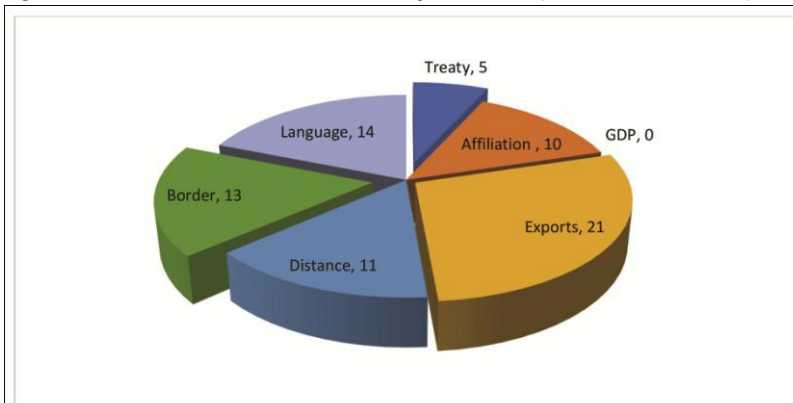
	Country	R2
1	Ethiopia	0.759
2	Eritrea	0.511225
3	Sudan	0.614656
4	Congo	0.643204
5	Angola	
6	Uganda	0.760384
7	Botswana	0.895
8	Burundi	0.973
9	Tanzania	0.726
10	South Africa	0.885
11	Djibouti	0.791
12	Rwanda	0.712
13	Zambia	0.83
14	Zimbabwe	0.824
15	Swaziland	0.751
16	Kenya	0.824
17	Libya	0.848
18	Lesotho	0.797
19	Malawi	0.414
20	Egypt	0.853
21	Mozambique	0.832
22	Namibia	0.971

Source: Statistical analysis tests

3. Discussion of the statistical analysis results

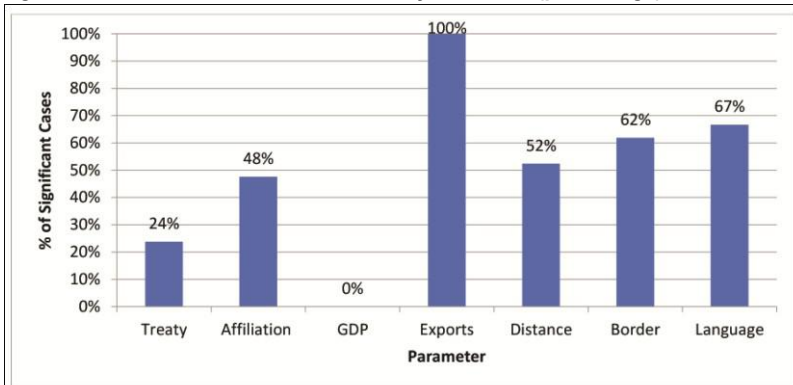
Figure 8 shows a summary of the statistical analysis performed on the trade flow among the countries that are members of COMESA, SADC and EAC, excluding the island countries (four countries) and Angola. As can be seen, the total GDP was found to have no significant impact on the trade flow, while the volume of exports was found to have significant impact on the trade flow in all cases. Language, Border and Distance were found to have significant impact in 67%, 62% and 52% of the cases, respectively, as can be seen in Figure 9.

Figure 8: Summaries of the statistical analysis results (number of countries)



Source: Statistical analysis results

Figure 9: Summaries of the statistical analysis results (percentage)



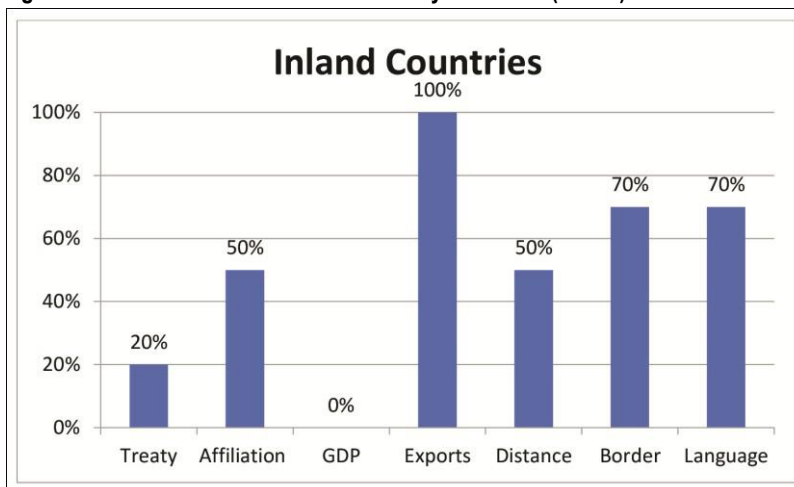
Source: Statistical analysis results

3.1 Inland countries

The statistical analysis results were grouped based on whether or not the country is inland country. Results of the inland group are shown in Figure 10. As can be seen from this figure, the impact of 'Boarder' increased to 70%. In other words, 'Boarder' has significant impact on 'Trade' for 70% of the cases of inland countries (7 out of 10 inland countries). The three inland countries that the 'Border' parameter has shown insignificant impact on 'Trade' are Uganda, Botswana and Swaziland. The parameters that have shown significant impact on the Trade Flow of these counties, other than 'Export' are:

- Language for Uganda, i.e. Uganda major trade volume is with counties that use the same language as Uganda, regardless how far these countries are from Uganda and/or being members of COMESA and/or EAC (Uganda is a member of both COMESA and EAC)
- Distance and Affiliation for Botswana, i.e. Botswana major trade flow is with countries that are located closer to Botswana and/or members of SADC (Botswana is a member of only SADC out of the three organisations considered in the study)
- Distance for Swaziland, i.e. Swaziland major trade flow with countries that are located closer to Swaziland, regardless the spoken language and/or being members of COMESA and/or EAC (Swaziland is a member of both COMESA and SADC).

Figure 10: Summaries of the statistical analysis results (inland)



Source: Statistical analysis results

3.2 Affiliation and members of multiple organisations

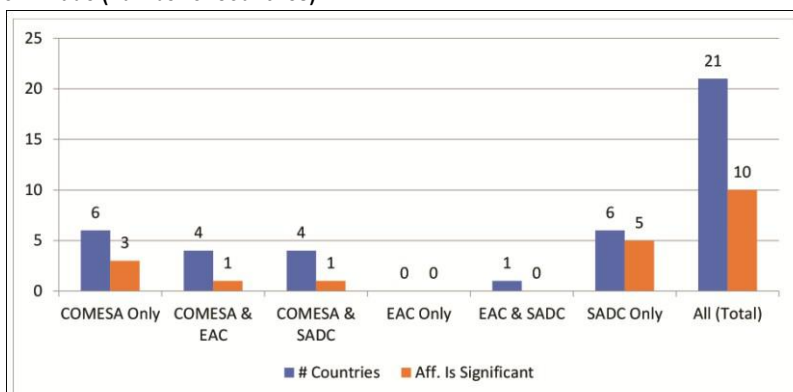
The statistical analysis results show that there are 8 countries out of the 21 countries considered in the analysis which are members of 2 organisations. It was found that 'Affiliation' has significant impact on 'Trade' for only 2 of these 8 countries, Burundi and Zimbabwe, which means being a member of 2 organisations would not help to increase the trade flow.

Similarly, there are 10 countries out of the 21 countries considered in the analysis that 'Affiliation' was found to have a significant impact on the trade flow of these countries. Two out of the 10 countries are members of 2 organisations out of the 3 organisations considered in the analysis (Burundi and Zimbabwe). In other words, being a member of multiple organisations will not necessary increase the trade flow.

More investigations were performed using the analysis results to assess the significance of being a member of the same organisation, 'Affiliation' the trade flow. The 21 countries considered in the analysis, which are members of COMESA, SADC and EAC, were grouped by organisation. Figure 11 shows the distribution of the countries by organisation, which can be summarised as follows:

- Fourteen countries out of 21 countries are members of COMESA and either EAC or SADC. Only 6 countries out of these 14 countries are members of COMESA only.
- Five countries out of 21 countries are members of EAC and either COMESA or SADC. However, none of these 5 countries are members of EAC only.
- Eleven countries out of 21 countries are members of SADC and either EAC or COMESA. Only 6 countries out of these 14 countries are members of SADC only.
- ‘Affiliation’ is found to have significant impact on the trade flow of:
 - five countries out of the 14 countries that are members of COMESA and may be EAC or SADC (36%)
 - three countries out of these 6 countries that are members of COMESA only (50%)
 - one country out of the 5 countries that are members of EAC and either COMESA or SADC (20%)
 - six countries out of the 11 countries that are members of SADC and either EAC or COMESA (55%)
 - five countries out of these 6 countries that are members of SADC only (83%).

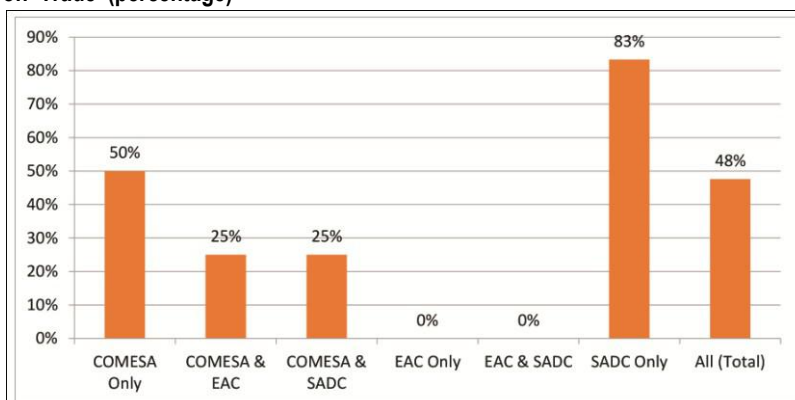
Figure 11: COMESA, EAC and SADC member countries and ‘Affiliation’ impact on ‘Trade’(number of countries)



Source: Statistical analysis results

Figure 12 shows COMESA, EAC and SADC member countries and the cases of ‘Affiliation’ is found to have significant impact on ‘Trade’. As can be seen, the highest percent (83%) is for countries that are members of only one organisation (SADC). Also, the percentage of Affiliation being significant has increased from 36% (all countries in COMESA, regardless of whether they are members of SADC and/or EAC) to 50% (countries in COMESA only).

Figure 12: COMESA, EAC and SADC member countries and ‘Affiliation’ impact on ‘Trade’ (percentage)



Source: Statistical analysis results

3.3 Distance

The impact of the physical distance between the capital cities on ‘Trade’ is one of the key parameters considered in the study. Transportation cost always represents one of the major cost items in trade. Therefore, it was expected that ‘Distance’ would have a negative correlation with trade flow, i.e. the longer the distance between two countries, the lower volume of trade. Results of the statistical analysis showed that ‘Distance’ has significant impact on ‘Trade’ for about 50% of the cases. This may be a result of political factors, such as political problems between neighbouring countries and border crossing logistics. An effort was made to investigate the unexpected results of the impact of ‘Distance’ on ‘Trade’. It was found that in some cases, the trend is reversed, in other words the correlation between ‘Distance’ and ‘Trade’ is positive, i.e. trade is higher with countries located at far distances.

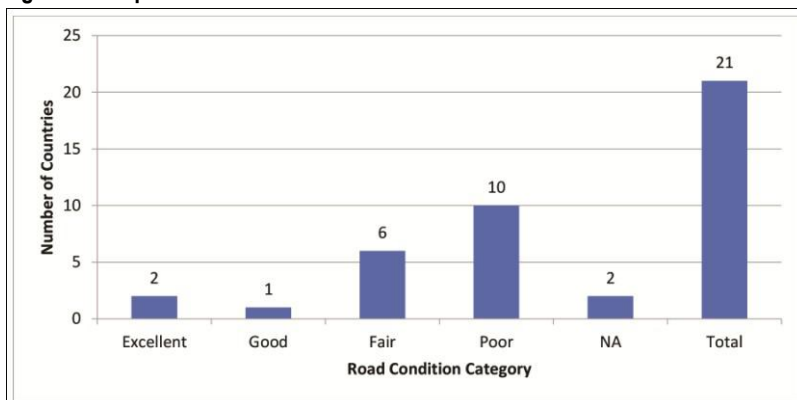
This was the case for 5 countries, which are Eritrea, Sudan, Ethiopia, Tanzania and Egypt. There are common factors among these countries, such as all being from eastern Africa and all, except Ethiopia, have sea borders. Eritrea, Sudan and Egypt have sea ports on the Red Sea, while Tanzania has sea ports on the Indian Ocean. Although, Ethiopia does not have a sea border, it is located very close to the Red Sea. Having sea borders would impact trade using land transportation because the transportation cost in case of sea freight is lower and not highly dependent on distance compared with land transportation.

More investigations were performed to find out why 'Distance' has shown limited impact on 'Trade'. An additional factor was considered in the investigations, which is the road condition. It is expected that poor condition of the road network would limit its use, and hence would limit the trade flow on the road network. Buys et. al., has reported the road condition for sub-Saharan African counties using a scale from 0 to 100 (100 is excellent condition). Figure 13 shows the reported condition category for the 21 countries considered in the study. In this figure, the road network condition is grouped into four groups, as follows:

- Poor Condition (Score < 25)
- Fair Condition (Score 25 to < 50)
- Good Condition (Score 50 to < 75)
- Excellent Condition (Score 75 to 100).

As can be seen from this figure, no data was available for 2 countries out of the 21 countries considered in the study. Also, the majority of the road network condition of the countries considered in the study is in Poor or Fair condition.

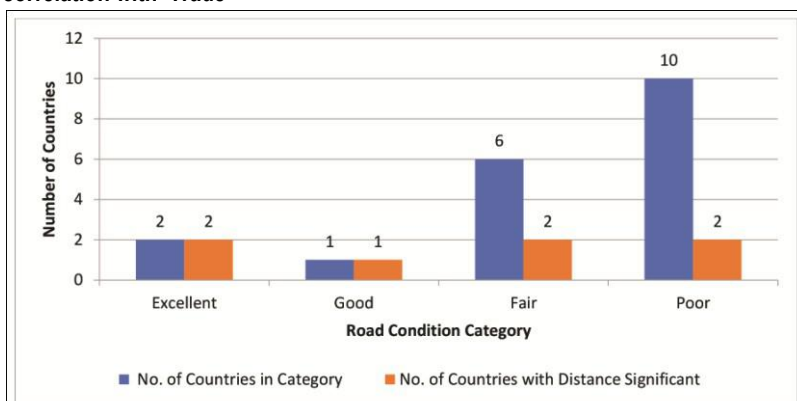
Figure 13: Reported road condition



Source: Buys, Deichmann and Wheeler (2006)

Figure 14 shows the number of countries in each road condition group for which 'Distance' showed significant negative correlation with 'Trade', as would be expected. As can be seen from this figure, 'Distance' showed significant negative correlation with 'Trade' for all countries with road network conditions in the 'Excellent' and 'Good' Categories (100%). On the other hand, 'Distance' showed significant negative correlation with 'Trade' for only 33% and 20% of the countries with road network condition in the 'Fair' and 'Poor' Categories, respectively, as shown in Figure 15.

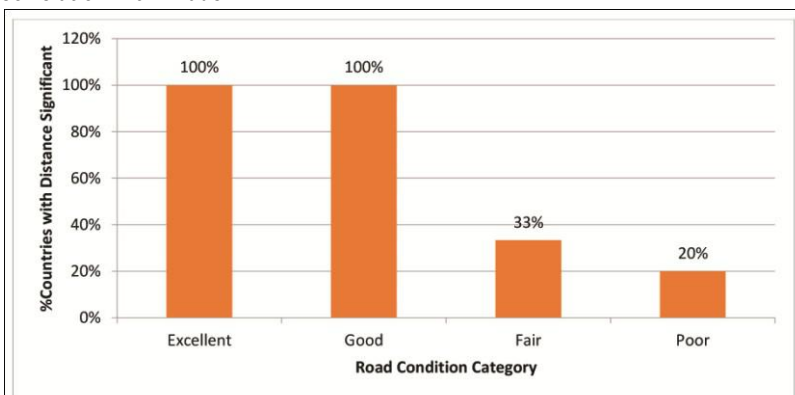
Figure 14: Number of countries with 'Distance' has significant negative correlation with 'Trade'



Source: Statistical analysis results

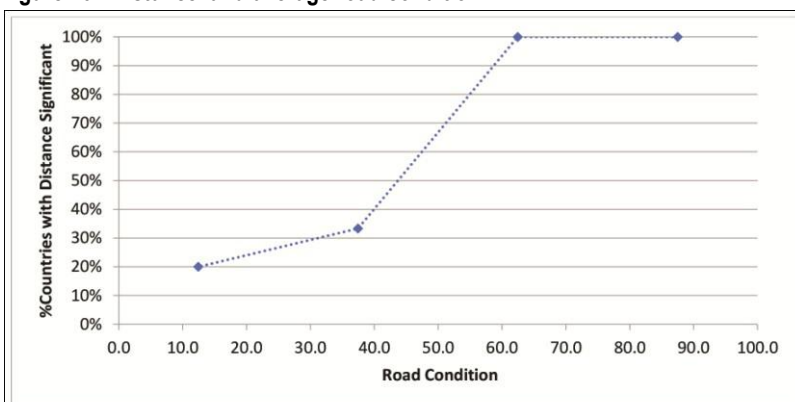
The same data showed in Figure 15 is re-presented in Figure 16 using a numeric value for each road condition category (midpoint of the category). As can be seen, there is an 'S' shape curve between Road Network Condition and the significance of 'Distance' on 'Trade'. This implies that improving the Road Network Condition to be in the 'Good' category or higher would impact the significance of 'Distance' on 'Trade', i.e. would increase the trade between countries located at close distances. It is worth mentioning that this finding does not consider any political related issues.

Figure 15: Percentage of countries with 'Distance' has significant negative correlation with 'Trade'



Source: Statistical analysis results

Figure 16: 'Distance' and average road condition



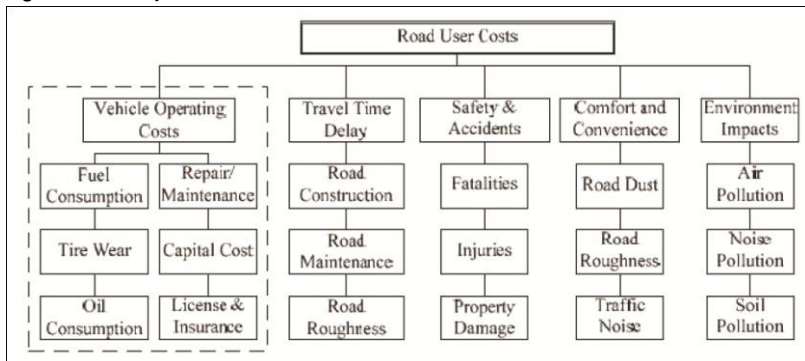
Source: Statistical analysis results

The impact of road condition on trade was further investigated. Figure 17 shows the components of road user costs, which include:

- monetary Items
 - Vehicle Operating Cost (VOC)
 - Time Cost
 - Accident Cost
- non- monetary Items
 - Comfort Cost
 - Environmental Impact.

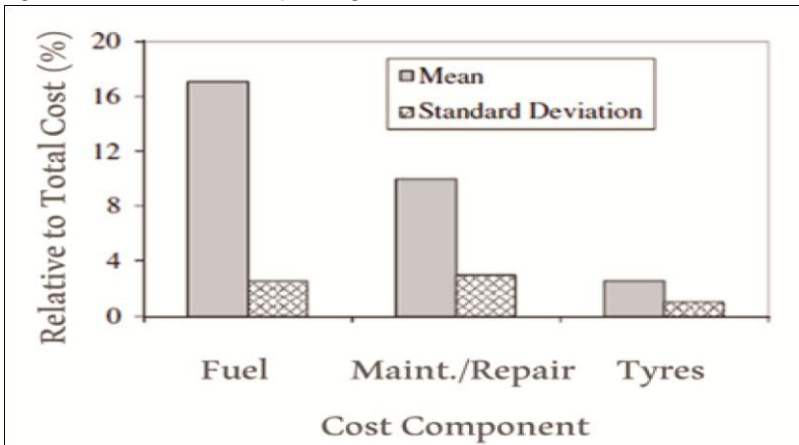
Road condition has negative significant impact on all the monetary cost items. Driving of rougher roads will increase VOC. Similarly, driving on rougher roads would be slower, i.e. higher travel time, and hence higher time cost and fuel consumption. Also, the number of accidents increases when the road condition is poor. Figure 18 shows the relative VOC for trucks. As can be seen from this figure, fuel consumption, maintenance and tyre costs represent about 30% of the total VOC, while other cost items, such as Capital Cost, represent the remaining portion of VOC.

Figure 17: Components of road user cost



Source: National Cooperative Highway Research Program (NCHRP)(2012)

Figure 18: Relative vehicle operating costs for trucks

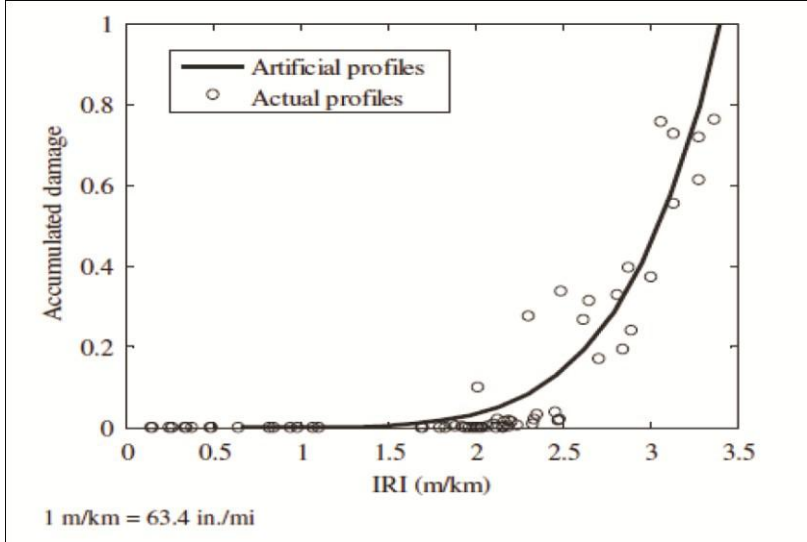


Source: NCRHP (2012)

The impact of road condition, in terms of International Roughness Index (IRI), on accumulated truck suspensions damage and on truck repair and maintenance cost are shown in Figures 19 and 20, respectively. As can be seen, the road condition impact on these parameters increases exponentially as the road condition get worse, higher IRI.

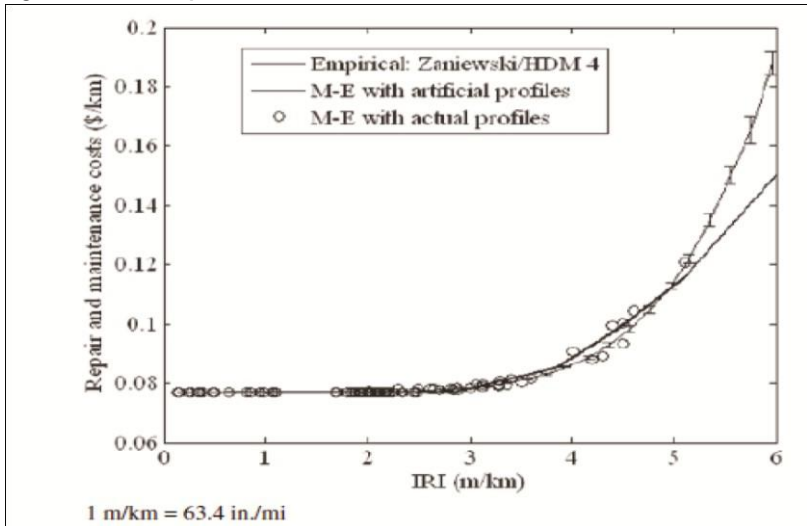
The following arbitrary example can be used to demonstrate the impact of road network condition on trade flow. If City A is located 1 000 km from to City B and the average travel speed based on the condition of the road network between the two cities is 40 kph. Then the travel time between the two cities would be 25 hours. A road improvement project was performed on the road network connecting the two cities and resulted in better road condition. As a result, the average travel speed increased from 40 kph to 80 kph, therefore the expected travel time would be 12.5 hours. The reduction in travel time will be automatically reflected on the cost of time, and hence on the transportation cost. Similarly, the better road condition will be automatically reflected on the VOC (maintenance and repair cost, fuel consumption etc.), which will further reduce the transportation cost between Cities A and B.

Figure 19: Accumulated truck suspension damage from actual pavement surface profile



Source: NCRHP (2012)

Figure 20: Truck repair and maintenance costs



Source: NCRHP (2012)

Also, the volume of Trade between Cities A and B is expected to be increased as a result of the road condition improvement project. Using the results of the statistical analysis presented earlier in the paper, the magnitude of the increase in trade volume as a result of the road condition improvement project can be estimated. The parameter 'Distance' can be expressed using the relation between time and distance (positive correlation). Since the travel time is expected to be reduced by 50% in the given arbitrary example, then it might be acceptable to assume similar reduction in distance. In other words, if a truck will travel the distance between Cities A and B (1 000 km) in 12.5 hours instead of 25 hours because of the road condition improvement project, then it is conservative to assume that the truck travelled only 500 km under the current road condition. In this case, the higher VOC cost due to the existing condition is ignored.

The regression coefficient for 'Distance' in the developed regression can be used to assess the increase in trade volume as a result of the road condition improvement project. The regression coefficient for 'Distance' in case of South Africa equals to -0.762 . Therefore, a 50% reduction in the 1 000 km distance used in the arbitrary example (-500km) would be equivalent to about 80 million US dollars per year increase in the trade volume (the model is using a log scale).

Therefore, improving the road condition would reduce the vehicle operating cost, as well as the other user cost items, such as cost of time and accidents. As a result, improving the road condition will lead to a reduction in the overall transportation cost and may significantly increase the volume of trade among African countries.

4. Conclusion and recommendations

A study was performed to investigate the correlation between the level of trade, import and export, among the member countries of three African organisations, which are COMESA, SADC and EAC and several factors that may impact trade. In this study, a form of the gravity model was used to estimate the impact of parameters, such as the GDP, the physical distance between the capital cities measured on the available road links, common boarder and language. In total, only 22 countries out of the 26 members of the 3organisations were considered in the study. The other four countries were excluded because they are islands (no roads are connecting them to the other

African countries and there are no common borders). In addition, Angola was excluded from the analysis because the available data was not sufficient for model development, leaving only 21 countries to be considered in the analysis.

Several statistical analyses were performed to determine the factors that have significant impact on 'Trade'. It was found that the volume of exports is significant for all countries, while the total GDP was not significant for any of the 21 countries. In other words, the volume of trade for a country is significantly dependent on the volume of exports of this country and is not affected by the GDP of the country. Language, common border, distance, affiliation and treaty were found to be significant for 14, 13, 11, 10 and 5 countries, respectively out of the 21 countries.

The 21 countries were grouped into inland countries and countries with sea borders. The statistical analysis results for inland countries were found to be different from the results for countries with sea borders, especially for the significance of 'Border'. It was found that 'Border' is significant for 7 countries out of the 10 inland countries (70% of the cases). The corresponding ratio for the countries with sea borders is 54.5% (6 countries out of 11).

The statistical analysis results were grouped by organisation (COMESA, EAC and SADC). Investigations were made to assess the impact of being a member of one or more of these organisations 'Affiliation' on 'Trade'. It was found that 'Affiliation' has significant impact on "Trade" for:

- five countries out of the 14 countries that are members of COMESA and may be EAC or SADC (36%)
- three countries out of these 6 countries that are members of COMESA only (50%)
- one country out of the 5 countries that are members of EAC and may be COMESA or SADC (20%)
- six countries out of the 11 countries that are members of SADC and may be EAC or COMESA (54.5%)
- five countries out of these 6 countries that are members of SADC only (83.3%).

The results imply that being a member of more than one organisation does not increase the trade volume.

Detailed investigations were performed on the impact of 'Distance' on 'Trade'. Also, additional factors were considered in the investigations, such as road condition. It was found that the road network condition for the majority of the counties considered in the study is in Poor to Fair categories (less than 50 points out of 100 point). Also, it was found that 'Distance' has significant impact on 'Trade' for all the countries with road network condition in Good or Excellent categories (100%).

An arbitrary example was presented to quantify the magnitude of increase in trade volume that may result from improving the condition of a 1 000 km road network. The example showed that the increase in trade volume is in the order of 80 million US dollars per year for a country similar to South Africa.

The study recommends that more investment should be made to improve road network condition, which will automatically lead to higher trade volume among the African countries that are members of COMESA, EAC and SADC.

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Chapter 10

Can FTA law prevail over WTO law? Choice of forum and choice of law clauses in FTAs

Elenor Lissel

1. Introduction

About 30% of the disputes in the World Trade Organisation (WTO) Dispute Settlement Body (DSB) are between members who are parties to the same Regional Trade Agreement (RTA) (WTO Secretariat, 2011:15)⁵⁹ This indicates that a large number of disputes between RTA or Free Trade Agreement (FTA) members are brought to the WTO. As will be elaborated below, some FTAs include clauses on choice of forum as well as choice of law. For example, some FTAs have wordings such as ‘in the event of any inconsistency’ between WTO rules and FTA rules, the FTA rules ‘shall prevail.’ Combined with this there might be clauses in the FTA that might not be in coherence with WTO law.

The question of whether FTA law can prevail over WTO law has had somewhat little consideration previously, but it is likely to rise due to the rising protectionism in the world. Also, regional dispute systems can become more important since they might ensure the protection of private party rights, which the WTO DSB does not. In the WTO DSB, the issue of prevalence has not had much attention but one of the few cases where this has been brought

⁵⁹ When countries enter into regional integration arrangement, it is commonly called Regional Trade Agreements (RTAs). Free Trade Agreements are entered between two or more countries to establish a free trade area of goods and/or services. Regional Trade Agreements is the common name used by the WTO and can be either FTAs or Customs Unions. There is no intention in this study to focus specifically on FTAs or RTAs and sometimes the abbreviations are used with the same meaning, however in the case Peru – Agricultural Products there was a focus on FTAs.

up is the fairly recent WTO case, *Peru – Additional Duty on Imports of Certain Agricultural Product* (hereinafter *Peru – Agricultural Products*) which will be attended to in this thesis. The Appellate Body elaborated on some questions, but the one question which is interesting here is whether the terms of the FTA prevail over WTO law in case of inconsistencies. Thus, the questions that will be examined here are as follows: Is it possible to waive the rights to the WTO dispute settlement system? What is the relation between the WTO DSB and FTA dispute settlement systems and is there a conflict? Is it possible to have clauses which are binding to the extent where the WTO DSB cannot examine the dispute (i.e., can the FTA include clauses which are inconsistent with WTO law)?

2. Peru price range system

In *Peru – Agricultural Products*, Guatemala complained over an additional duty on imports of agricultural products such as rice, sugar, maize, milk and certain dairy products that Peru had in place. These duties were determined using a mechanism called the price range system (PRS), which mean (i) a range constituted by a floor price and a ceiling price, which reflect international prices over the last 60 months; and (ii) a reference price published every two weeks, reflecting the average international market price for each product concerned. Guatemala claimed that the measures were inconsistent with various Articles of the General Agreement on Tariffs and Trade (GATT) 1994, such as Article II, and Article 4.2 and footnote 1 of the Agreement on Agriculture and some Articles of the Customs Valuation Agreement.

Peru argued that (amongst others), under the FTA signed between Guatemala and Peru in December 2011, Peru was allowed to maintain its PRS. Peru also argued that the parties had modified their reciprocal WTO rights and obligations, and consequently, the FTA should prevail.

This raises some questions, such as whether it is possible to modify the WTO rights and obligations in an FTA and thus whether the FTA can prevail over WTO law. First, we need to examine WTO law and the dispute settlement system closer.

3. The jurisdiction of the WTO Dispute Settlement Understanding

Access to the Dispute Settlement Understanding (DSU) is limited to WTO Members, which can take part either as parties or as third parties.⁶⁰ This also means that a member which is a potential exporter but not actually directly affected by any measure, can bring a claim under the GATT 1994.⁶¹ Even if private individuals and companies may often be the ones (as exporters or importers) most directly and adversely affected by the measures allegedly violating the WTO Agreement, they do not have direct access to the dispute settlement system. However, they can file an *amicus curiae* submission to WTO dispute settlement bodies. According to WTO jurisprudence, panels and the Appellate Body have the discretion to accept or reject *amicus curiae*, but are not obliged to consider them. This is a significant difference compared to regional dispute settlement systems where some courts allow for private parties.⁶²

The object and purpose of the WTO dispute settlement system is through multilateral procedures, to settle a dispute between WTO members rather than through unilateral actions.⁶³ Article 23.1 of the DSU states:

‘When members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.’

⁶⁰ Dispute Settlement Understanding, Understanding on Rules and Procedures Governing the Settlement of Disputes. See Appellate Body Report on United States – Import Prohibition of certain shrimp and shrimp products, (*US-Shrimp*), WT/DS58/AB/R, (12 October 1998), para. 101.

⁶¹ Appellate Body Report on European Communities — Regime for the Importation, Sale and Distribution of Bananas, (*EC-Bananas III*), WT/DS27/AB/R, DSR 1997: II, 591, (25 September 1997), para. 138.

⁶² See for example the COMESA Court of Justice, *Malawi Mobile Ltd v Government of Malawi*, 20th November, 2015 and Treaty Establishing the Common Market for Eastern and Southern Africa, Article 26 allows any person who is resident in a member state to refer for determination by the Court the legality of any act, regulation, directive or decision of the Council or of a Member State on the grounds that it is unlawful or an infringement of the provisions of the Treaty. http://www.wipo.int/wipolex/en/other_treaties/details.jsp?treaty_id=218.

⁶³ Van den Bossche, P. 2005. *The Law and Policy of the World Trade Organisation. Text, cases and materials*183.

A complaining member is obliged to bring any dispute arising under the covered agreements to the WTO dispute settlement system and the jurisdiction is compulsory in nature.⁶⁴ Members of the WTO may not make a unilateral determination that a violation of WTO law has occurred and may not take retaliation measures unilaterally concerning violations of WTO law according to Article 23.2 of the DSU.⁶⁵ This means that whether a violation has occurred can only be decided through the recourse to dispute settlement in accordance with the rules and procedures of the DSU.⁶⁶ In *US – Certain EC Products*, the panel stated that it is a general obligation that the members seek the redress of a WTO violation through the DSU only.⁶⁷ Members serve to preserve the rights and obligations under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law according to Article 3.2 of the DSU. Membership of the WTO in itself comprises consent and acceptance of the compulsory jurisdiction of the WTO dispute settlement system.⁶⁸ According to the Panel in *US-Section 301 Trade Act*, members shall have remedy to the WTO dispute settlement system to the exclusion of any other system. Thus, members are prohibited from determining that a violation has occurred or similar of the covered agreements, except through recourse to dispute settlement in accordance with the rules and provisions of the DSU. The Panel recognised that:

‘Article 23.1 is not concerned only with specific instances of violation. It prescribes a general duty of a dual nature. First, it imposes on all members to “have recourse to” the multilateral process set out in the DSU when they seek the redress of a WTO inconsistency. In these circumstances, members have to have recourse to the DSU dispute settlement system to the exclusion of any other system, in particular a system of unilateral enforcement of WTO rights and obligations. This, what one could call

⁶⁴ Van den Bossche 189.

⁶⁵ Van den Bossche 183.

⁶⁶ Article 23.2 Dispute Settlement Understanding.

⁶⁷ Panel Report on United States – Import measures on certain products from the European Communities, (*US – Certain EC Products*), WT/DS165/R, (17 July 2000), paras 6.19–6.20. This was upheld by the Appellate Body WT/DS165/AB/R, at para. 111.

⁶⁸ Van den Bossche 189.

“exclusive dispute resolution clause”, is an important new element of members' rights and obligations under the DSU.’⁶⁹

The panel also concluded that members are compelled generally to (a) have recourse to and (b) abide by DSU rules and procedures which ‘include most specifically in Article 23.2(a) a prohibition on making a unilateral determination of inconsistency prior to exhaustion of DSU proceedings’.⁷⁰ The panel also concluded that trade legislation ‘which statutorily reserves the right for the member concerned to do something which it has promised not to do under Article 23.2(a), goes, in our view, against the ordinary meaning of Article 23.2(a) read together with Article 23.1.’⁷¹ In simple words, this means that member states cannot themselves make a determination to the effect that a violation has occurred, benefits have been nullified or impaired if the violation, obligation or nullification concern the covered agreements. In that case, they have to bring the dispute to the WTO DSB.

The WTO recognises the legitimacy of RTAs under certain conditions such as compliance with Article XXIV. However, Article 23 of the DSU seems to prevent other jurisdictions from adjudicating WTO law violations. The Article does not though prohibit tribunals established by other treaties from exercising jurisdiction over the claims arising from their treaty provisions that are parallel to or overlap with WTO provisions. The choice of using an exclusive forum clause (which will be explained below) can give a solution to this problem as indicated by the panel in *US – Section 301 Trade Act*.⁷²

As the title indicates, Article 23 of the DSU deals with the ‘Strengthening of the Multilateral System’. It is designed to prevent WTO members from unilaterally resolving their disputes in respect of WTO rights and obligations. According to the statements in the panel report on *US – Section 301 Trade Act* it does so by obliging members to follow the multilateral rules and procedures of the DSU. It is solely for the WTO through the DSU process to determine

⁶⁹ Panel Report on United States — Sections 301-310 of the Trade Act of 1974, (*US - Section 301 Trade Act*), WT/DS152/R, DSR 2000: II, 815, (27 January 2000), para. 7.43.

⁷⁰ *US - Section 301 Trade Act*, para. 7.59.

⁷¹ *US - Section 301 Trade Act*, paras. 7.59 and 7.63.

⁷² Kwak, K., and Gabrielle, M. 2006. ‘Overlaps and conflicts of jurisdiction between the World Trade Organisation and Regional Trade Agreements’ in Bartels, L., and Ortino, F., (ed.) *Regional Trade Agreements and the WTO Legal System* 476.

that (i) a WTO inconsistency has occurred according to Article 23.2(a), (ii) to determine the reasonable period of time for the member concerned to implement DSB recommendations and rulings (Article 23.2(b)) and finally (iii) to determine, in the event of disagreement, the level of suspension of concessions or other obligations that can be imposed as a result of a WTO inconsistency.⁷³

The binding nature of the DSB decisions is also an object of debate. Adopted Panel and Appellate Body reports after the reasonable period has lapsed are despite the other objections on WTO law binding.⁷⁴ If a country legislates a determination of inconsistency before awaiting a possible appeal, it would violate Article 23(a).⁷⁵ Some WTO members have not yet ratified specific legislation which provides for procedures to enforce WTO rights while some have. In light of the Vienna Convention Rules on treaty interpretation it is important to make clear that these rules do not violate its WTO obligations when designing them.

When the panel examined the facts in the case *US – Section 301 Trade Act* they interpreted Article 23 based on the Vienna Convention and concluded that neither the GATT nor the WTO Agreement have so far been interpreted by GATT/WTO institutions – nor by regional institutes – as a legal order producing direct effect, but individual operators should nevertheless somehow be protected.⁷⁶ This was emphasised by the panel in the following words:

‘Trade is conducted most often and increasingly by private operators. It is through improved conditions for these private operators that members benefit from WTO disciplines. The denial of benefits to a member which flows from a breach is often indirect and results from the impact of the breach on the market place and the activities of individuals within it.’⁷⁷

The panel also concluded under the reading of Article 31 of the Vienna Convention that the responsibility of members under Article 23 – to abide by

⁷³ Panel Report on *US - Section 301 Trade Act*, para. 7.38.

⁷⁴ Zonnekeyn, G. A. 2003. EC liability for the non-implementation of WTO Dispute Settlement Decisions- Advocate General Alber proposes a “Copernican innovation” in the case law of the ECJ. *Journal of International Economic Law* 6 (3), 761 766.

⁷⁵ Panel Report on *US - Section 301 Trade Act*, para. 7.48.

⁷⁶ Panel Report on *US - Section 301 Trade Act*, paras. 7.74-7.76.

⁷⁷ Panel Report on *US - Section 301 Trade Act*, para. 7.77.

the rules and procedures of the DSU and to refrain from unilateral determinations of inconsistency – is to assure members that no such purposes in respect of WTO rights and obligations will be made.⁷⁸

Thus, so far, the relation between the WTO dispute settlement system and those of the regional nature, is that disputes concerning the WTO agreements shall be settled in the WTO DSB. In regard to the above, it is clear that questions of whether a WTO violation has occurred can only be decided through the recourse to dispute settlement in accordance with the rules and procedures of the DSU. This leaves the question whether it is possible to try disputes concerning regional or FTAs in the WTO DSB.

3.1 Good faith

Good faith is a common term in contract law, where it is a general presumption that the parties to the contract will act in good faith and thus not eradicate the right of the other party or parties. In *Peru – Agricultural Products*, it was discussed whether Guatemala brought proceedings to the WTO in a manner contrary to good faith since the FTA allowed the inconsistencies and also prevailed over WTO law.

Members of the WTO are requested under the DSU to apply good faith engagement in dispute settlement procedures. The Appellate Body in *US/Canada – Continued Suspension* stated:

‘The DSU makes reference to “good faith” in two provisions, namely, Article 4.3, which relates to consultations, and Article 3.10, which provides that, “if a dispute arises, all members will engage in these procedures in good faith in an effort to resolve the dispute.” These provisions require members to act in good faith with respect to the initiation of a dispute and in their conduct during dispute settlement proceedings. Neither provision specifically addresses the question of whether a member enjoys a presumption of good faith compliance in respect of measures taken to implement.’⁷⁹

⁷⁸ Panel Report on *US - Section 301 Trade Act*, 7.95.

⁷⁹ Appellate Body Report, *Canada — Continued Suspension of Obligations in the EC — Hormones Dispute*, (US/Canada — Continued Suspension), WT/DS321/AB/R, 16 October 2008, para. 313.

Article 3.10 of the DSU has been recognised as one of a very limited number of explicit limitations on the right of WTO members to bring an action under the DSU.⁸⁰ As long as a member respects the principles in Articles 3.7 and 3.10 of the DSU, that is to use their ‘judgement as to whether action under these procedures would be fruitful’ and to engage in dispute settlement in good faith, ‘then that member is entitled to request a panel to examine measures that the member considers nullify or impair its benefits.’⁸¹

The Panel in *Argentina – Poultry* stated that ‘we consider that two conditions must be satisfied before a member may be found to have failed to act in good faith. First, the member must have violated a substantive provision of the WTO agreements. Second, there must be something ‘more than mere violation’.⁸²

3.2 Treaty interpretation by the WTO DSB

The WTO dispute settlement system was created based on the DSU; which is the starting point for defining the function of WTO panels and the Appellate Body. However, other procedural rules besides the DSU can be relied upon.⁸³

Claims under the WTO covered agreements are the only claims that can be brought before panels and the Appellate Body according to Article 1.1 DSU. Nevertheless, once the jurisdiction of a panel or the Appellate Body is appropriately established it is not exactly clear what law panels and the Appellate Body may apply.⁸⁴ Panels and the Appellate Body have the power to determine their own jurisdiction.⁸⁵ However, the Appellate Body has been

⁸⁰ Appellate Body Report, Mexico — Tax Measures on Soft Drinks and Other Beverages, (Mexico — Soft Drinks), WT/DS308/13, 29 March 2006, fn. 101.

⁸¹ Appellate Body Report, United States – sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan, (US — Carbon Steel), WT/DS244/AB/R, 15 December 2003, para. 89.

⁸² Panel Report in *Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil*, (Argentina – Poultry), WT/DS241/6, 22 May 2003, para. 7.36.

⁸³ Van Damme 163.

⁸⁴ Report of the ILC Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law – Finalised by Martti Koskenniemi and Draft conclusions of the work of the Study Group, Doc. A/CN.4/L.682 and Add.1 and Corr.1, para. 45.

⁸⁵ Appellate Body Report, US – 1916 Act, at para. 54. See Van Damme, I. 2009. *Treaty Interpretation by the WTO Appellate Body* 9.

somewhat reluctant to interpret RTA or FTA law.⁸⁶ As will be shown below, overlaps of jurisdiction can however arise. The interpretation of Article 3.2 DSU suggests that only the customary principles of interpretation of public international law also apply in WTO dispute settlement.⁸⁷

Pauwelyn proposes two ways by which non-WTO law can be applied in WTO disputes. The first is that panels and the Appellate Body can apply international law as a 'fall-back' or in defence of a claim of a WTO violation, except where members have contracted out of international law. This practice has been performed by the Appellate Body.⁸⁸ The other, which is not supported by jurisprudence, suggests that in the event of a conflict between WTO law and international law, non-WTO law may dis-apply WTO rules in particular respects.⁸⁹ However, panels and the Appellate Body can interpret WTO law in such a way that there is no conflict with the non-WTO rule, determine the conflict through the use of conflict of norms principles, or decide that WTO law does not allow countermeasures.⁹⁰

In *Peru – Agricultural Products*, the Appellate Body came to the conclusion that Guatemala had not acted inconsistently with good faith since:

- Guatemala's good faith was acknowledged and Guatemala duly exercised its judgement as to whether the initiation of the procedure would be fruitful.⁹¹
- Peru's argument that Guatemala had waived its rights, was limited by the undisputed fact that the FTA was not yet in force.⁹²

⁸⁶ Appellate Body Report, *EC Measures Concerning Meat and Meat Products (EC – Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, para 124 and Appellate Body Report, *(Mexico — Soft Drinks)*, para 55.

⁸⁷ Van Damme 14.

⁸⁸ Appellate Body Reports on *EC – Poultry* (WT/DS69), (23 July 1998), *Argentina – Footwear* (WT/DS56), (22 April 1998), *EC – Hormones*, (13 February 1998), *Korea – Government Procurement* and *US – Shrimp* (WT/DS58), (6 November 1998).

⁸⁹ Pauwelyn, J. 2003. *Conflicts of Norms in Public International Law. How WTO Law Relates to Other Rules of International Law* 478-86.

⁹⁰ Van Damme 18.

⁹¹ Panel Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, para. 7.75.

⁹² Panel Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, para. 7.88.

- The Panel also concluded that it was ‘not convinced that the violation by a member of the obligation contained in Article 18 of the Vienna Convention with respect to a treaty that does not form part of the WTO covered agreements can constitute evidence of lack of the good faith required by Articles 3.7 and 3.10’; Peru would have to show that Guatemala initiating the present procedure, constitutes an act which has the effect of defeating the object and purpose of the FTA.⁹³
- Determining the object and purpose of the FTA would go beyond the Panel's scope.⁹⁴

This does though raise the question whether the issue of waiving rights would have been deemed differently if the FTA would have been in force. The panel and the Appellate Body would maybe come to the conclusion that if the FTA or RTA members had explicitly waived its rights, as elaborated below in *Argentina – Poultry*, the WTO DSB perhaps would not be able to review the matter. However, the WTO DSB would still be able to examine whether the FTA at issue is consistent with WTO law. Before we continue to study whether FTA law can be applied in WTO DSB, overlaps of jurisdiction will be introduced.

4. Overlaps of jurisdiction

Procedural overlaps occur when a country challenges another country under a regional trade agreement first and then before the WTO (*Argentina – Poultry* and *Mexico – Soft Drinks* are examples). This is also referred to as the institutional perspective when discussing fragmentation of international law which was under the examination of the International Law Commission (ILC)⁹⁵. An **overlap of substantial rules** occurs when a claim is brought before a court and special rules on applicable law and conflict exists which is outside the dispute settlement mechanism. There are three types of overlaps of jurisdiction that will be discussed here:

⁹³ Panel Report, Peru – Additional Duty on Imports of Certain Agricultural Products, para. 7.92.

⁹⁴ Panel Report, Peru – Additional Duty on Imports of Certain Agricultural Products, para. 7.92.

⁹⁵ However, they examine the substantive aspect in fragmentation of international law.

- i) when two fora claim to have jurisdiction over the matter – which disclose a factual conflict
- ii) when one forum claims to have jurisdiction and the other one offers jurisdiction – which could lead to a potential conflict
- iii) when the dispute settlement mechanism of two different fora are available to examine the matter on a non-mandatory basis – which would be a conflict if the two fora try the conflict and end up with different results.⁹⁶

Some agreements have clear rules on dispute settlement while others do not. There are currently two ways of handling procedural overlaps between the dispute settlement mechanism of regional trade agreements and that of WTO law.⁹⁷

1. *Forum choice clause or forum election clause.*
2. *Forum choice clause and an Exclusivity forum clause (in order to not have more than one dispute on the same subject).*

Choosing the North American Free Trade Agreement (NAFTA) as an example, the first option gives the complaining party the discretion to settle the dispute at either forum *i.e.* number one above.⁹⁸

NAFTA; Article 2005: GATT Dispute Settlement

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

In relation to where the responding party claims that its action is subject to environmental issues the complaining party may thereafter have recourse to dispute settlement procedures solely under the NAFTA.

The second option mentioned above where European Free Trade Association (EFTA) is used as an example, it is stated that disputes may be settled in either

⁹⁶ Kwak and Gabrielle 468.

⁹⁷ Kwak and Gabrielle 468.

⁹⁸ NAFTA chapter 20 Article 2005 (2).

forum at the discretion of the complaining party or the forum selected shall be used to the exclusion of the other.⁹⁹

EFTA; IX. Dispute settlement, Article 56

2. Disputes on the same matter arising under both this Agreement and the WTO Agreement, or any agreement thereunder, to which the Parties are party, may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.

The Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific countries give no other alternative than to settle the disputes according to the EPAs or according to the GATT where **it is so stated**. The wording in the agreements is rather precise which will be explained below. As an example, it is stated in the EU-SADC Article 33-34 that safeguard measures in **this** agreement are not subject to WTO Dispute Settlement provisions and that measures in accordance with Article XIX of the GATT shall not be subject to the Dispute Settlement provisions of this Agreement. It is an exclusivity forum clause but in the agreements, there are two options, either a forum choice of WTO dispute settlement or EPA dispute settlement. This indicates that the forum of choice is somehow different in the EPAs from the exclusivity forum choice since the WTO is excluded in some of the areas of dispute settlement and has no jurisdiction. The parties to the EPA have waived their rights to bring a dispute to the WTO DSB in certain circumstances as was elaborated on in the *Argentina – Poultry* case. In *Argentina – Poultry* the panel stated that there was no evidence that Brazil made an express statement that it would not bring WTO dispute settlement proceedings if previously challenged through MERCOSUR.¹⁰⁰ The panel also referred to *EEC (member states) – Bananas I*, where estoppel can only ‘result from the express, or in exceptional cases implied consent of the complaining parties’.¹⁰¹

⁹⁹ Agreement between the EFTA States and Singapore Article 56 (2).

¹⁰⁰ WTO, World Trade Report 2011, *The WTO and preferential trade agreements: From co-existence to coherence*, (2011), page 174.

¹⁰¹ Panel Report in *Argentina – Poultry*, WT/DS241/R, para. 7.38.

The Panel continued:

‘In particular, the fact that Brazil chose not to invoke its WTO dispute settlement rights after previous MERCOSUR dispute settlement proceedings does not, in our view, mean that Brazil implicitly waived its rights under the DSU. This is especially because the Protocol of Brasilia, under which previous MERCOSUR cases had been brought by Brazil, imposes no restrictions on Brazil's right to bring subsequent WTO dispute settlement proceedings in respect of the same measure.’¹⁰²

In the EPAs there is an express statement that the partners will not bring disputes on regional safeguard measures to the WTO, as seen below. However, in cases of general exclusivity clauses there is nothing that prevents a WTO panel to examine a claim if the parties agree to bring the dispute to the WTO DSB.

EU-SADC; Article 33, Multilateral safeguards¹⁰³

1. Subject to the provisions of this Article, nothing in this Agreement shall prevent the SADC EPA States and the EC Party from adopting measures in accordance with Article XIX of GATT 1994, the WTO Agreement on Safeguards, Article 5 of the Agreement on Agriculture annexed to the Marrakech Agreement Establishing the World Trade Organisation and any other relevant WTO Agreements.

4. The provisions of paragraph 1 shall not be subject to the Dispute Settlement provisions of this Agreement.

Article 34, Bilateral safeguard

11. Safeguard measures adopted under the provisions of this Article shall not be subject to WTO Dispute Settlement provisions.

If the dispute is handled in the regional dispute system, there is a potential risk that the jurisdiction of the WTO could be slowly undermined. Also, if the

¹⁰² Panel Report in Argentina – Poultry, WT/DS241/R, para. 7.38.

¹⁰³ Council of the European Union, Brussels, 2 February 2009, 14062/08, Legislative Acts and other instruments; Council Decision on the signature and provisional application of the interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the SADC EPA States, of the other part.

regional dispute system comes to a conclusion it is questionable to which extent the conclusion is binding in the WTO dispute settlement body. Another concern is, as mentioned, whether exclusivity clauses as the one included in the EPAs is binding to the extent where the WTO dispute settlement body cannot examine the dispute.¹⁰⁴ As was elaborated above, a clear waiving of rights in an agreement which is in force seem to indicate that the WTO DSB cannot examine the issue. Thus, the paragraph cited above which relates to bilateral safeguard measures could be clear and precise enough to waive the rights under the WTO.

When a choice of forum clause and an exclusive forum clause is absent problems will arise with *res judicata*.¹⁰⁵ *Lis alibi pendens*¹⁰⁶ could also constitute concern since once a dispute is pending in one forum, it cannot be brought before another forum. Also, the principle of *forum non conveniens*¹⁰⁷ provides that the adjudicative body could refer the dispute to another forum if it would be more appropriate for another forum to exercise jurisdiction.¹⁰⁸ Thus, there are some basic principles that could offer a guide on how to proceed when dealing with overlaps of jurisdiction.

There are eight basic rules of international law described by Pauwelyn which could give answers to which treaty prevails and to the problem with choice of forum in the absence of exclusivity.¹⁰⁹ These will be presented below, but this study rather intends to introduce them – not examine them thoroughly.

The first rule states that unless otherwise provided, all treaties are in principle created equal. The only exception is norms or rules which have the status of

¹⁰⁴ Ibid, 173-174.

¹⁰⁵ *Res judicata* means literally ‘a matter judged’ which implies that a case in which there has been a final judgment and is no longer subject to appeal the matter can no longer be raised again.

¹⁰⁶ The principle of *lis alibi pendens* addresses the problem of contradictory judgments, for example if two courts would reach different decisions.

¹⁰⁷ *Forum non conveniens* means that a court can refuse to take jurisdiction over a more convenient forum which is available.

¹⁰⁸ WTO, World Trade Report 2011, *The WTO and preferential trade agreements: From co-existence to coherence*, (2011) 174.

¹⁰⁹ Pauwelyn, J. 2009. Legal Avenues to ‘Multilateralising regionalism’, in Baldwin, R., and Low, P. (eds), *Multilateralising Regionalism, Challenges for the Global Trading System*, WTO The Graduate Institute 373-379.

jus cogens which, for example, is codified in the Vienna Convention on the Law of Treaties.¹¹⁰ In terms of RTAs they are usually not considered *jus cogens* which mean that the treaties are all equal. However, if two treaties state that they can be subject to dispute settlement procedures, the conflict can be subject to two disputes with two different results.

The second rule states that a treaty is only binding upon the parties to it.¹¹¹ This rule also indicates that if one of the parties to the RTA is not a member of the WTO, then of course the RTA will prevail and the WTO DSB will be without effect.

The third rule according to Pauwelyn indicates that a treaty must be interpreted as taking account of ‘any relevant rules of international law applicable in the relations between the parties’.¹¹² The Appellate Body in *Peru – Agricultural Products* stated that:

‘In order to be "relevant" for purposes of interpretation, rules of international law within the meaning of Article 31(3)(c) of the Vienna Convention must concern the same subject matter as the treaty terms being interpreted.’¹¹³

Again, in the SACU, parties are not allowed to sign agreements without the approval from all SACU parties in order to avoid conflicts and conflicting rules.

The fourth rule gives the alternative where one treaty prevails over another treaty despite rule number one. An example is some of the EPAs which state that they prevail over the Cotonou agreement in certain parts. Also, in the EPAs it is stated in the CARIFORUM that ‘the Parties agree that nothing in this Agreement requires them or the Signatory CARIFORUM States to act in a manner inconsistent with their WTO obligations’ and also that disputes shall not be set under the WTO Agreement and that recourse to dispute settlement shall be without prejudice to any action in the WTO. As elaborated above, this

¹¹⁰ Vienna Convention on the Law of Treaties, Articles 53 and 64. *Jus cogens* means literally ‘compelling law’ and describes norms from which no derogation is permitted.

¹¹¹ Vienna Convention on the Law of Treaties, Article 26.

¹¹² Vienna Convention on the Law of Treaties, Article 31.3 (c).

¹¹³ Appellate Body Report in *Peru – Agricultural Products*, para. 5.101.

could have the effect that the parties waive their rights to have the dispute brought under the WTO DSB. In the *Peru – Agricultural Products*, Peru argued that the parties had modified their WTO rights and obligations in the FTA which thus should prevail.

Pauwelyn's rule number five indicates that a treaty is valid and legal unless it is declared otherwise. One example is GATT Article XXIV which allows for exceptions from the MFN principle as long as the FTAs or custom unions meet the conditions set in GATT Article XXIV. This will be attended to again below with regard to the Vienna Convention on the Law of Treaties.

Rule number six states that a later treaty prevails over an earlier, also known as *lex posterior derogat lex priori*. However, the purpose of RTAs is not to divert multilateral negotiations but rather to enhance regional trade and thus does not intend to replace the WTO agreements. It is only where the RTAs concern the same subject matter such as this will be relevant. Also, as will be elaborated on below, RTAs or FTAs might prevail over WTO disciplines in the event of *lex superior*, not in the event of inconsistencies.

According to Pauwelyn's seventh rule a more specific treaty prevails over a more general rule, also known as *lex specialis derogat lex generalis*. This becomes evident in, for example, disputes on environmental issues where environmental laws can prevail over general laws. A rule becomes 'special' or 'general' in relation to other rules not exactly in itself. The principle that special law derogates from general law is widely accepted when conflict of norms occur.¹¹⁴ Also, a special rule can be considered to be an application of a general standard or instead as a modification and overruling of the general standard.¹¹⁵ The notion of 'self-contained regimes' such as the WTO is also a subcategory of *lex specialis*.¹¹⁶ One example is paragraph 1 of the Enabling Clause which ensures that, to the extent that there is a conflict between measures under the Enabling Clause and the MFN obligation in Article I:1, the Enabling Clause, as the more specific rule (*Lex Specialis*), prevails over

¹¹⁴ Chapter X, Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law 284-285.

¹¹⁵ Chapter X, Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law 286.

¹¹⁶ Chapter X, Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law 288.

Article I:1. Also, the creation of bilateral and regional safeguards does not affect the integrity of the global safeguard measure since the two types of safeguards are not in relation to one another in order to apply the legal principle of *lex specialis derogate generali*.¹¹⁷

The eighth rule covers the subject where dispute panels only have jurisdiction under their respective treaty. For example, the WTO panels have limited jurisdiction and can only find violations under the covered agreements of the WTO according to the Dispute Settlement Understanding Article 1. However, this does not indicate that other treaties are irrelevant. In the interpretation of the exclusivity forum choice, this implies that the clause clearly specifies which dispute settlement has jurisdiction over which treaty and that the disputes will be settled in the correct forum.¹¹⁸ In the *Peru – Agricultural Products*, it was emphasised that the Appellate Body could not interpret the FTA since it was not the right forum to do so.

If the dispute is handled in the regional dispute system, there is a potential risk that the jurisdiction of the WTO could be slowly undermined. Also, if the regional dispute system comes to a conclusion it is questionable to which extent the conclusion is binding in the WTO dispute settlement body. Another concern is as mentioned whether exclusivity clauses such as the one included in the EPAs is binding to the extent where the WTO dispute settlement body cannot examine the dispute.¹¹⁹ One difference between the regional dispute system and the WTO dispute body is that the WTO system can have positive (or negative) externalities for members that **are not parties** to the dispute.

4.1 The Vienna Convention on the Law of Treaties

The Appellate Body in *US – Gasoline* stated that WTO law was not to be ‘read in clinical isolation from public international law’.¹²⁰ The Vienna Convention

¹¹⁷ Kotera, A., & Kitamura, T. 2007. *On the comparison of safeguard mechanisms of free trade agreements*, RIETI Discussion paper series 07-E-017 8.

¹¹⁸ Pauwelyn 2009 373-379.

¹¹⁹ WTO, World Trade Report 2011, *The WTO and preferential trade agreements: From co-existence to coherence*, (2011) 173-174.

¹²⁰ Appellate Body Report, United States — Standards for Reformulated and Conventional Gasoline, (US — Gasoline), WT/DS2/AB/R, 29 April 1996, 17. See also Appellate Body Reports, India — Patent Protection for Pharmaceutical and Agricultural Chemical Products, (India — Patents (US)), WT/DS50/AB/R, 19 December 1997, para. 46;

on the Law of Treaties has been referred to by the WTO DSB.¹²¹ In *EC – Sardines*, the Appellate Body stated that:

‘We must assume that members of the WTO will abide by their treaty obligations in good faith, as required by the principle of *pacta sunt servanda* articulated in Article 26 of the Vienna Convention. And, always in dispute settlement, every member of the WTO must assume the good faith of every other member.’¹²²

Pacta sunt servanda means that every treaty in force is binding upon the parties to it and must be performed by them in good faith as described above. Amongst others, the obligation excludes the contractors from entering into successive agreements incompatible with obligations entered into earlier. Article 30 VCLT deals with the application of successive treaties relating to the same subject matter and state (Article 30(2)) that when a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

This means that the exclusivity forum clause in the EPAs where it says that the provisions shall not be subject to either ‘this Agreement’ or the ‘WTO Dispute Settlement Mechanism’ the other treaty prevails accordingly. In accordance with Article 30(3) the provisions of the previous treaty apply only to the extent that they are compatible with the later treaty. The formation of the trade agreement as well as the exclusivity forum clause is compatible with the WTO Agreements and thereby Article 30(3). Also, the phrase that the RTAs prevail over WTO law seems to be intended for occasions where RTA provisions went beyond WTO disciplines (*lex superior*), not to prevail in the event of inconsistency.¹²³ The International Law Commission also advises States to include conflict clauses in treaties that might conflict with other treaties which

Appellate Body Report Japan — Taxes on Alcoholic Beverages (Japan — Alcoholic Beverages II), WT/DS8/AB/R; WT/DS10/AB/R ; WT/DS11/AB/R, 4 October 1996, 10-12.

¹²¹ See for example Appellate Body Report in Brazil — Measures Affecting Imports of Retreaded Tyres (Brazil — Retreaded Tyres), WT/DS332/AB/R, 3 December 2007 and Appellate Body Report, European Communities — Trade Description of Sardines, (EC — Sardines), WT/DS231/AB/R, 26 September 2002, para. 278.

¹²² Appellate Body Report, EC — Sardines, para. 278.

¹²³ WTO, Negotiating Group on Rules, *Compendium of issues related to regional trade agreements*, Background Note by the Secretariat, TN/RL/W/8/Rev.1, (1 August 2002), para. 120.

also should be linked with appropriate dispute settlement mechanisms,¹²⁴ such as the ones found in the EPAs.

In *EC –Hormones (US) (Article 22.6 –EC)*, the Arbitrators applied Article 30 in the context of declining to take certain bilateral agreements, invoked by the US, into account since ‘the EC schedule, in accordance with Article 30 of the Vienna Convention on the Law of Treaties, has superseded and prevails over the bilateral agreements.’¹²⁵

The Panel in *Argentina – Poultry* found that Brazil had not failed to act in good faith when they challenged Argentina’s anti-dumping measure before the MERCOSUR Ad Hoc Tribunal first and when they lost, they initiated a proceeding in the WTO dispute settlement system.¹²⁶

In the case *Peru –Agricultural Products*, The Appellate Body stated that:

‘With multilateral treaties such as the WTO covered agreements, the “general rule of interpretation” in Article 31 of the Vienna Convention is aimed at establishing the ordinary meaning of treaty terms reflecting the common intention of the parties to the treaty, and not just the intentions of some of the parties. While an interpretation of the treaty may in practice apply to the parties to a dispute, it must serve to establish the common intentions of the parties to the treaty being interpreted.’¹²⁷

It was also emphasised that ‘in order to be “relevant” for purposes of interpretation, rules of international law within the meaning of Article 31(3)(c) of the Vienna Convention must concern the same subject matter as the treaty terms being interpreted.’¹²⁸

¹²⁴ United Nations, General Assembly, International Law Commission, *Fragmentation of international law: difficulties arising from the diversification and expansion of international law*, A/CN.4/L.682/Add.1, (2 May 2006) 12.

¹²⁵ Decision by the Arbitrators, EC — Hormones (US) (Article 22.6 — EC), para. 50.

¹²⁶ Panel Report in *Argentina – Poultry*, para. 7.34.

¹²⁷ Appellate Body Report in *Peru – Agricultural Products*, para 5.95.

¹²⁸ Appellate Body Report in *Peru – Agricultural Products*, para 5.101.

In this case, the Appellate Body came to the conclusion that it did not concern the same subject matter.¹²⁹

The FTA between Peru and Guatemala also states that the parties confirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organisation (WTO Agreement), while another paragraph of the same provision states that, ‘in the event of any inconsistency between the FTA and the WTO covered agreements, the provisions of the FTA shall prevail to the extent of the inconsistency.’ The Appellate Body did not believe that it was clear whether a WTO-inconsistent measure would be allowed under these circumstances. When reading these provisions together, that Peru may maintain the PRS and that the FTA shall prevail to the extent of the inconsistency, does not clearly indicate that a WTO inconsistent PRS would be allowed since it is not clear that the parties have agreed between themselves to modify Article 4.2 of the Agreement of Agriculture and Article II:1(b).¹³⁰ The Appellate Body continued and argued that the ‘alleged modification’ might not be subject under Article 41 of the Vienna Convention.¹³¹ Article 41 VCLT regulates the modification of multilateral agreements through succeeding agreements between some of the parties to the treaty.

In *Turkey –Textiles*, the Panel referred to Article 41 and then observed that ‘even if the Turkey-EC customs union agreement did require Turkey to adopt all EC trade policies, an issue that we do not have to address, we consider that such requirement would not be sufficient to exempt Turkey from its obligations under the WTO Agreement.’¹³² The Appellate Body in *Peru – Additional Duty on Imports of Certain Agricultural Products* went further and stated:

‘Nevertheless, we note that the WTO agreements contain specific provisions addressing amendments, waivers, or exceptions for regional trade agreements³⁰⁰ which prevail over the general provisions of the Vienna Convention, such as Article 41. This is particularly true in the case of FTAs considering that Article XXIV of the GATT 1994 specifically

¹²⁹ Appellate Body Report in *Peru – Agricultural Products*, para 5.104.

¹³⁰ Appellate Body Report in *Peru – Agricultural Products*, para 5.109-5.110.

¹³¹ Appellate Body Report in *Peru – Agricultural Products*, para 5.111.

¹³² Panel Report, *Turkey – Restrictions on imports of textile and clothing products*, (Turkey – Textiles), WT/DS34/R, 31 May 1999, para. 9.182.

permits departures from certain WTO rules in FTAs. However, Article XXIV conditions such departures on the fulfilment of the rule that the level of duties and other regulations of commerce, applicable in each of the FTA members to the trade of non-FTA members, shall not be higher or more restrictive than those applicable prior to the formation of the FTA.

Thus, the correct way to determine whether a provision in an FTA that could depart from certain WTO rules is nevertheless consistent with the covered agreements, are the WTO provisions that allow the formation of regional trade agreements and that is Article XXIV of the GATT, the Enabling Clause and Article V of the General Agreement on Trade in Services (GATS).¹³³

The *inter se* modifications in Article 41 may take the form of external treaties that change the legal relationship between certain WTO members,¹³⁴ but might also indicate modifications within a treaty that might, for example, disrupt the object and purpose.¹³⁵ *Inter se* was referred to by the International Law Commission (ILC) as ‘... an agreement entered into by some only of the parties to a multilateral treaty and intended to modify it between themselves alone’.¹³⁶ *Inter se* agreements are often used so as to take more effective or more far-reaching measures than the multilateral, i.e. RTAs.¹³⁷ The possibility in Article 41(1)(a) is provided according to GATT Article XXIV which accepts the arrangement of RTAs. Neither does WTO law expressly prohibit the formation of RTAs. RTAs are compatible with Article 41 VCLT as long as they are in compliance with the conditions set forth by the WTO Agreements. Shaffer and Winters argue that the WTO Appellate Body could recognise that FTA rules constitute ‘consent’ to a measure that would otherwise be non-consistent to WTO in accordance with Article 41 VCLT, and thus eliminate a conclusion of unlawful conduct (per Article 20 of the ILC Articles), provided

¹³³ Appellate Body Report in Peru – Agricultural Products, para 5.113.

¹³⁴ Thomas Cottier, T. and Marina Foltea, Constitutional Functions in the WTO and Regional Trade Agreements, in Lorand Bartels and Federico Ortino (ed), *Regional Trade Agreements and the WTO Legal System* 55.

¹³⁵ James H. Mathis, Regional Trade Agreements in the GATT/WTO: Article XXIV and the Internal Trade Requirement, (The Hague: T.M.C. Asser Press, 2002), 274.

¹³⁶ International Law Commission, *Report of the International Law Commission on the Work of the Second Part of its 17th Session*, (1996) UN Doc. A/6309/Rev.1.

¹³⁷ United Nations, General Assembly, International Law Commission, *Fragmentation of international law: difficulties arising from the diversification and expansion of international law*, A/CN.4/L.682/Add.1, (2 May 2006), 12.

(i) that the consent is sufficiently clear and (ii) that other WTO members are not adversely affected by it.¹³⁸

In case a conflict occurs between WTO law and RTAs, the RTAs need to surrender according to Cottier and Foltea, since they are an exception to WTO law,¹³⁹ also the *inter se* agreement is *lex posterior*, codified in Article 30(3) and (4) of the Vienna Convention, thereby the WTO law (*lex priori*) prevails.¹⁴⁰ The *lex posterior* will then be illegal based on the *lex priori*, but it will not be invalid.¹⁴¹ However, WTO Law does not *inter se* affect the relationship of the parties to RTAs despite the fact that it is inconsistent with GATT Article XXIV and thus Article 41 VCLT,¹⁴² since WTO law does not prohibit the formation of RTAs.

The Appellate Body in *Peru – Agricultural Products* referred to the *Turkey – Textiles* case. In *Turkey – Textiles*, it was stated by the Appellate Body that GATT inconsistent measures can only be justified under Article XXIV if the requirements in Article XXIV:8 are met. Furthermore, the Appellate Body found that the text of the chapeau indicates that Article XXIV can justify measures inconsistent with certain other GATT provisions if they are introduced on the formation of a customs union. However, the chapeau of Article XXIV:5 states that

‘...the provisions of this Agreement shall not prevent ... the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or a free-trade area ...’

Thus, the chapeau makes it clear that Article XXIV under certain conditions may justify the adoption of a measure which is inconsistent with certain other GATT provisions and may be invoked as a possible defence to a finding of

¹³⁸ Gregory Shaffer and L. Alan Winters, FTAs as Applicable Law in WTO Dispute Settlement: Was the Appellate Body Wrong in *Peru-Additional Duty (DS457)?*, RSCAS 2016/65, Robert Schuman Centre for Advanced Studies, Global Governance Programme-241, 23.

¹³⁹ Cottier and Foltea 56-57.

¹⁴⁰ Pauwelyn, J. 2003. *Conflict of Norms in Public International Law. How WTO Law relates to other rules of international law* 310.

¹⁴¹ Pauwelyn 2003 311.

¹⁴² Cottier and Foltea 61.

inconsistency. This is, however, only the case if the measure is introduced upon the formation of a free trade area and only to the extent that the formation of the free trade area would be prevented if the introduction of the measure were not allowed. The Appellate Body in *Turkey – Textiles* relied also on paragraph 4 of this provision, which states that the purpose of a customs union or FTA is ‘to facilitate trade’ between the constituent members and ‘not to raise barriers to the trade’ with third countries.¹⁴³ The Appellate Body in *Peru – Agricultural Products* concluded that:

‘In our view, the references in paragraph 4 to facilitating trade and closer integration are not consistent with an interpretation of Article XXIV as a broad defence for measures in FTAs that roll back on members’ rights and obligations under the WTO covered agreements.’¹⁴⁴

Thus, a conclusion would be that WTO members must fulfil the requirements in accordance with Article XXIV of the GATT, the Enabling Clause and Article V of the General Agreement on Trade in Services (GATS)¹⁴⁵ in order to be able to justify inconsistent measures under an FTA. However, Article XXIV cannot be used as a broad defence of all inconsistencies made.

5. Conclusion

In *Peru – Agricultural Products* the Appellate Body named a series of conditions for it to recognise a waiver of WTO rights. First, ‘any such relinquishment must be made clearly’. Second, such waiver ‘should be ascertained... in relation to, or within the context of, the rules and procedures of the DSU.’¹⁴⁶ Third, the waiver may not go ‘beyond the settlement of specific disputes.’¹⁴⁷ Fourth, the Appellate Body warned that ‘the DSU

¹⁴³ Appellate Body Report, *Turkey – Textiles*, para. 57.

¹⁴⁴ Appellate Body Report in *Peru – Additional Duty on Imports of Certain Agricultural Products*, para 5.116.

¹⁴⁵ Appellate Body Report in *Peru – Additional Duty on Imports of Certain Agricultural Products*, para 5.113.

¹⁴⁶ Appellate Body Report in *Peru – Additional Duty on Imports of Certain Agricultural Products*, para 5.25.

¹⁴⁷ Appellate Body Report in *Peru – Additional Duty on Imports of Certain Agricultural Products*, para 5.25, footnote 106.

emphasises that '[a] solution mutually acceptable to the parties' must be 'consistent with the covered agreements'.^{148, 149}

The first and third condition was also ascertained in *Argentina – Poultry* where the panel stated that there was no evidence that Brazil made an express statement that it would not bring WTO dispute settlement proceedings if previously challenged through MERCOSUR,¹⁵⁰ and in *EEC (member states) – Bananas I*, where estoppel can only 'result from the express, or in exceptional cases implied, consent of the complaining parties'.¹⁵¹ The second condition is established in the DSU itself, Article 1 and 3 for example. The fourth condition has also been emphasised in *Turkey – Textiles*, where it was held by the Appellate Body that GATT inconsistent measures can only be justified under Article XXIV if the requirements in Article XXIV:8 are met. Inconsistencies are sometimes allowed under the WTO agreements, such as the use of countervailing duties, protection of environment and formation of free trade agreements and customs unions.

To conclude, to be able to waive the rights to WTO law in FTAs, it must be clearly specified which rights and obligations are waived, so that it is well understood which rights are concerned. Also, if there are inconsistencies between WTO law and the FTA, they cannot go beyond the scope of Article XXIV; GATT inconsistent measures can only be justified under Article XXIV if the requirements in Article XXIV:8 are met. Thus, this implies that it is only possible to waive the rights if the waiver is clear and is not inconsistent with WTO law especially Article XXIV or the Enabling Clause.

¹⁴⁸ Appellate Body Report in *Peru – Additional Duty on Imports of Certain Agricultural Products*, para 5.25.

¹⁴⁹ Gregory Shaffer and L. Alan Winters, *FTAs as Applicable Law in WTO Dispute Settlement: Was the Appellate Body Wrong in Peru-Additional Duty (DS457)?*, RSCAS 2016/65, Robert Schuman Centre for Advanced Studies, Global Governance Programme-241, 20.

¹⁵⁰ WTO, *World Trade Report 2011, The WTO and preferential trade agreements: From co-existence to coherence*, (2011) 174.

¹⁵¹ Panel Report in *Argentina – Poultry*, WT/DS241/R, para. 7.38.

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