



## EVALUATING PROGRESS

With the start of discussions between Southern African states and the EU on economic partnership agreements (EPAs) in 2004, and negotiations between the Southern African Customs Union (SACU) and the US, Mercosur and EFTA, it is timely for SADC to take a hard look at its accomplishments and future regional strategy and role.

These negotiations are creating de facto re-alignments in the regional integration make-up of Southern Africa, against a continental backdrop in which such communities are supposedly the 'building blocks' of the Nepad vision of African integration, good governance and prosperity. Is SADC up to this task?

Since 1992, SADC has adopted 23 protocols and, more recently, has revamped its institutional framework. It has lost Seychelles, but is gaining Madagascar, while Tanzania chose to stay with SADC, withdrawing from the Common Market for Eastern and Southern Africa (Comesa). In the EPA negotiations, Angola, Tanzania, Mozambique and the SACU states (excluding South Africa) form one grouping, while the remaining SADC members are negotiating as the eastern and southern Africa bloc. What this means for the future of Comesa is unclear.

Why do states choose a particular regional configuration? What benefits do the various actors expect to derive – a question usually asked of governments, but one that should also be asked of business and other stakeholders in these countries? And lastly, what is the competitive advantage of different regional integration schemes, especially where memberships overlap?

SADC might be a 'scheme for tomorrow' – but without decisive action and the necessary political will, it might always be just that. While SADC is regarded as one of the more promising African regional integration initiatives, a broad development agenda and weak institutional capacity present a number of challenges.

These challenges are about how to

make 'integration' happen – and give its myriad of protocols more meaning. Yet, are its members committed to SADC simply because of the potential economic-trade benefits flowing from their inclusion, or for reasons of regional political alignment, or security, or all of the above?

In the economic arena, the SADC trade protocol entered into force in 2000. Only the Democratic Republic of Congo (DRC) has yet to accede. But the protocol deals only with the institutional architecture, and not the short-term obstacles to intra-SADC trade. On a more basic yet fundamental level, trade might best be spurred by improved trade facilitation. Such measures would include the harmonisation of border and customs procedures, road weight limits and insurance rules; establishment of the planned dispute resolution tribunal for commercial disputes, which would make contract enforcement more consistent; and freer movement of labour, which would reduce the costs of doing business.

This requires the adoption of an efficiency-focused regional agenda.

On the political-security front, the Protocol on the Organ on Politics, Defence and Security, is viewed by many as an important step in creating a common security and political value system. The concept was further enhanced by the adoption of the electoral norms and standards at the 2004 Mauritius summit. Yet, politically, the lofty values espoused in both documents do not reflect a practical convergence of members' thinking on the meaning of democracy and good governance.

What would the Secretariat view as its greatest successes in the last ten years? Who have been the main beneficiaries of the SADC integration process? If SADC ceased to exist tomorrow, who would be affected?

These questions are not aimed at unnecessarily denigrating the organisation. The Secretariat and the members should be asking these continuously in their

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ISSN Number: 1728-063X

Editor: Richard Meissner

PO Box 31596, Braamfontein, 2017  
South Africa

Tel: +27 (0)11 339 2021

Fax: +27 (0)11 339 2154

sadcbarometer@saiia.wits.ac.za

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commitment to making a success of the region's economies.

Importantly, this would necessitate a more responsible approach to the allocation of regional resources so that deliverables become tangible. There are a number of infrastructural projects that SADC can undertake with its own resources, rather than donor funding. This demands a resolution of the age-old tension between regional, continental and national project priorities. And even with donor funding, SADC should be more selective in its priorities – fewer 'priorities' may mean more outputs that can help to justify SADC's existence more loudly than any statements of political leaders. SADC's primary role should be to make things better for its members' citizens – fewer conflicts, more trade and economic activity, hence more jobs and hopefully less poverty. SADC's constituency is clear, as is what it should be focusing on. The rest will then speak for itself. (E)

Elizabeth Sidiropoulos and Richard Meissner



## Rejoining the Continent: Madagascar and SADC

At the SADC summit in Mauritius in August 2004, the Seychelles left the Southern African Development Community. Citing the need to cut costs, the government of the Indian Ocean island ditched what it deemed the least important of its many expensive memberships in multilateral organisations. Since the Seychelles hardly ever paid its membership dues to SADC anyway, the cost saving was minimal, but the decision to leave made

it clear that the small and relatively rich island state did not see SADC as central to its economic, political or security interests.

At the same summit, another vastly bigger and much poorer Indian Ocean island became an applicant member of SADC, and is set to obtain full membership in August 2005. This is Madagascar, the world's fourth-largest island (after Greenland, New Guinea and Borneo), with a population of 17 million people. Although it is only 400 kilometres off the coast of Mozambique, Madagascar's relations with Africa have been distant and intermittent. A former French colony, after independence in 1960, the country retained strong ties with France, not just politically and economically, but also in terms of language and cultural, architectural, legal and culinary traditions. An insular, socialist regime in charge for most of the post-independence period was more eager to shield the country from outside influences than to build relationships with its African neighbours.

Viewed against this background, Madagascar's entry into SADC has raised both questions and eyebrows. Why would this Francophone Indian Ocean island want to become a member of a regional organisation dominated by English-speaking countries with which it has few political, cultural

and economic ties? And why, in turn, would SADC want to welcome Madagascar, considering the moratorium it imposed on admitting new members after the inclusion in 1998 of the organisation's only other French-speaking country, the Democratic Republic

### Madagascar's relations with Africa have been distant and intermittent.

of Congo, a decision that did more to strain than to strengthen regional co-operation? Critics of SADC — of which there are many — could easily conclude that

Madagascar's inclusion was yet another example of the Southern African organisation inflicting on itself new obstacles to achieving its aim of closer regional integration.

A closer look at Madagascar allows for a less gloomy conclusion. Something close to a revolution in economic and foreign policy outlook has taken place in the country in the last couple of years, making SADC membership look much more attractive, both for Madagascar itself and for SADC as a whole. The architect behind these changes is President Marc Ravalomanana, a business tycoon turned statesman, who was carried into office on a wave of popular demonstrations in 2002 after the old regime of Didier Ratsiraka attempted to rig the 2001 election against him.

The way in which Ravalomanana came to power, together with his policies once in office, explain why SADC membership has become increasingly natural and desirable for Madagascar. The presidential elections in December 2001

led to a six-month political and constitutional crisis. President Ratsiraka refused to give up his office and withdrew to his stronghold in the port of

Toamasina. Meanwhile, Ravalomanana declared himself president and took over the government offices in the capital, Antananarivo. The stand-off between the two presidents brought most commercial activity to a halt and led to a drop in GDP in 2002 of more than 12%.

Ratsiraka's position became increasingly tenuous and the former president finally flew into exile in France in May 2002, leaving behind one of the poorest and most corrupt countries in the world. A telling example of the economic mismanagement and lack of development under his and previous regimes was the state of the country's roads: while the French colonialists left behind 32,000 kilometres of roads at independence in 1960, only 6,000 kilometres were left in 2001.

Starting from this dismal base, President Ravalomanana has quickly turned Madagascar into the donor community's darling. New embassies are sprouting and the World Bank has sent one of its senior managers to head a 50-person-strong office in the capital. Like a good CEO, Ravalomanana has streamlined the administration from 33 to 16 ministries, set performance targets for each ministry, and introduced privatisation and market reforms to increase competitiveness and attract foreign investment. Madagascar's rating on Transparency International's Corrup-

### Unlike his predecessor, Ravalomanana has an international outlook.

tion Perceptions Index has improved from being number 98 out of 102 countries in 2002 to being number 82 out of 145 in 2004. The government has also started building roads, schools and health facilities with

the eager support of international donors. Despite two cyclones and a rice shortage crisis, GDP growth in 2004 was still a respectable 5%.



Unlike his predecessor, Ravalomanana has an international outlook. He has begun to reduce Madagascar's economic dependence on France by awarding several prestigious new government contracts to non-French companies. Together with his ministers, he has travelled widely to build new political and economic relations with both developing and developed countries.

This new policy of openness brings us back to Madagascar's SADC membership. The Malagasy government has consciously decided against relying solely on aid from and trade with the rich North. The US and EU are important political allies and donors for Madagascar, but a small and poor country with a history of political instability cannot expect to receive large amounts of foreign investment from relatively risk-averse companies in the North. Such investment must instead be courted from other emerging markets, such as Malaysia, India, China and South Africa, whose companies are less afraid of the political challenges and more aware of the economic opportunities on offer in troubled but fast-growing countries like Madagascar.

Ravalomanana's courting of SADC countries, and especially of South Africa, is both politically and economically motivated. Economically, the reasons for joining SADC are obvious: South Africa, the dominant economic actor in SADC, is only a short three-hour flight away from Madagascar. South African business has already shown a strong willingness to expand and invest in the rest of Africa, but has so far given little attention to Madagascar. Member-

ship in SADC is one way of increasing South African awareness of the business opportunities Madagascar has to offer.

But SADC's economic benefits are so far a thing of the future. Until common tariffs and other trade agreements are finally introduced, bilateral relations between South Africa and Madagascar will be much more important than membership in the same regional organisation. The opening in January 2004 of a South African embassy in Antananarivo will thus, at least in the medium term, do more to create closer economic ties between the two countries than Madagascar can hope to achieve through SADC.

The political benefits of SADC membership are perhaps less tangible, but also more immediate. By joining SADC, Ravalomanana acquires a group of sympathetic allies who, by providing the government with regional legitimacy, can help Madagascar shore up its domestic economic and political reforms and, if another political crisis were to loom, would strengthen the government's position in relation to opponents from the former regime.

The 2002 political crisis was a lesson for Ravalomanana on what happens when you do not have regional allies. The Organisation for African Unity (OAU) was the only major international actor to refuse to recognise Ravalomanana's new presidency when he was inaugurated in May 2002. Sticking to a legalistic interpretation of its generally sound principle of not recognising governments that grab power through illegitimate or unconstitutional means, the OAU noted that Ravalomanana had come to power through street rallies and popular protests rather than an official election victory (although the latter would have been difficult, since the electoral managing bodies and the courts were unfairly biased against him). Madagascar's OAU membership was suspended, and the country was not allowed back

into the African fold until December 2002, after Ravalomanana's party, Tiako I Madagasikara (TIM — 'I Love Madagascar'), comfortably won the legislative election with 103 out of 160 parliamentary seats.

After this baptism by fire, Ravalomanana has worked hard to improve relations with his African counterparts. Joining the SADC club is one way of nesting Madagascar within a network of African political allies. Unlike his predecessors, Ravalomanana is not ambivalent about Madagascar's identity as an African country, and membership of SADC is one way in which the island can confirm its link to the mother continent.

The Malagasy president has also proved a popular new addition to Africa's leadership: his charismatic appearances at African gatherings, talking about how Africa needs to be more self-confident and take charge of its own development, has gone down well with other African leaders — not least with Thabo Mbeki, the architect of the New Partnership for Africa's Development (Nepad).

Finally, this leads us to the question of why SADC would want Madagascar as a member. Although poor and still riddled with problems — including the danger that Ravalomanana will forget democracy in his eagerness for economic development — Madagascar is at the moment a hopeful and exciting country, led by a new type of political leader — the business CEO with a zeal for human development. Fellow SADC countries with similar outlooks on macro-economic stability, infrastructure development and market-friendly economic policies, such as South Africa, Mauritius and Botswana, are likely to find in Madagascar a valuable ally in the quest to make Southern Africa into a prosperous and dynamic region. For this reason, Madagascar is welcome in SADC. (S)

Anne Hammerstad, Senior Researcher, SAIIA

## SADC contact details

Private Bag 0095  
Gaborone, Botswana  
Tel: +267 395 1863  
Fax: +267 395 2848  
Website: [www.sadc.int](http://www.sadc.int)  
E-mail: [registry@sadc.int](mailto:registry@sadc.int)



## External Actors and SADC Regional Integration

Generally, groups of nations that are linked geographically establish regional blocs to achieve intra-regional trade liberalisation, while maintaining barriers with the rest of the world. Members of these blocs hope that this will result in increased trade, leading in turn to higher rates of economic growth. In the case of SADC, the effect of external actors on the regional integration process is of particular importance.

The overall SADC market is not large enough to achieve the growth objectives of its members. This has spurred SADC to actively engage external actors such as international co-operation partners (ICPs), the EU, US, China and the Southern Cone Common Market (Mercosur). On the one hand, the provision of development assistance, market access, supply chain links, trade negotiations and services by these actors promotes regional integration. On the other hand, their impact on policy frameworks, competition, trade deflection and fiscal fluctuations retards the integration project.

### Promoting regional integration

Trade liberalisation has a significant impact on regulation, revenue and welfare in SADC countries. It often creates adjustment costs arising from supply side constraints, because of the developing nature of most of these economies. Fiscal gaps, which arise in government expenditure to meet these costs, are gradually met by foreign aid. In 2002, sub-Saharan Africa's gross national income (GNI) was \$310.9 billion. It received approximately \$19.6 billion in official aid, representing 6.3% of its GNI. Total government expenditure was approximately \$80.5 billion, representing 25.9% of GNI. Therefore, in 2002, official aid was approximately 24.3% of total government expenditure.

Despite the negative press that aid

conditionality usually receives, conditions can be geared towards promoting initiatives such as regional co-ordination activities and multicountry projects, which reduce impediments to cross-border trade and support the development of complementary national trade policies in the region. They can also address weak internal control mechanisms created by powerful, domestically-oriented interest groups that advocate protectionist policies. For example, to ensure compliance with the conditions they have imposed, ICPs monitor aid to determine the efficiency of use, destination of expenditure and beneficiaries of funds.

In most cases, aid is geared towards structural changes in the economies of recipient countries. Pro-integration structural reforms can weaken protectionist policies and promote regional integration.

Most SADC countries have similar economic structures based on primary commodity exports. This results in a lack of complementarity in trade in the region. External actors offer a way to overcome this obstacle by increasing access to their markets.

For instance, China seeks commodity exports from SADC, such as oil and steel, to meet its industrial needs. The US, in addition to oil for industrial needs, seeks exports to promote the development objectives of the region through trade arrangements like the African Growth and Opportunity Act (AGOA). The EU, on the other hand, seeks to remove residual trade barriers on existing trade agreements to create reciprocity in its economic partnership agreements.

The increased market access offers SADC firms that need large markets to operate efficiently the benefits of economies of scale. This creates an incentive for firms to expand in the region, which in turn also supports regional integration.

Due to their similarities, most SADC countries utilise the same production

technologies. To meet the increased demands for commodity exports by external actors, firms can create cross-border collaborative manufacturing arrangements to take advantage of the opportunities offered by external actors. This provides an opportunity for intraregional supply chain links to flourish; for instance, AGOA's 'special rule', which allows the use of third-country inputs, resulted in textile exports from South Africa to the Mauritian clothing industry.

However, there is also a regulative side to the trade policies of external actors. Some adopt domestic policies that seriously distort the market. The EU's Common Agricultural Policy reform process involves moving away from a system of price support to one of direct aid to farmers. This will potentially reduce prices of agricultural commodities, resulting in a negative impact on SADC countries that are dependent on agricultural commodity exports to the EU. Nevertheless, this will not be a serious threat, because Africa exported \$11.74 billion worth of agricultural products to Europe in 2002, which represents only 5.7% of its overall exports to the EU, which was \$66.44 billion in 2002, as reported in the World Trade Organisation's international trade statistics for 2003.

Even so, due to the similarities among SADC member countries, common ground for countering these policies could be found. Other developing world trading blocs like Mercosur also have similar interests. These common interests could lead to the creation of a formidable negotiating bloc at the

Regional trade blocs can be ranked from lowest to highest into five distinct integration levels, i.e. preferential trading clubs, free trade areas (FTAs), customs unions, common markets and economic unions.



global trade level to counter these potential threats. Such common interests are also an impetus to regional integration.

The fiscus gap is also filled by foreign direct investment. In an effort to increase investment from external actors, regional liberalisation of services such as banking, telecommunications, construction, engineering and tourism has gained increasing importance in order to promote the quality of services. SADC has been promoting financial system reforms to increase transparency and competition. In 2002, memoranda of understanding related to the macroeconomic convergence and co-operation in taxation and related matters were signed. These are aimed at strengthening SADC's monetary and fiscal policy infrastructure and management to support investment in the region. Yet these initiatives have also been prompted by the fact that as SADC's system becomes more liberalised, the region's integration into the global financial architecture will also increase its vulnerability to capital fluctuations. This will be exacerbated if there is a lack of regional capacity to manage financial dynamics.

SADC's interaction with external actors creates a need for a coherent, transparent and reliable policy framework. Regional liberalisation efforts have resulted in cross-border initiatives to harmonise telecommunication policies, infrastructure development and ecotourism standards. This encourages predictability and order, which is an incentive to trade and investment.

### **Retarding regional integration**

The existence of multiple regional blocs, with overlapping membership has resulted in multiple trade agreements between external actors and the Common Market for Eastern and Southern Africa (Comesa), SADC and the Southern African Customs Union (SACU). In addition, trade agreements extended to individual countries

are not necessarily compatible and may complicate future negotiations in SADC. An example of this occurs under the economic partnership agreements, where individual SADC countries are negotiating with the EU as members of Comesa, SADC or SACU. These trade blocs have different mandates, which undermine the capacity of SADC to negotiate. The multiplicity and incompatibility of these trade agreements also create a fragmented policy framework, which

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### **In SADC, customs revenue is an important source of government revenue.**

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retards regional integration.

The potential for trade deflection in SADC exists where overlapping memberships in regional blocs at different integration levels occur. Trade deflection occurs where imports from non-member countries of a trade bloc can enter a high-duty member country through a low-duty member country, e.g. if imports from external actors, such as China, enter SADC through sub-regional blocs with which they have trade arrangements that impose lower custom duties than SADC. This leads to a loss in revenues for SADC, with negative implications for regional integration.

What is also worth mentioning is that external actors utilise more efficient, lower-cost production technologies than SADC members. Interaction with them could result in trade creation, which occurs when production shifts from a higher-cost member country producer to a lower-cost non-member producer. These lower costs benefit consumers through lower prices. However, due to the highly efficient production processes of external actors, such as China, cheaper imports tend to flow into SADC. Theoretically, the resulting competition should stimulate innovation among

import-competing industries, leading to increased production efficiency. Yet, local enterprises face supply-side constraints. This limits their ability to respond quickly to increased competition. The resulting loss in market share often leads to the closure of firms in these affected industries.

In the case of distribution to a third country, rules of origin are supposed to regulate violations. However, some external actors build final assembly plants in SADC countries to circumvent this control mechanism. These pre-assembled goods flow to external actors' markets in the EU and US who are unaware of the origin of these goods. This practice has eroded the market share for import-competing industries in SADC and has negative implications for SADC.

In many SADC countries, customs revenue is an important source of government income. In the case of Namibia, the customs revenue from EU trade represents nearly 2.5 times the current government budget deficit. In this regard, FTAs with external actors will result in fiscal losses. The resulting inability to meet the financial obligations of supervisory regional bodies weakens SADC's capacity. Most importantly, the loss of fiscal revenue will translate into difficulties

The beginnings of SADC were couched in regionalism, defined as integration driven by political factors. To counter the potential threat of dominance by apartheid South Africa, other countries in the region formed SADC's predecessor, the Southern African Development Co-operation Conference, in 1980. Now that South Africa has achieved democratic rule, this original focus has transformed into regionalisation, defined as integration driven by the economic factors, which has led to regional integration agreements (RIAs) that are necessary to regulate microeconomic decisions by firms engaging in cross-border trade.



for governments in financing services like health and education, which will adversely affect development in the region and by definition also regional integration.

In conclusion, it is important to understand the role played by external

actors in SADC's integration process to avoid reactionary regionalism, where trade initiatives strictly respond to external influences. This could have an overall negative effect on regional integration in the long run. To achieve SADC's overall socio-economic devel-

opment aim of eradicating poverty, higher regional economic growth will be necessary. This can be promoted or retarded by external actors, depending on how SADC members develop their policy responses. (6)

Jonathan Adongo, Researcher, NEPRU

## Seychelles: The Obituary of a Former SADC Member

Seychelles was admitted to SADC in September 1997, but it officially ceased its membership in June 2004, having submitted its official application to withdraw on 1 July 2003. While this decision is unlikely to have a major knock-on effect on the scope and functioning of the SADC community – in part due to Seychelles' very small size — there are some important lessons to be drawn from this event, both for SADC and for Seychelles.

Firstly, the withdrawal must be considered in the context of Seychelles' domestic political economy. By 2003, it was clear that the economy required substantive reform in order to wrench it out of balance of payments and foreign exchange crises. In an attempt to counter this negative trend, government institutionalised a home-grown macroeconomic reform programme in June/July 2003. Part of this process incorporated a review of all external government payments, including an internal cost-benefit analysis of membership of regional integration organisations. In short, the annual government financial contribution of \$200,000 for membership of SADC was deemed unsustainable in light of the perceived short- and medium-term benefits. On the other hand, an annual contribution of around \$60,000 to the Common Market for Eastern and Southern Africa (Comesa) was considered to be a more realistic financial commitment. It should be noted that Seychelles simultaneously an-

nounced its withdrawal from the Indian Ocean Rim-Association for Regional Co-operation (IOR-ARC).

However, the constraint of the financial costs of membership was not the only factor considered in the decision to withdraw from SADC. The particular constraints associated with being a small island developing state (SIDS) are increasingly being recognised by the international community. With a population of only 80,000, Seychelles is an island microstate and the smallest country in Africa. The corresponding pressure on human resources regarding international commitments is vast and unmanageable. The far-reaching and numerous agreements,

**Seychelles was in effect acting as a 'silent partner' in a wide array of SADC business.**

protocols and declarations (including revisions) undertaken within the SADC framework placed enormous strain on Seychelles government personnel, both to properly review their full implications and, where accepted, to carry out their final implementation. In contrast, legislative and other obligations under the Comesa framework are less onerous (although Seychelles has yet to integrate with Comesa's free trade area).

Similarly, due to the financial

costs and personnel hours required, the country was unable to participate effectively in all SADC sectoral workshops, conferences and meetings. In other words, from the outset, Seychelles was in effect acting as a 'silent partner' in a wide array of SADC business. Moreover, many of the most immediate concerns of SADC countries might be considered 'continental' in scope and are not always relevant to the particularities of African islands in general and Seychelles in particular. Comesa constitutes a less ambitious and more simplified regional integration framework and as such offered greater appeal to the Seychelles government when it realised that financial constraints were compelling it to choose between the two.

Despite all this, Seychelles did perceive a number of substantive benefits of SADC membership, in particular in the areas of peace and security; education and training; and the fisheries, tourism and health sectors. The sharing of experience and best practices, as well as the achievement of economies of scale and scope (for example, in tourism marketing), were all areas where tangible benefits may well have been forthcoming. Yet in the context of Seychelles' contemporary economic situation, perhaps the most important perceived benefit — increased inflows of foreign direct investment (FDI), particularly from South African investors — did not manifest any immediately quantifiable results.



## Quitting Comesa: Implications for Tanzania

This is not to suggest that the government did not acknowledge the medium- to long-term potential benefits of SADC membership. In fact, the opposition of the Seychelles Chamber of Commerce and Industry (SCCI) to withdrawal was based precisely on this perceived benefit. It is simply that the demands of short-term commitments and the lack of immediate financial benefits meant that government felt compelled to decide between the two major regional integration organisations. Despite objections from the SCCI, additional opposition to the withdrawal among civil society and private sector actors was limited, at least in public forums. (In fact, debate on the prospect of leaving SADC was primarily limited to cabinet and inner government circles.) This may be a consequence of the limited popular understanding of contemporary processes of regional integration, which is in turn perhaps a manifestation of Seychelles' physical isolation from continental Africa and the fact that many Seychellois do not identify themselves as 'African'.

Seychelles' withdrawal from SADC does not imply a total rejection of the process of regional integration. The government is taking the negotiation of Economic Partnership Agreements (EPA) with the European Union (EU) very seriously. As all members of the Indian Ocean Commission are also Comesa members (except France/Réunion), the commission has opted to undertake the EPA process under the aegis of the Comesa framework. Therefore, it is likely that Seychelles will continue to co-operate with SADC through the joint Comesa-SADC Task Force. In other words, Seychelles' relationship with SADC does not end here.



Liam Campling, P.hD Student, School of Oriental and African Studies, London (Formerly, Head of Programme/Lecturer in International Politics, University of Manchester Twinning Programme, Seychelles Polytechnic)

Tanzania was a founder member of the Common Market for Eastern and Southern Africa (Comesa) when it was formed in December 1994 to replace the former preferential trade area (PTA) that had existed since 1981.

Comesa (as defined by its treaty) was established as an organisation of free, independent, sovereign states co-operating to develop their natural and human resources for the good of their peoples. Comesa's main focus was the formation of a large economic and trading area to overcome trade barriers (i.e. all internal trade tariffs that individual states faced) and thus form a free trade area (FTA). With its 21 member states, a population of over 385 million and an annual import bill of around \$32 billion, Comesa has become a major market for both external and internal trade. Tanzania tendered notice to withdraw from Comesa on 2 September 1999 and ceased to be a member a year later.

Tanzania's decision to withdraw from Comesa, made by the government in late 1997, was based on a number reasons.

Firstly, steady economic co-operation within SADC and the East African Community (EAC) forced Tanzania to re-evaluate its multiple membership in the three regional co-operation entities. The objectives of all three organisations showed varying degrees of overlap. Comesa was seen to have the narrower focus of being merely a PTA. It thus lacked the apparent 'depth' of the other two organisations, whose objectives went much further to embrace political, social, infrastructural, research and industrial policy, among others.

Secondly, Tanzania's withdrawal was made necessary by the cost burden of membership of the three

organisations. Apart from Comesa's annual fees (about \$357,000 per member), there were the far greater costs of participation (travel, meetings etc.). Tanzania's membership in the three organisations thus brought with it problems of manageability and efficiency when pursuing similar objectives through parallel initiatives. There were unnecessary costs in terms of executive time spent rationalising the various and sometimes contradictory action plans arising from multiple memberships with considerable overlap in terms of policies, treaty obligations and regulations. Add to this the African, Caribbean and Pacific (ACP)/EU and World Trade Organisation (WTO) membership, together with bilateral treaties, and the limited human and financial resources of Tanzania became grossly overstretched.

Thirdly, accelerated co-operation within SADC and the EAC would offset the temporary losses in trade arising from withdrawing from Comesa. Approximately 80% of intra-African trade for Tanzania was with EAC and SADC countries. In any case, it was thought that Tanzania could enter into bilateral arrangements with any Comesa member wherever such an arrangement was thought to be mutually beneficial. These bilateral treaties would enable Tanzania to maintain her main markets, while keeping costs, in terms of membership fees, down.

After the withdrawal notice came into effect, Tanzania immediately lost all the rights and privileges it enjoyed by virtue of being a Comesa member state. As a result, goods originating in Tanzania were no longer eligible for Comesa trade preferences and were liable to full national rates of customs duty in all Comesa member states.

(Continued on the next page)





Therefore, the Comesa certificate of origin issued by Tanzania became null and void as far as Comesa trade preferences were concerned in all Comesa member states, thereby restoring the higher pre-Comesa tariffs, rendering Tanzania's regional exports uncompetitive.

Similarly, goods originating in Comesa members were not accorded Comesa trade preferences in Tanzania. Furthermore, Tanzania was no longer eligible to use Comesa transit facilities and instruments, namely the Comesa Customs Bond Guarantee Scheme and the Comesa carrier licence, making road haulage for Tanzania very cumbersome.

With respect to the Comesa carrier licence, it meant that a Tanzanian-licensed truck carrying goods to any Comesa members would not be allowed to load and carry any goods from within Comesa to any destination after offloading its cargo. Any Tanzanian-licensed truck violating this condition would be liable to penalties prescribed in the Comesa member where the offence is committed, which could include seizure and forfeiture of the vehicle.

However, according to the treaty that established Comesa, Article 191(3) states that 'The obligations assumed by the member states shall, to the extent necessary, survive the termination of membership of any member state.' On the strength of this sub-paragraph, Tanzania institutions remained members of various Comesa organs lie:

- the Advanced Cargo Information Systems projects;
- the Eastern and Southern African Trade and Development Bank (PTA Bank);
- the PTA Reinsurance Company;
- the Comesa Automated System for Customs Data (Asycuda);
- the African Trade Insurance Agency (ATI); and
- Comesa's telecommunications company (Comtel).

Remaining in the above-named organisations has been useful in terms of salvaging ongoing transactions of Tanzania companies and institutions such as insurance companies, banks, harbours and Comtel.

At the time Tanzania pulled out of Comesa, there was an expectation that trade volume loss would be compensated for through bilateral trade arrangements with key Comesa members. Nevertheless, there was reluctance on the part of Comesa members to enter into bilateral arrangements with Tanzania, as this was construed to be a backdoor manoeuvre. It would be tantamount to according membership privileges to a non-member and, in this case, a non-member who had recently opted out of the organisation.

As a result, Tanzania's exports within Comesa fell from \$82.3 million in 1997 to \$66.1 million in 2000. For 2003, Tanzania's exports into Comesa reached \$159.5 million, but would have been higher had Tanzania remained within the organisation.

Current thinking is that Tanzania should co-operate with Comesa to effect an agreement on the following points:

- a common external tariff applying to SADC, EAC and Comesa; and
- the harmonisation of rule of origin and customs documentation such that there would be no contradictory regulations among the three blocs.

Discussions at the technical level are now being carried out to reach a common agreement among the three blocs. Successful economic partnership agreement (EPA) negotiations are expected to restore normality, resulting in unimpeded export/import flows. (S)

Samuel Sitta, Executive Director, Tanzania Investment Centre

## SADC Protocols: Achievements and the Way Forward

The SADC Treaty provides for co-operation in various areas and for the conclusion of protocols on co-operation in each area. These protocols bind only the member states that ratify or accede to them. The SADC Treaty, as amended in 2001, identified the following 'core areas' of integration: trade, industry finance and investment (TIFI); infrastructure and services (I&S); food, agriculture and natural resources (FANR); and social and human development and social programmes (SHDSP).

However, the treaty, and the subsequent institutional reforms, failed to specify mechanisms for ensuring that all member states uniformly implement protocols and other legal instruments in these core areas. This article surveys the record on the conclusion, ratification and accession to protocols and other legal instruments, and suggests that future SADC reforms should consider identifying 'core legal instruments' that every member state is required to implement as a precondition for membership. Effectively, the article suggests that any such reforms will be incomplete without the adoption of a variant of the single-undertaking rule (in terms of negotiations, it means that nothing is agreed until everything is agreed) attached to World Trade Organisation (WTO) membership.

The table below shows all the SADC legal instruments as at 12 October 2004, classified under each core area of integration. Excluding the treaty and the agreement amending it, 34 legal instruments exist in the various areas. These comprise 23 protocols, four declarations, three memorandums of understanding (MOUs), two charters, one agreement and one





defence pact. In SADC treaty practice, ratification and/or accession is required only for the protocols, not for the other legal instruments. The protocols enter into force upon acceptance by the specified number of signatories. Given how slowly some member states ratify protocols, obligations on core areas of integration could be better secured if incorporated in the legal instruments not requiring ratification. MOUs, charters and declarations do not impose final, legally binding commitments, but often reflect preliminary obligations, pending the conclusion of a protocol. This makes it imperative that the application of key protocols should be secured through a single undertaking rule.

## **Trade, Industry, Finance and Investment**

The table identifies three protocols and three MOUs dealing with co-operation within the TIFI core area. All the relevant protocols and legal instruments are now in force, but the Democratic Republic of Congo (DRC) is yet to sign or accede to the Protocols on Trade, and to MOUs on Co-operation in Standardisation, Taxation and Macro-economic Convergence. Angola only ratified the Trade Protocols in 2003, three years after other member states. Angola, DRC and Swaziland are yet to ratify or accede to the Protocol on Mining. Swaziland is yet to sign the MOU on Standardisation, which covers issues relevant to the Trade Protocols, which it has already ratified. Zambia is yet to sign the MOU on Macro economic Convergence, and Mozambique the MOU on Taxation. The association of trade with industry, finance and investment suggests that trade liberalisation and market integration are not ends in themselves. They are important integration activities partly because of their potential for attracting investment required for equitable industrial growth and development. These wider objectives could be compromised if some member states opt

out of the total package of responsibilities in the TIFI core area.

## **Infrastructure and Services**

Three protocols, one charter and one declaration fall within the I&S core area. Because of their relevance to trade, the ICT Declaration and the Protocols on Transport, Energy and Tourism would be prime candidates for a single undertaking device. DRC has not acceded to any of the protocols in this core area. Angola, Malawi and Zambia are yet to accede to the Protocol on the Development of Tourism. Effective liberalisation of tourism services might require harmonised policies and regulations, and this will be complicated if countries committed to trade liberalisation are not committed to the protocol under which the harmonised policies and regulations will be developed.

## **Food, Agriculture and Natural Resources**

Five protocols fall within the FANR core area. The Protocol on Forestry has not yet received sufficient ratifications to enter into force. Because of the importance to most members of the Protocols on Shared Watercourses and on Wildlife Conservation, they would be candidates for a single undertaking rule. Although DRC has signed the Protocols on Wildlife, Fisheries and Forestry, it has not acceded to any of the protocols in the FANR core area. Angola is also yet to accede to the Protocols on Shared Watercourses, Wildlife Conservation and Forestry. Zimbabwe, one of whose borders is a key regional watercourse (the Zambezi), acceded to the original protocol, but not yet to its revised version. Zimbabwe is also yet to accede to the Wildlife Protocol, which would affect transboundary national parks and conservation areas in which it is involved with other member states that are party to this protocol. Another reason for encouraging all SADC member states to accede to the protocols in the FANR core area is that they are related to

trade liberalisation and the vexed issue of the co-existence of liberal trade disciplines with sustainable conservation and exploitation of natural resources.

## **Social and Human Development and Special Programmes**

There are eight protocols, three declarations and one charter in the SH-DSP core area. Probably only three protocols and two declarations are critical to SADC integration and candidates for a single undertaking device. These are the Declarations on Gender, and Development, and the Protocols on Education, Health and Culture, Information and Sport. The Declarations on Gender should be enforced in all member states. The Protocol on Culture is not yet in force and is yet to be ratified by Angola, DRC, Swaziland, Zambia and Zimbabwe. This has held up the uniform observation of important trade-related disciplines on copyright and neighbouring rights provided for in the protocol. The Protocol on Health is in force, but it is yet to be acceded to by Angola, DRC, Swaziland and Zambia. It deals with a common SADC approach on importation of medicines. The Protocol on Education and Training, also in force, but not yet acceded to by Angola and DRC, will be relevant to trade only if SADC decides to pursue the objectives of the protocol through liberalisation of trade in educational services.

## **Politics, Defence and Security, and Dispute Settlement and Other Legal Means**

The table also identifies two other important areas of SADC co-operation, which are not designated as core areas, i.e. politics, defence and security co-operation, and dispute settlement and legal affairs. Given SADC's origins, and the prominence given to political issues in the ongoing restructuring, the Protocol on Politics, Defence and Security Co-operation

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should be among the mandatory instruments on SADC integration. It is now in force, but has not been acceded to by Angola, DRC, Swaziland and Zambia. Angola has also not signed the SADC Defence Pact, the second key instrument on security. This, so far, has only been ratified by Botswana, Mauritius, Namibia and Zimbabwe. There is probably no sufficient security threat in the region to suggest this should be a compulsory instrument.

Three protocols and one agreement deal with dispute settlement and other legal issues. The instruments that would be candidates for compulsory acceptance and application are already in force. The Protocol on Immunities and Privileges is accepted by every country upon accession to the SADC Treaty and it might not therefore be necessary to include this under a single undertaking rule.

The Protocol on the Tribunal and Rules of Procedure, and the agreement amending it, have also been accepted by all member states and will be applicable to dispute settlement throughout SADC. This was achieved through an ingenious amendment to the SADC Treaty that effectively com-

pels member states to accept SADC dispute settlement procedures. The Agreement Amending the SADC Treaty (2001) amended Article 16(2) to make the protocol dealing with the tribunal an integral part of the treaty. As a result, subsequent amendments to the protocol and the rules of procedure, like amendments to the treaty, enter into force upon adoption by three-quarters of the Summit, without the need for separate ratification by member states.

The overall picture that emerges is that the process of ratification has improved considerably. Out of the 34 instruments, only seven protocols and the Defence Pact have not yet received the required number of ratifications or accessions to enter into force. Most of the instruments sufficiently important for mandatory application under a single undertaking rule are now in force. Among those not yet in force, only the Protocols on Forestry, Corruption, and Culture, Information and Sports could be described as vitally relevant to SADC's objectives. Thus, it would appear that the main reason for recommending the introduction of a single undertaking rule would be to ensure uniformity in the adoption

and application of SADC legal obligations, and not just their speedier ratification. The table suggests that Mauritius and Botswana, probably because of their constitutional regimes, have been very diligent in ratifying and acceding to SADC legal instruments. DRC, and Angola before it improved its uptake after assuming the SADC chair in 2002, have been delinquent, as was Seychelles before it withdrew from SADC. The principle of variable geometry in SADC treaty practice might entail one pace of integration for DRC, and possibly Angola, and a faster pace for the rest. But DRC is now so far behind in the assumption of legal obligations in all core areas that it is not likely to improve in the near future. Like Seychelles, DRC might therefore have to consider withdrawing from SADC. The poor record of participation in SADC legal obligations by these two countries may have taught SADC a lesson. Madagascar's admission will be conditional on acceptance and implementation of all those instruments identified as important in the core areas of integration. (☺)

Clement Ng'ong'ola, Professor, Department of Law, University of Botswana

## STATUS OF SADC PROTOCOLS AND LEGAL INSTRUMENTS, AS AT 12 OCTOBER 2004

Protocol/instrument	Tabled for signature	Signatures	Ratifications/accessions	Entry into force	Outstanding signatures/ratifications/accessions
SADC Treaty	August 1992	10	14	30 September 1993	None
Agreement Amending the SADC Treaty	August 2001	14	14	14 August 2001	None
<b>Trade Industry Finance and Investment</b>					
Protocol on Trade	August 1996	12	12	25 January 2000	DRC to accede
Amendment Protocol on Trade	August 2000	14	12	7 August 2000	DRC to implement
Protocol on Mining	September 1997	12	10	10 February 2000	Angola, DRC & Swaziland to accede
MOU on Cooperation in Sqaam	November 1999	11	11	16 July 2000	DRC & Swaziland to sign
MOU on Macroeconomic Convergence	September 2002	12	12	8 August 2002	DRC & Zambia to sign
MOU on Taxation	September 2002	12	12	8 September 2002	DRC & Mozambique to sign
<b>Infrastructure and Services</b>					
Protocol on Transport, Communications & Meteorology	August 1996	12	12	6 July 1998	DRC to accede
Protocol on Energy	August 1996	12	12	17 April 1998	DRC to accede



Protocol/instrument	Tabled for signature	Signatures	Ratifications/ accessions	Entry into force	Outstanding signatures/ ratifications/ accessions
Protocol on Tourism	September 1998	11	9	26 November 2002	Angola, DRC, Malawi & Zambia to accede
Regional Tourism Organisation of Southern Africa Charter	September 1997	12	12	7 September 1997	DRC to accede
Declaration on CT	August 2001	14	14	14 August 2001	None
<b>Food, Agriculture and Natural Resources</b>					
Protocol on Shared Watercourse Systems	August 1995	11	10	28 September 1998	Angola & DRC to accede
Revised Protocol on Shared Watercourses	August 2000	13	10	22 September 2003	Angola, DRC & Zimbabwe to accede
Protocol on Wildlife Conservation	August 1999	14	9	30 November 2003	Angola, DRC, Swaziland & Zimbabwe to accede
Protocol on Fisheries	August 2001	14	6	8 August 2003	DRC, Swaziland, & Zimbabwe to accede
Protocol on Forestry	October 2002	11	4		Botswana, Mozambique & Namibia to sign; Angola, Botswana, DRC, Malawi, Mozambique, Namibia, Swaziland, Zambia & Zimbabwe to ratify
<b>Social and Human Development and Special Programmes</b>					
Protocol on Illicit Drugs	August 1996	12	12	20 March 1999	Angola & DRC to accede
Protocol on Education & Training	September 1997	12	11	31 July 2000	Angola & DRC to accede
Protocol on Health	August 1999	14	9	14 August 2004	Angola, DRC, Swaziland & Zambia to ratify
Protocol on Culture, Information & Sports	August 2001	14	8		Angola, DRC, Swaziland, Zambia & Zimbabwe to ratify
Protocol on Control Of Firearms	August 2001	14	9	8 November 2004	Angola, DRC, Swaziland & Zimbabwe to ratify
Protocol against Corruption	August 2001	14	8		Angola, DRC, Mozambique, Namibia, & Swaziland to ratify
Protocol on Extradition	October 2002	13	6		Angola, Botswana, DRC, Malawi, Mozambique, Namibia, Swaziland & Zimbabwe to ratify
Protocol on Mutual Assistance in Criminal Matters	October 2002	13	3		Angola, Botswana, DRC, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia & Zimbabwe to ratify
Declaration on Gender & Development	September 1997	12	12	8 September 1997	DRC & Seychelles did not sign
Addendum to Declaration on Gender & Development	September 1998	14	14	18 September 1998	None
Declaration on Productivity	August 1999	14	14	18 September 1999	None
Charter of Fundamental Social Rights	August 2003	11	11	26 August 2003	Angola & Botswana to sign; other member states not required to ratify



Protocol/instrument	Tabled For signature	Signatures	Ratifications/ accessions	Entry into force	Outstanding signatures/ ratifications/ accessions
<b>Politics, Defence and Security</b>					
Protocol on Politics, Defence & Security Cooperation	August 2001	14	9	2 March 2004	Angola, DRC, Swaziland, & Zambia to accede
SADC Mutual Defence Pact	August 2003	12	4		Angola, DRC, Lesotho, Malawi, Mozambique, South Africa, Swaziland, Tanzania & Zambia to ratify
<b>Dispute Settlement and Other Legal Issues</b>					
Protocol on Immunities & Privileges	August 1992	10	14	30 August 1993	None
Protocol on Legal Affairs	August 2000	13	6		Angola, DRC, Mozambique, South Africa, Swaziland, Zambia & Zimbabwe to ratify
Protocol on the Tribunal and Rules of Procedure	August 2000	13	4	14 August 2001	Botswana, Lesotho, Mauritius & Namibia ratified, but ratifications not required from other member states
Agreement Amending the Protocol on the Tribunal	October 2002	13	-	3 October 2002	Mozambique to sign; other member states not required to ratify or accede

**Notes:**

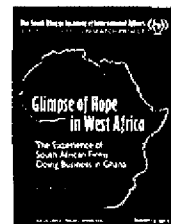
1. The allocation of the above instruments to various core areas of SADC integration is the author's, derived from descriptions of the objectives of the aims and objectives of the Directorates. This may differ from the actual or official allocation of responsibilities in the SADC Secretariat.
2. After its withdrawal from the organisation in 2004, the table has been edited to exclude references to the Seychelles. But Seychelles' record of participation in SADC legal instruments was as poor as that of the DRC.

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