



tralac | trade law centre

Regional integration in SADC: retreating or forging ahead?

by Paul Kalenga

WORKING PAPER

tralac Working Paper
No. S12WP08/2012
September 2012



Please consider the environment before printing this publication

www.tralac.org | info@tralac.org | [Twitter @tradelawcentre](https://twitter.com/tradelawcentre) | Copyright © tralac, 2012.

Readers are encouraged to quote and reproduce this material for educational, non-profit purposes, provided the source is acknowledged. All views and opinions expressed remain solely those of the authors and do not purport to reflect the views of tralac.

Copyright © tralac, 2012.

Readers are encouraged to quote and reproduce this material for educational, non-profit purposes, provided the source is acknowledged. All views and opinions expressed remain solely those of the authors and do not purport to reflect the views of tralac

This publication should be cited as: Kalenga, P. 2012.

Regional integration in SADC: retreating or forging ahead? Stellenbosch: tralac.

This publication has been financed by the Swedish International Development Cooperation Agency, Sida. Sida does not necessarily share the views expressed in this material. Responsibility for its contents rests entirely with the author.



www.tralac.org | info@tralac.org | Twitter [@tradelawcentre](https://twitter.com/tradelawcentre)

*Readers are encouraged to quote and reproduce this material for educational, non-profit purposes, provided the source is acknowledged. All views and opinions expressed remain solely those of the authors and do not purport to reflect the views of **tralac**.*

1. Introduction

Regional economic integration remains a viable development strategy for Africa, a continent characterised by small economies and markets. Integration of these markets can facilitate efficiencies in production, investment and trade, thus enhancing development outcomes. The Southern African Development Community (SADC) has adopted a development integration approach which seeks to address production, infrastructure and efficiency barriers to growth and development. In the area of trade and economic liberalisation, the Regional Indicative Strategic Development Plan (RISDP) articulates the roadmap for SADC integration through the establishment of a free trade area (FTA) by 2008, a customs union in 2010, a common market in 2015, a monetary union in 2016, and an economic union with a single currency in 2018.

2012 marks two important milestones in SADC – the completion of member states’ tariff phase-down schedules to reach a status of an effective free trade area and the current review of the RISDP. This paper provides a status of trade integration in SADC, highlighting achievements, challenges and constraints. Understanding constraints facing this process can provide insights as to whether the region should forge ahead with its approach to economic integration or retreat and evaluate the process with a view to define what could be its immediate priorities. The current review of the RISDP should provide an opportunity to appraise and inform the process moving forward, particularly the region’s advancement towards its envisaged integration milestones.

Generally, SADC has made significant progress in liberalising trade. Most SADC countries have reduced and eliminated tariffs and quotas under the Protocol on Trade since 2000. However, the protocol extends beyond this *shallow integration* to include issues which also regulate the business environment such as customs and trade facilitation, product standards and technical regulations, competition policy, intellectual property rights, investment, and services. It is in this *deep integration* where progress lags behind. Two critical constraints seem evident. First, it is not very clear whether all member states remain committed to integration in such behind-the-border issues. Second, advancing on such regulatory integration appears to be constrained by overlapping membership of the majority of SADC countries in other regional integration initiatives, i.e., the famous ‘spaghetti-bowl’ effect. Current negotiations to establish a common trade regime involving countries belonging

to the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and SADC, i.e. the Tripartite FTA¹, can be an important avenue for addressing such constraints.

The RISDP sets out a policy integration plan which has overtones of the European Union (EU). Such a process requires that countries agree to common policies involving the surrender of some of the national sovereignty on policy making and implementation. Experience gained in negotiating various SADC protocols suggests that most member states are hesitant in ‘sharing sovereignty’ required for such policy integration.² Various protocols and instruments that have been adopted remain constrained by inadequate implementation due to lack of compliance. This also raises the question of the appropriateness of the choice of partners and the legal and institutional context established to advance deeper levels of integration.

This review paper concludes that there is a definite case for concentrating efforts to effectively implement existing protocols as an immediate priority for SADC, including effective operation of the FTA. With respect to other integration milestones, it can be argued that the notion of linearity suggests that it is only possible to move from one stage to the next if the previous stage has been completed. Therefore, timing, pace and appropriate sequencing are important in advancing the regional economic integration agenda. However, given existing pitfalls in the choice of partners due to SADC’s historical legacy, the principle of ‘variable geometry’ can be employed to guide the process.³ The current review of the RISDP is therefore an important opportunity for SADC to investigate these challenges and constraints and to agree on ways to tackle them. To be meaningful, the review should encourage a broader inclusive debate on these issues with a view to mapping out a strategic approach for regional integration as an appropriate development strategy for Southern Africa.

¹ The Tripartite FTA negotiations were launched on 12 June 2011 by the heads of state and/or government of the countries that belong to COMESA, EAC and SADC. They signed a declaration that commits them to conclude a trade in goods agreement and movement of business persons within three years (by the end of 2014) and thereafter to negotiate a trade in services and other trade-related issues during the second phase.

² For example, the Protocol on the Facilitation of Movement of Persons has not been implemented because it is not yet ratified by the required two-thirds majority of member states.

³ Variable geometry is a strategy that allows negotiations of one (or more) particular issue to lead to an agreement that is not binding on all of the parties and to agree to accept subsequently any other country to join the group on the same terms. Two European Union examples are the Schengen Agreement and the Economic and Monetary Union (EMU).

2. From SADCC to SADC: pitfalls in the legal and institutional framework

The origin of SADC can be traced to April 1980 when the then nine independent states of Southern Africa – Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe – met at summit level in Lusaka, Zambia, and adopted the Lusaka Declaration entitled ‘Southern Africa: Toward Economic Liberation’ under the Southern African Development Coordination Conference (SADCC). They also adopted a functional regional cooperation approach aimed at developing regional linkages in a number of economic sectors⁴, primarily to reduce economic dependence on the then apartheid South Africa. A decentralised structure was adopted which allocated different sectors to each member state. As the number of member states increased, the areas of cooperation also expanded. It is important to note that this approach to regional cooperation did not require a strong legal and institutional framework for policy coordination and harmonisation.

The 1980s witnessed movement towards regional economic blocs in search of beneficial economies of scale provided by large markets. European success towards market enlargement and its associated benefits had largely inspired this development. At the continental level, African states under the auspices of the Organisation of African Unity (OAU) resolved to intensify efforts to promote closer economic relations by signing the Abuja Treaty in 1991, establishing the African Economic Community (AEC). The Abuja Treaty recognised eight Regional Economic Communities (RECs), including SADC, as building blocks for the AEC.

SADC heads of state and/or government met in Windhoek in August 1992 and signed a treaty transforming SADCC from a loose association into a legally binding arrangement – the SADC Treaty. The purpose of such a transformation was to promote deeper economic cooperation and integration to help address production, infrastructure and efficiency barriers to growth and development. This ‘development integration’ approach was formalised in 2003 as the RISDP.

A critical challenge arising from this process is that the transformation from SADCC to SADC required a strong legal and institutional framework of community building and integration, as it presupposes the need to share some sovereignty on policy issues and to entrust oversight and enforcement of integration commitments to supranational institutions. The restructuring of SADC institutions that

⁴ Initial priority sectors were transport and communications, food and agriculture, industry, manpower development, and energy.

accompanied this transformation fell short of achieving the required supranationality endowed with far-reaching decision-making competencies. Several analysts have argued that the success of European integration could largely be explained by the existence of an effective legal and institutional framework that ensured that member states complied with their obligations. This remains insufficient in the SADC context. Current debate in SADC appears to indicate that institutional integration which entails a reduction in national sovereignty remains a contested issue.

It is also inadequate to create 'regional' institutions which are not empowered to drive the policy integration process thereby reducing their credibility. The SADC Treaty provides for a number of institutions to oversee, implement and coordinate the regional integration agenda:

- The **SADC Secretariat** serves as the principal executive institution of SADC; yet it has no real power to enforce implementation of SADC policies and programmes by member states.
- The **SADC Tribunal**, which should be constituted to ensure adherence to and the proper interpretation of the provisions of the SADC Treaty and subsidiary instruments as well as to adjudicate upon such disputes, was suspended in August 2010. This has cast a further shadow on its legal autonomy to promote regional integration.
- The **SADC Parliamentary Forum** created in terms of Article 9(2) of the SADC Treaty has no legislative powers; a number of SADC protocols are not being implemented and some are not ratified by the required two-thirds majority of the member states despite vast amount of resources utilised to develop them.

Prospects for a deeper regional integration in SADC as envisaged in the RISDP remain relatively bleak in the context of such legal and institutional constraints. Furthermore, the transformation from SADC to SADC has been accompanied by a growing membership from nine (9) original members to fifteen (15), resulting in increased economic diversities and expanded regional economic imbalances. This poses critical challenges to the efficacy of institutional integration envisaged by the RISDP in the absence of some targeted adjustment interventions and a strong rules-based governance framework.

Another constraint to deeper regional integration in SADC is the problem of overlapping membership of most members in other regional economic integration initiatives. Despite being contracting parties to the SADC Treaty, some members have continued to accede to other regional

arrangements with similar deeper integration milestones. This institutional reality has proved to be a critical obstacle to regional economic integration efforts and its persistence will continue to influence the inability of SADC to achieve further integration milestones.

All these challenges and constraints make the case for an *inclusive rethinking* of the SADC regional integration approach stronger. Such a rethinking does not necessarily mean abandoning the RISDP aspirations but should suggest the need to pose pertinent questions. Are the necessary preconditions for institutional integration in place? Is there an optimal sequencing of integration? Is the choice of integrating partners appropriate for SADC? It appears that a ‘variable geometry’ approach to regional integration may be a policy option for SADC rather than the current approach of moving together as ‘one-size-fits-all’. The expected review of the RISDP in 2012 is therefore an important opportunity to review the legal and institutional framework for economic integration in Southern Africa.

3. Trade and economic liberalisation in SADC

Trade and economic liberalisation is one of the highest priority intervention areas of SADC. Within the trade, industry, finance and investment (TIFI) cluster, three protocols have been adopted:

- The Protocol on Trade aims to liberalise trade in goods and services with a view to creating an FTA in SADC; to ensure efficient production within SADC reflecting the current and dynamic comparative advantages of member states; to contribute towards the improvement of the climate for domestic, cross-border and foreign investment; and to enhance the economic development, diversification and industrialisation of the region. The protocol entered into force on 25 January 2000.
- The Protocol on Finance and Investment aims to facilitate the development of financial and capital markets leading to monetary integration in the region; to encourage movement towards macroeconomic stability and convergence through prudent fiscal and monetary policies; to promote the development of sound investment policies; to facilitate and stimulate investment flows, encouraging savings, technology transfer and investment in the region. The protocol entered into force in April 2010.
- The Protocol on Mining aims to facilitate the development of an economically, socially, and environmentally sustainable regional mining sector and to ensure improvement in living

standards for the people of the region through development of the region's abundant mineral resources. The protocol entered into force in February 2000.

3.1 Progress towards implementation of the Protocol on Trade

The SADC Protocol on Trade is a legal instrument for intraregional trade liberalisation. Article 3 of the protocol commits members to eliminate tariffs and non-tariff barriers (NTBs) to intra-SADC trade within a time frame of eight (8) years from its entry into force. The protocol entered into force in January 2000 after it had been ratified by the required two-thirds majority of the member states. Angola, the Democratic Republic of Congo (DRC) and Seychelles⁵ have not acceded to the Trade Protocol. Relative progress has been recorded in the sphere of the reduction of tariff barriers. However, market access conditions are not only determined by tariffs. NTBs, in a broader sense, remain unacceptably high and continue to undermine the potential gains to be derived from tariff liberalisation.

3.1.1 Tariff liberalisation

The phased mechanism to reduce tariffs commenced in 2001. Minimum conditions for the FTA were attained in 2008 when 85% of intraregional trade amongst the participating states attained zero duty. Maximum tariff liberalisation is expected to be achieved in 2012 when the tariff phase-down process for sensitive products would have been completed. In line with the principle of asymmetry, SACU countries committed themselves to complete their reductions by 2008, whilst Mozambique would complete its tariff phase-down with respect to imports from South Africa in 2015.

⁵ Seychelles has submitted a tariff offer which is currently under negotiation by the SADC Trade Negotiation Forum (TNF).

Significant progress was achieved towards the establishment of a SADC FTA in 2008, when the majority of the participating members reached the required level of tariff liberalisation. A recent audit on the implementation of the Trade Protocol found the following⁶:

- SACU countries completed their tariff liberalisation commitments under the SADC FTA in 2008.⁷
- Madagascar, Mauritius, Zambia and Mozambique remain on course with their tariff phase-downs, thereby suggesting that they can complete the process by end of 2012, except with Mozambique whose completion with respect to South Africa will be in 2015.
- Malawi has been falling behind in implementing its tariff phase-down schedule to such an extent that by January 2012 it had only liberalised about 46% of its tariff offer. However, recently Malawi has confirmed being on schedule with respect to its tariff phase-down offer to the rest of SADC, except to South Africa where it stood at around 86%.
- Tanzania has completed its tariff phase-down with the exception of sugar and specific categories of paper products on which duty has been reinstated and derogation is being sought.
- Zimbabwe was granted derogation from implementing its Category 'C' tariff reductions until 2012 and to be completed by 2014. Concerns have been raised by some member states that Zimbabwe has introduced a surtax of 25% on 107 tariff items since 1 January 2012.⁸

In most circumstances, the difficulties being experienced by some countries can be attributed to industrial competitiveness and customs revenue challenges. Although the protocol has provisions to deal with these challenges through application of safeguard measures, infant industry protection or balance of payments difficulties, member states have opted to invoke Article 3 (1) (c) of the Protocol on Trade.⁹ This article has the potential to undermine the overall objective of the Trade Protocol as it can be used to reverse progress attained in tariff liberalisation.

⁶ See the 2011 Audit of the implementation of the SADC Protocol on Trade by the USAID SA Trade Hub.

⁷ These are Botswana, Lesotho, Namibia, South Africa and Swaziland. As members of a customs union they had a common tariff offer to the rest of the SADC member states and initially agreed to fast-track their tariff reductions.

⁸ In fact, the SADC Protocol on Trade provides for the elimination of import duties which are defined in Article 1 of the protocol to mean: 'Customs duties or **charges of equivalent effect** imposed on, or in connection with, the importation of goods consigned from any Member State to a consignee in another Member State'.

⁹ Article 3 (1) (c) of the Protocol on Trade states that 'Member States which consider they may be or have been adversely affected by removal of tariffs and non-tariff barriers (NTBs) to trade may, upon application to CMT, be granted a grace

3.1.2 Rules of origin

Since the negotiations of the SADC Protocol on Trade, rules of origin have been a bone of contention. SADC rules of origin have been widely regarded by many stakeholders in the region as being complex and contributing to the low usage of SADC preferences in some products of export interests. Initially, SADC trade negotiators agreed on a simple and transparent set of rules. These rules were similar to those that existed in the COMESA FTA regime, which today are considered by many commentators as less trade restrictive than those of SADC. It appears that a trade-off between substantial tariff liberalisation and restrictive rules of origin became a necessary outcome during the SADC FTA negotiations. The result was restrictive product-specific rules which were ostensibly promoted as a tool for regional industrial development.

The Mid-Term Review (MTR) of the SADC Protocol on Trade conducted in 2004 revealed that the SADC rules of origin were not supportive to the enhancement of intraregional trade and competitiveness. The MTR called for the reform of the SADC rules of origin regime towards less restrictiveness and simplicity.¹⁰ A number of rules were reviewed which made them less restrictive, such as by lowering the threshold of regional value addition or raising permissible levels of imported inputs¹¹.

However, a stalemate still exists regarding rules of origin on garments and textiles requiring a double-stage transformation. An arrangement which provided a special dispensation allowing for single stage transformation for textile and clothing exports from SADC's least developed members, namely Malawi, Mozambique, Tanzania and Zambia (the MMTZ arrangement) expired in 2009. Some members (such as Malawi) have reportedly suffered negative effects after the MMTZ expiry resulting in the closure of their industries.¹² Most member states still consider the yarn-forward rule for garments as an unnecessarily costly impediment to intra-SADC trade. SADC member states have been successful in having a single transformation rule accepted in the negotiations of the Economic Partnership Agreements (EPAs) with the European Union (EU). Such rules are also flexible in the context of the African Growth and Opportunity Act (AGOA), which have been credited with

period to afford them additional time for the elimination of tariffs and NTBs. CMT shall elaborate appropriate criteria for the consideration of such applications'.

¹⁰ See the Mid-Term Review of the SADC Protocol on Trade (2005).

¹¹ See the 2011 audit of the implementation of the SADC Protocol on Trade by the USAID SA Trade Hub.

¹² See <http://www.trademarksa.org/news/customs-trade>.

substantial expansion of clothing exports from some African countries to the United States (US).¹³ It is rather unfortunate that they cannot agree to the same rule amongst themselves.

Wheat flour continues to be traded on non-preferential basis (i.e. outside the SADC FTA regime) as no rule could be agreed upon. There also remain a few problems in processed foods sectors (such as blended teas, coffee and mixtures of spices), where local content requirements are likely to continue to restrict trade.¹⁴ Rules of origin still remain an unresolved issue among SADC member states. As SADC rules of origin are different from those applicable in COMESA and EAC, their negotiations in the context of the Tripartite FTA is likely to pose a formidable challenge.

3.1.3 Other non-tariff liberalising commitments

The SADC Trade Protocol provides for a number of trade liberalising commitments beyond the reduction and elimination of tariffs. These are indicative of SADC's objective of 'deep integration' which addresses regulatory barriers to intraregional trade through harmonisation and cooperation.

- Article 6 of the SADC Trade Protocol requires all member states to adopt and implement policies to eliminate existing NTBs and to refrain from imposing any new NTBs on intra-SADC trade.
- Article 7 prohibits member states to apply any new *quantitative restrictions* and phase out the existing restrictions on imports of goods originating in member states, except in specified circumstances. Quotas can only be applied provided that the tariff rate under such a quota system is more favourable than the rate applied under the protocol.
- Article 8 prohibits member states to apply any *quantitative restrictions on exports or export duties* to any other member state, except under specified circumstances.

Most member states continue to violate the above provisions as evidenced by complaints reported on the online web-based mechanism which has been developed to report, monitor and eliminate NTBs as part of the COMESA-EAC-SADC Tripartite Coordination Mechanism.¹⁵ Analysis of the complaints submitted onto the online system suggests that provisions on eliminating non-tariff barriers to trade, such as quantitative restrictions on imports and exports, export duties and

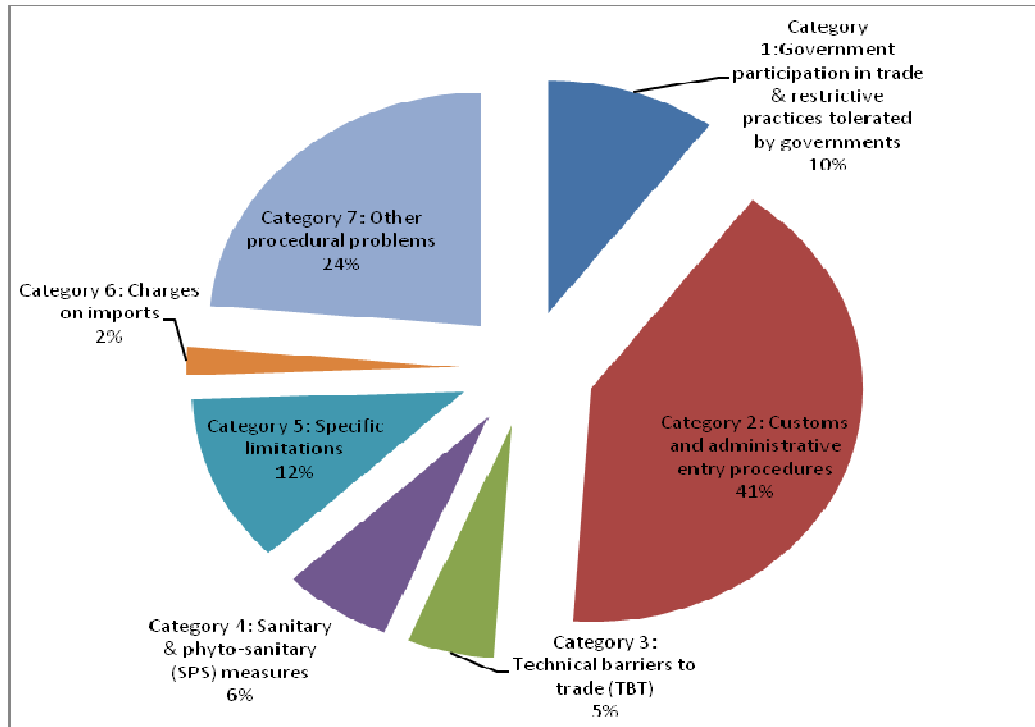
¹³ See <http://qed.econ.queensu.ca/faculty/flatters/writing>.

¹⁴ See SADC Secretariat (2012).

¹⁵ See <http://www.tradebarriers.org>.

restrictions, import and export bans, seasonal imports bans, and so forth, continue to be the main impediment to intraregional trade in the COMESA-EAC-SADC region. Chart 1 below provides a summary of reported NTBs per categories.

Chart 1: Overview of reported NTBs according to the agreed categories



Source: Author's analysis from www.tradebarriers.org.

Category 5 that deals with specific limitations entails the following barriers: quantitative restrictions, export taxes, embargoes, prohibitions, quantitative safeguard measures, etc. Although most of these measures are policy-induced, they are prohibited by the SADC Trade Protocol.

3.1.4 Trade facilitation

In a narrow sense, trade facilitation concerns the movement of goods in cross-border trade. The SADC Trade Protocol contains the following provisions which relate to trade facilitation:

- Article 13 – cooperation on customs matters (specified in Annex II)
- Article 14 – trade facilitation (including simplification and harmonisation of trade documentation and procedures (specified in Annex III)
- Article 15 – transit trade (specified in Annex IV).

Annex II specifically noted that divergence between national customs laws and procedures can hamper intra-SADC trade. Member states have committed themselves to take appropriate measures to simplify and harmonise customs laws and procedures. Annex III recognises that cumbersome trade documentation and procedures can be a barrier to intra-community trade in goods and services. Member states have committed themselves to adopt internationally accepted standards and guidelines for facilitating trade documentation and procedures. Under Annex IV of the protocol, member states have undertaken to grant all transit traffic freedom to traverse their respective territories.

Not much analytical work has been done on the extent to which these commitments are being implemented. Evidence from the Tripartite NTB mechanism (see Chart 1 in this paper) suggests that 41% of the complaints received are related to customs and administrative entry procedures. The Customs Audit undertaken by the secretariat in 2011 also revealed that not all member states are implementing the agreed customs instruments.¹⁶ While efforts by customs administrations to reform and modernise procedures and processes continue, there is a need to complement the process with adherence to obligations under the protocol beyond mere best endeavour approaches. Trade facilitation is critical to the advancement of the region's market integration agenda and, as such, it should become an urgent priority in SADC.

3.1.5 Standards and technical regulations

Member states have also assumed obligations in the area of standards and technical regulations. Article 16 commits member states to base their sanitary and phyto-sanitary (SPS) measures on international standards, guidelines and recommendations, so as to harmonise SPS measures for agricultural and livestock production. In addition, they undertook, upon request, to enter into consultation with the aim of achieving agreements on recognition of the equivalence of specific SPS measures.

Article 17 further commits member states to use relevant international standards as a basis for standards-related measures. Member states have also undertaken to accept as equivalent technical regulations (TBT) of each other, even if these regulations differ from their own, provided that they adequately fulfil the objectives of their regulations. These also extend to conformity assessment

¹⁶ SADC Secretariat Customs Audit (2011).

procedures. Recently, member states have adopted annexes on TBT and SPS establishing modalities of cooperation in the implementation of a regional technical regulatory framework and SPS measures respectively. It appears that these annexes are yet to be domesticated in national regimes.

As in the case of non-tariff related commitments, not much analytical work has been done to assess the progress in implementation. Again, evidence from the Tripartite NTB mechanism (see Chart 1 in this paper) suggests that around 11% of the complaints received relate to TBT and SPS measures. A number of initiatives are, however, being undertaken to develop the regional standardisation, quality assurance, accreditation and metrology (SQAM) infrastructure. For example, a regional accreditation body – the SADC Accreditation Service (SADCAS) – was established in Botswana in 2009 to offer accreditation in the areas of testing, calibration, certification and inspection.

3.1.6 Trade in services

Under Article 23 of the Protocol on Trade, member states have recognised the importance of trade in services for the development of the economies of SADC economies and have committed themselves to adopt policies and implement measures in accordance with their obligations in terms of the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS), with a view to liberalising their services sector.

Until now, services liberalisation has not received much attention in the SADC market integration process.¹⁷ In 2009 trade ministers approved a Draft Framework Protocol on Trade in Services whose objective is to progressively liberalise intraregional trade in services. Negotiations for liberalisation of trade in services are envisaged, in the first instance, to take place in the six (6) priority sectors covering communication, construction, energy-related, financial, tourism and transport services. These negotiations are yet to commence.

3.1.7 Other trade-related issues

Other trade-related issues, namely investment, intellectual property rights (IPRs), competition and consumer policy constitute a built-in agenda of the Protocol on Trade. Article 22 commits member states to adopt policies and implement measures that promote an open cross-border investment

¹⁷ There are, however, other protocols that are related to trade in services such as on tourism; finance and investment; facilitation of movement of persons; energy; education and training; communication and metrology. Effective implementation of these protocols will complement the region's services integration agenda.

regime, in order to enhance economic development, diversification and industrialisation. In this respect, SADC has adopted the Finance and Investment Protocol (FIP) which was approved by the SADC Summit in August 2006 and came into force in April 2010.

Article 24 commits member states to adopt policies and implement measures for the protection of IPRs, in accordance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Progress in this area is very limited, largely because the protocol does not envisage a regional IPR framework rather than implementation of the WTO commitments. Most SADC member states are classified as Least Developed Countries (LDCs) in the WTO, and as such, they have a transition period for implementation of the TRIPs agreement until 2013. The extent to which the other developing SADC countries are implementing the WTO TRIPs agreement is not known.

Article 25 obliges member states to implement measures that prohibit unfair practices and promote competition. SADC adopted a Declaration on Regional Cooperation in Competition and Consumer Laws and Policies in July 2008. In terms of this declaration, member states have pledged to adopt, strengthen and implement the necessary competition and consumer protection laws at national levels and to establish a mechanism to bring about effective cooperation in competition and consumer protection matters. There has been noticeable progress at national levels as most member states have established or are in the process of developing competition policy and laws and the necessary institutions. However, it seems that divergences exist between national laws and policies; and this is likely to constrain future efforts towards the realisation of a harmonised regional competition framework.

4. The SADC Customs Union

A customs union is a form of trade agreement under which certain countries preferentially grant tariff-free market access to each other's imports and agree to apply a common set of external tariffs to imports from the rest of the world. It is a deeper form of integration than an FTA, generally requiring more coordination and a greater loss of autonomy in trade policy. The RISDP envisaged the establishment of a SADC Customs Union by 2010, preceded by the following measures that were to be implemented between 2005 and 2010:

- negotiation of a common external tariff (CET);
- establishment of an institutional framework for implementing the Customs Union (subject to the outcome of the mid-term review of the Protocol on Trade in 2004);
- the implementation of the CET.

The 2010 target date for the SADC Customs Union was not met and the SADC Customs Union is unlikely to be realised in the near future. The RISDP had at the onset observed that the issue of overlapping membership of SADC countries in a number of other similar regional integration initiatives should be addressed if SADC has to move into higher levels of integration beyond the FTA. This has not happened. Instead most members have continued to pursue customs union ambitions in other arrangements such as in COMESA and EAC.

Since 2006, intense technical preparations towards the launching of the SADC Customs Union have taken place. Such a process has revealed interesting issues confronting the SADC regional integration ambitions. There seems to be fundamental policy differences as to whether a customs union is at all feasible in SADC. Divergences in economic conditions, regional economic imbalances and varied levels of customs revenue sensitivities raise difficulties in agreeing on a CET and collection and distribution mechanisms of customs revenue. These systemic challenges and constraints could be addressed if there is utmost political commitment to the model of regional integration envisaged under the RISDP. However, it appears that such a commitment is significantly in deficit in SADC for a variety of reasons.

The linear integration model contained in the RISDP indicates that the implementation of each integration stage prepares the way for the next stage. From this perspective, effective

implementation of the FTA is likely to unlock the dynamic path towards future regional integration stages. It is also possible to allow countries that ready to move towards the customs union to do so; or as SACU has agreed to consolidate itself as a stepping stone to regional integration in Southern Africa, it may offer an avenue for additional SADC members to join that platform.

5. Other deeper integration milestones

Other deeper integration milestones include the establishment of the Common Market by 2015 aimed at consolidating the SADC internal market through the negotiation of instruments on the free movement of factors of production (labour, capital, services) and substantial harmonisation of commercial policies. The time frame set is 2010 to 2015, culminating into the adoption of legal instrument on free movement of all factors of production. It seems that the process of laying critical foundations for negotiating such instruments is still far from being established. The SADC FTA is not yet effectively implemented and there seems to be an emerging consensus among governments that the FTA should first be consolidated as a prerequisite to moving towards the Custom Union and the Common Market.

The RISDP also envisages other deeper integration milestones, namely the establishment of the Monetary Union by 2016 and the Economic Union with a single currency by 2018. The SADC Finance and Investment Protocol, which is the instrument to lay such a foundation, only came into force on 16 April 2010.¹⁸ The FIP sets out commitments by the parties to improve the investment climate in each state and the region as well as to achieve the preparation, cooperation and harmonisation necessary for regional financial integration. The ultimate objective of the FIP is to bring about the necessary harmonisation and integration of regional frameworks and policies leading to the creation of a single investment and single financial market with shared systems, regulations and institutions. This is considered vital for the creation of a single monetary zone, with shared currency and single central bank.

The FIP is given effect by a number of annexes related to investment; macroeconomic convergence; taxation and related matters; exchange control policies; harmonisation of legal and operational frameworks of Central Banks; payment, clearing and settlement systems; information and communication technology among Central Banks; banking regulatory and supervisory matters;

¹⁸ Democratic Republic of Congo (DRC), Seychelles, Swaziland, Tanzania and Zimbabwe have not yet ratified the FIP.

development finance institutions; non-banking financial institutions; and stock exchanges. Up to now, member states have concentrated largely on areas of cooperation and benchmarking with international best practices.

There has not yet been a serious policy discussion to foster an understanding of the implications related to the ultimate objective of the FIP, i.e. achieving a single monetary zone with a single currency. It is evident that the European case, which has been widely considered to be a role model of monetary integration in SADC, is in a state of flux. This raises questions as to whether conditions in the region met requisite conditions for successful monetary integration. McCarthy (2012) argues that a step towards monetary union should be considered with great caution, if at all, and that opening markets in the region to trade in financial services can contribute to enhancing economic efficiency by facilitating trade in goods and investment. The current review of the RISDP should reflect on these issues.

6. Conclusions

This review paper starts from the premise that regional economic integration makes sense for Africa in general and for Southern Africa in particular. Given small economies with limited domestic markets, the creation of an integrated economic space can facilitate efficiencies in production, investment and trade, thus enhancing development outcomes.

SADC has made significant strides towards tariff liberalisation. Most SADC countries have reduced and eliminated tariffs and quotas under the Protocol on Trade since 2000. In the area of trade and economic liberalisation, the immediate policy priority for SADC should be effective implementation of the Protocol on Trade and services-related protocols. Specifically, the potential benefits of tariff liberalisation are constrained by restrictive, product-specific rules of origin, especially on clothing and textiles and agro-processed products. More flexible rules of origin, that require lower thresholds of regional value addition, would enable many smaller SADC countries to expand their production capacity and enhance their trade performance. In particular, a single-stage transformation rule for garment production would allow producers to source competitively priced inputs from global sources and so increase their export competitiveness.

The potential gains from liberalisation are further eroded by the proliferation of non-tariff barriers, many of which violate specific provisions in the SADC Trade Protocol. Imposing new NTBs,

quantitative import and export restrictions and export duties on intra-SADC trade are prohibited by the protocol and should only be applied in exceptional circumstances. NTBs affect in particular intra-SADC trade in agricultural products which is closely linked to food security and poverty. Trade facilitation is also hampered by NTBs such as protracted delays at borders, road blocks and other behind-the-border regulatory impediments. The current online NTB reporting system is an important transparency mechanism, but requires a robust rules-based dispensation for the resolution and prevention of NTBs.

The potential benefits from these protocols will only be realised with effective compliance with commitments undertaken. There is a clear challenge in SADC with member states not complying with the commitments undertaken in the SADC Trade Protocol. Compliance requires legal and institutional infrastructure at national and regional levels, and is part of a broader governance imperative. The SADC Tribunal is an important institution provided for in the SADC Treaty to ensure compliance as well as adjudication of disputes. The suspension of the tribunal in August 2010 has cast a shadow on its legal autonomy, on the commitment of member states to regional integration, as well as on broader governance issues. Its reinstatement would signal an important commitment to SADC's rules-based integration process. In addition, the secretariat, as the principal executive institution of SADC, should have powers to monitor and enforce member states' compliance.

A well-functioning FTA is an essential step to deeper integration. Given divergences in economic conditions among SADC members, regional economic imbalances and overlapping membership, a variable geometric approach within a rules-based governance framework, may be an optimal integration strategy for SADC moving forward. The review of the RISDP is an opportunity to consider SADC's approach to regional integration and specific milestones.

While this paper has focused on trade and economic liberalisation issues, it is important to underscore that infrastructure development is an indispensable pillar for regional integration, competitiveness and development. The Regional Infrastructure Development Master Plan (RIDMP) is a very welcome initiative for the SADC region. Implementation of the RIDMP should be accompanied by regulatory reform through the regional harmonisation of regulation and a services liberalisation agenda. In particular, regulatory reform that promotes access to competitive infrastructure services inputs such as energy, telecommunications, finance and transport is important.

In conclusion, the RISDP review should provide an opportunity for an inclusive debate and consultative process on the SADC regional integration approach and strategy for deeper integration. Regional economic integration should go beyond an inter-governmental process, to foster broader participation by the private sector and non-state actors, ensuring also that regional economic integration is mainstreamed into national development policies and strategies.

References

COMESA-EAC-SADC. 2011. *Declaration launching the negotiations for the establishment of the Tripartite Free Trade Area*. Johannesburg: COMESA-EAC-SADC. 12 June.

COMESA-EAC-SADC. 2012. *Non-Tariff Barriers Reporting, Monitoring and Eliminating Mechanism*. [Online]. Available: <http://www.tradebarriers.org>.

McCarthy, C. 2012. Monetary Union: the experience of the euro and the lessons to be learned for African (SADC) monetary union. In Hartzenberg, T. (ed.), *The Tripartite Free Trade Area: Towards Anew African Integration Paradigm?* Stellenbosch: tralac and Sida.

SADC. 2003. *Regional Indicative Strategic Development Plan*. Gaborone: Southern African Development Community.

SADC. 2005. *Mid-term review of the SADC Protocol on Trade*. Gaborone: SADC Secretariat.

SADC. 2011. *Customs Audit*. Gaborone: SADC Secretariat.

SADC. 2011. *Audit of the implementation of the SADC Protocol on Trade*. Gaborone: SADC Secretariat.

SADC. 2012. *Report of the Executive Secretary to the Ministerial Task Force on Regional Economic Integration*. Gaborone: SADC Secretariat.
