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WIDER Working Paper 2015/056

National policies and regional integration in the South African Development Community

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June 2015

United Nations University World Institute for Development Economics Research

wider.unu.edu

Abstract: This paper focuses on the relationship between regional integration in the Southern African Development Community and national policies. Review of trade, industrial, agricultural, labour, and related policy areas, indicates that national policies can and do run counter to the regional integration initiatives that are formalized in the legal instruments of this southern African regional economic community.

Keywords: regional integration, Southern African Development Community
JEL classification: F13, F15

Acknowledgements: We would like to acknowledge the support of UNU-WIDER.

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This study has been prepared within the UNU-WIDER project 'Regional Growth and Development in Southern Africa', directed by Channing Arndt.

ISSN 1798-7237 ISBN 978-92-9230-945-9 https://doi.org/10.35188/UNU-WIDER/2015/945-9

Typescript prepared by Lisa Winkler at UNU-WIDER.

UNU-WIDER acknowledges specific programme contribution from the National Treasury of South Africa to its project 'Regional Growth and Development in Southern Africa' and core financial support to its work programme from the governments of Denmark, Finland, Sweden, and the United Kingdom.

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1 Introduction

Regional integration is being pursued as an overarching continental development strategy by member states of the African Union (AU). However, despite the multiplicity of regional integration arrangements in Africa and concerted efforts to harmonize various initiatives of the regional economic communities (RECs), the African market remains highly fragmented (World Bank 2012). Notwithstanding progress made by some RECs to eliminate tariffs on intra-REC trade in line with the Abuja Treaty (1991),[1] there is general consensus that the African market remains fragmented by a range of non-tariff and regulatory barriers to the movement of goods, services, people, and capital across borders. Renewed interest is, however, emerging from recent initiatives such as the Tripartite free trade agreement negotiations, which were launched in June 2011, and the decision of the AU Summit in January 2012 to fast-track the establishment of an African continental free trade area (FTA) by 2017.

Many reasons have been advanced to explain Africa's poor performance with regional integration arrangements (UNECA 2004). This paper seeks to provide some insights on the failure of national policies and regulations to support regional integration efforts in Africa. It presents a general analysis of the Southern African Development Community (SADC) market integration experience with respect to select national policies and regulatory frameworks of member states.[2] The selected areas relate to national trade, industrial, agricultural, competition, and labour policies. The paper concludes that most of these policies are underpinned by restrictive measures arising from inadequate implementation of the adopted protocols and policy frameworks at national levels, thereby hindering progress on regional integration in SADC.

Effective mechanisms for strategy development, planning, and especially for monitoring and evaluation of protocols and other core policies, are urgently required in SADC.[3] Such mechanisms need to be underpinned by a rules-based institutional framework that enhances compliance by member states. The current institutional mechanisms remain inadequate to foster greater policy and regulatory convergence among member states.

An emerging debate in analytical work on SADC's regional integration relates to the nature of the approach to regional integration. The approach adopted at the continental level through the Abuja Treaty (1991), is premised on a linear integration model, as in the case of European integration, with consecutive stages of integration, starting with a free trade area, customs union, common market, monetary union, and economic union with a single currency. Draper (2010) argues that this European model is not useful – at least in the short term. He makes the case for limited regional economic integration which steers clear of formal, institution-intensive arrangements.

[1] The roadmap established by the Abuja Treaty (1991) envisaged the strengthening of the RECs by 1999; the co-ordination and harmonization of the REC activities progressively eliminating tariff and non-tariff barriers by 2007; the RECs establishing free trade areas and customs unions by 2017; the establishment of the continental customs union by 2019; formation of a continental common market by 2023; and a continental economic and monetary union by 2028.

[2] SADC Member States are: Angola, Botswana, Democratic Republic of the Congo (since 1997), Lesotho, Madagascar (since 2005), Malawi, Mauritius (since 1995), Mozambique, Namibia, South Africa (since 1995), Swaziland, Seychelles (since 1997), Tanzania, Zambia, and Zimbabwe.

[3] See SADC Policy for Strategy Development, Planning, Monitoring and Evaluation, approved by the Council of Ministers in February 2012 at http://www.sadc.int/files/8713/6621/3373/SPME.

Hartzenberg (2011) calls for a deeper integration that includes services, investment, competition policy, and other behind-the-border issues capable of addressing national level supply side constraints far more effectively than an agenda that focuses almost exclusively on border measures.

The World Bank (2012) argues that the appropriate metric for successful integration is reduction in the level of transaction costs that limit the capacity of Africans to move, invest, and trade goods and services across borders, which calls for a different approach to one that proceeds within the straightjacket of specific sequential steps to integration.

It is therefore vital that the regional integration agenda should pay attention to microeconomic policies that used to be considered the exclusive domain of national economic policy. This approach seeks greater policy and regulatory 'harmonization' and adoption of best practices that will not only reduce diversity in the region but also improve the general business environment across borders by reducing costs and levelling the playing field for economic operators.

This debate towards an alternative approach to regional integration in Africa, and in SADC in particular, is urgent. Analytical work to understand how national policies and regulations relate to the regional integration process can assist in building a bottom-up approach to regional integration. This is also likely to generate alternative approaches to tackling on-the-ground policy and regulatory constraints within member states that limit the flow of goods, services, capital, and workers across borders within the region.

2 The SADC regional integration approach

Regional integration involves a process of increasing interaction and interdependence in the economic and political arena among a group of countries. Such interactions may be formal (deliberate strategies by political actors in a variety of national settings – formal, state-driven regionalism) or informal (through the market-strategies by private actors). There is increasing recognition in recent literature of the role that economic actors can play in strengthening and deepening the economic ties across national borders. This development has become increasingly visible in the twenty-first century with the emergence of integrated networks of investment, production, and trade (distribution).

Two general features of the approach to regional integration in SADC can be discerned. First, to achieve a progressive elimination of obstacles to the free movement of goods, services, capital, and labour, and of the people of the region generally, member states have entered into a contractual relationship to harmonize their political and economic policies, and plans (The SADC Treaty of 1992).[4] The Treaty provides for member states to conclude protocols as may be necessary in each area of co-operation, to achieve the SADC Treaty objectives.[5] Most protocols call for the harmonization of national policies in their respective sectors, and as such, they are regarded as important instruments towards policy convergence or harmonization among member states. The protocols constitute SADC's legal instruments and they require ratification

[4]A treaty is an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation (Article 2(1) (a) of the Vienna Convention on the Law of Treaties 1969). The SADC Treaty was signed on 17 August 1992 and entered into force on 30 September 1993. The Treaty was amended in August 2001. A consolidated text and all its amendments can be accessed at http://www.sadc.int.

[5]SADC Treaty (1992) Article 22.

by a two-thirds majority of member states to enter into force.[6] These protocols bind only those SADC states which have become parties to the specific protocol. Even if a member has ratified the protocol but the required two-thirds majority has not been achieved that protocol will not be implemented.[7] Other instruments include memoranda of understanding (MoUs); declarations and policy frameworks, whose implementation is on a best-endeavor basis. Currently, most SADC protocols and policy frameworks face implementation constraints at national levels (SADC 2013). Erasmus (2015) in their analysis of commitments, institutional structures, mechanisms, and support needed to eliminate policies and procedures that economic operators report as non-tariff barriers, note that SADC agreements do not contain a binding obligation to 'domesticate' the relevant instruments and to make them part of the national legal systems in member states. Generally, the failure by member states to comply with their regional obligations does not appear to have consequences. Under these circumstances, protocols are simply regarded as best endeavor instruments, and not rules-based instruments, with consequences for non-compliance.

Second, the Regional Indicative Strategic Development Plan (RISDP), which was adopted in 2003, articulates a 15-year roadmap as the blueprint for regional integration in SADC. It envisages a sequential (linear) process of deeper economic integration, starting with the establishment of a free trade area by 2008; a customs union by 2010; a common market by 2015; a monetary union by 2016; and an economic union, with a single currency by 2018. It is believed, as in the case of the European Union, that reaching these milestones gradually will lead to the free flow of goods, services, capital, labour, and people across the region.

A SADC free trade area (in goods) was launched in 2008, and its implementation is still ongoing.[8] Moving from an FTA to a customs union requires common trade policies and institutions to manage the common external tariff. The 2010 deadline for the establishment of the customs union was missed. Challenges associated with the establishment of a customs union include, the diverse levels of economic development among members, their different trade and industrial policy orientations and heavy dependence on customs revenue by most member states.[9] Given the constraints of moving along the adopted linear path of integration, raises the question as to whether, for example, free movement of capital or labour should depend on the region establishing a common market, or whether some alternative approaches can be found.

In addition, the RISDP has embraced what is referred to as 'development integration', which seeks to address production, infrastructure, and efficiency barriers to growth and development. The priorities of the RISDP are identified as:

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[6] The SADC website lists the following protocols: combating illicit drug trafficking; the control of firearms, ammunition and other related materials; culture, information and sport; gender and development; education and training; energy; extradition; the facilitation of the movement of persons; fisheries; forestry; health, immunities and privileges; legal affairs; mining; mutual legal assistance in criminal matters; politics, defense and security co-operation; shared watercourses; tourism; trade; transport, communication and meteorology; tribunal and its rules (suspended); wildlife conservation and law enforcement; finance and investment; and trade in services.

[7] For example, the Protocol on the Facilitation of the Movement of Persons is not yet in effect because it has not been ratified by two thirds (majority) of member states.

[8] Implementation of the FTA is being done according to the Action Plan Matrix adopted by the Ministers of Trade and the Ministerial Task Force on Regional Economic Integration in August 2010.

[9] Between 2006 and 2012, SADC was involved in preparatory work to establish a customs union. A report by the High Level Committee on the SADC Customs Union adopted by the Summit in 2012 highlighted these constraints and challenges.

- Trade/economic liberalization and development;
- Infrastructure in support of regional integration;
- Peace and security co-operation (as a prerequisite for achieving regional integration); and
- Special programmes of regional dimension in education and human resource development, health, HIV/AIDS, and other communicable diseases; food security and transboundary natural resources; statistics; gender and development; science, technology and innovation; and research and development.

A mid-term review of the RISDP was to be scheduled for 2012. A desk assessment was conducted by the Secretariat in 2011 and an independent mid-term review by a consultancy firm in 2013. An official review report is still to be released.[10] Preliminary indications are that most member states have not adequately mainstreamed the RISDP in their national development policy and regulatory frameworks. In addition, progressing towards other deeper integration milestones in SADC, which requires reduction in national policy flexibility, appears to be problematic to some member states. Instead, a new discourse on 'development integration' with emphasis on infrastructure and industrial development is gaining prominence not only in SADC, but also in the context of the Tripartite FTA negotiations.

These developments, namely a best-endeavour approach to implementation of protocols, sensitivities concerning a reduction in national policy space and sharing of sovereignty through supranational institutional and policy frameworks, seem to indicate that there is now less commitment by some member states to the official SADC regional economic integration approach. Given these developments, calls for new thinking are gaining ground, in search of less state-driven approaches that can effectively address practical constraints confronting economic operators as they seek to deepen economic linkages across national borders to be competitive in the twenty-first century.

3 The SADC trade policy framework

3.1 SADC and most-favored nation tariff profiles – divergent levels of most-favored nation protection remain

The 1990s witnessed the reform of the trade policy regimes of most SADC economies either unilaterally or within the context of structural adjustment programmes supported by the International Monetary Fund (IMF) and the World Bank. As a result, most SADC countries have significantly lowered their average applied most-favored nation (MFN) tariffs, ranging from the lowest 1 per cent of Mauritius to the highest of Zimbabwe at 16.8 per cent as indicated in Table 1. However, it is to be noted that there still exist relatively high tariffs on 'sensitive' products (tariff peaks) in most SADC countries.

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[10] As of February 2015, no official report has been released.

Table 1: Bound and applied MFN tariffs (simple average) on all goods

Country	MFN bound Final bound	MFN applied Applied
Angola	59,2	7,3
Botswana	18,7	7,6
DRC	96,1	11,0
Lesotho	78,3	7,6
Madagascar	27,3	11,7
Malawi	74,7	12,4
Mauritius	97,8	1,0
Mozambique	97,4	10,1
Namibia	19	7,6
Seychelles	-	6,4
South Africa	19	7,6
Swaziland	19	7,6
Tanzania	120	12,8
Zambia	106,0	13,2
Zimbabwe	88	16,8

Source: WTO Trade Profiles (2014), available at: www.wto.org/english/res_e/booksp_e/trade_profiles14_e.pdf

SADC countries with significantly higher average applied MFN tariffs are the Democratic Republic of Congo (DRC), Madagascar, Malawi, Mozambique, Tanzania, Zambia, and Zimbabwe. In many countries, tariffs on agricultural products are higher than tariffs on other products. This is especially the case in Zimbabwe, Zambia, Tanzania, Madagascar, and Malawi. The level of tariff bindings of most SADC countries at the World Trade Organization (WTO) is, however, high and substantial. An important point to make here is that these diverse levels of external trade protection present a challenge to the harmonization of trade and industrial policies in SADC and hence to deeper regional trade integration. It also appears that countries with higher average MFN tariffs also experience a significant number of reported non-tariff barriers (NTBs) on the SADC NTB reporting mechanism, suggesting that NTBs might have replaced tariffs on intra-SADC trade due to tariff liberalization.

3.2 Tariff liberalization under the SADC Protocol on Trade – considerable progress has been made

Trade and economic liberalization have been at the heart of the SADC regional economic integration paradigm. The Protocol on Trade is one of SADC's earliest legal instruments signed on 24 August 1996 and coming into force on 25 January 2000. The objectives of the Trade Protocol, as amended, are to further liberalize intra-regional trade in goods and services; ensure efficient production within SADC reflecting the current and dynamic comparative advantages of its members; contribute to the improvement of the climate for domestic, cross-border, and foreign investment; and enhance the economic development, diversification, and industrialization of the region.

The Trade Protocol sets the process and modalities for the phased elimination of tariffs and non-tariff barriers within a time frame of eight years from entry into force, i.e., by 2008. Tariff phase down schedules were to be completed by 2012. There has been an asymmetric element in tariff phase down time frames depending on the level of development of a member concerned. Mozambique's tariff phase down with respect to imports from South Africa is only to be completed by 2015. South Africa and its partners in the Southern African Customs Union (SACU) frontloaded their tariff phase down to complete by 2008, while the rest of SADC back-loaded their phasedowns up to 2012. Each non-SACU member of the Trade Protocol submitted two offers – one applicable to all SADC members except South Africa and the other applicable to South Africa. SACU members submitted a single offer applicable to all non-SACU SADC members. Table 2 and 3 provide the SADC tariff phase-down schedules as negotiated.

Table 2: SADC offer without South Africa (percent of tariff lines at zero)

Country offering preference	#Tariff lines	2001	2005	2006	2007	2008	2012
Malawi	5 443	33,4	33,4	48,7	85,3	85,3	99,7
Mauritius	5 479	69,7	90,5	90,5	90,5	90,5	100
Mozambique	5 246	30,1	30,1	30,1	30,1	94	99,6
SACU	7 802	63,9	94,6	99,3	99,3	99,3	99,3
Tanzania	6 066	17,5	24,4	42,8	43,1	86,3	99,3
Zambia	6 066	54,2	54,2	95,9	95,9	95,9	100
Zimbabwe	7 167	30,7	30,7	72,2	72,2	89,8	98,7

Source: SADC Secretariat.

Table 3: SADC offer to South Africa (percent of tariff lines at zero)

Country offering preference	#Tariff lines	2001	2005	2006	2007	2008	2012
Malawi	5 443	33,4	33,4	34,8	34,8	84,9	99,7
Mauritius	5 479	69,4	69,7	69,7	90,5	90,5	100
Mozambique	5 246	28,1	28,1	28,1	28,1	92,6	92,6
Tanzania	6 215	15,7	15,7	15,7	15,9	84,6	99,3
Zambia	6 066	32,1	32,1	40	40	95,9	100
Zimbabwe	5 957	32,1	44	48,4	55,4	71,6	82,1

Source: SADC Secretariat.

As indicated in Tables 2 and 3, there are products excluded from intra-SADC preferential trade as follows:

- SACU countries have excluded 31 tariff lines (sugar and sugar products, used clothing, and motor vehicle parts);
- Malawi has excluded 19 tariff lines (sugar, weapons, and ammunition);
- Mozambique has excluded 19 tariff lines (ivory, weapons, and ammunition);
- Tanzania has excluded 43 tariff lines (ivory and other restricted animal hides/ materials, weapons and ammunition, opium and propellant powder (explosive);
- Zimbabwe has the highest exclusions (jet/specialized fuels, vehicles/ parts, rear view mirrors, used clothing, radioactive products, used tires and precious metals); and
- All SADC member states have excluded Chapter 93 (weapons and ammunition) even if not in the specific list.

Twelve out of 15 member states are participating in the SADC FTA. Only Angola, the DRC, and Seychelles have not acceded to the SADC FTA. Seychelles' tariff phase down offer was approved by the SADC Committee of Ministers responsible for trade matters (CMT) in July 2014 and its accession process is expected to be finalized within a year. The tariff offer covers 5673 tariff lines constituted as follows:[11]

- 4884 tariff lines (86 per cent) for immediate liberalization;
- 103 tariff lines (2 per cent) will be phasedown in 8 years;
- 379 tariff lines (7 per cent) will be phasedown in 12 years; and
- 307 tariff lines (5 per cent) will be excluded from tariff liberalization.

Since 2002, SADC's engagement with Angola on submitting a tariff offer have not been successful.[12] Consultations with DRC were advanced during 2012, resulting in the submission of the roadmap to CMT, which envisaged its accession to the SADC FTA by January 2015. Secretariat sources have confirmed that the roadmap has not been implemented to date.

With few exceptions based on derogations,[13] SADC member states have made considerable progress towards the implementation of their tariff phase downs as depicted by the following:[14]

- SACU (Botswana, Lesotho, Namibia, South Africa, and Swaziland) completed its tariff phase down by 2008;
- Mauritius, Madagascar, and Zambia have implemented their tariff phase down, Mozambique has completed its tariff liberalization in respect of all other SADC members (excluding South Africa) and is expected to complete its phase down for South Africa by 2015;
- Malawi has completed its tariff phase downs to all SADC members (excluding South Africa). Malawi is still to conclude its tariff phase down on some imports from South Africa on the basis of the derogation granted;
- Tanzania has completed its tariff phase down with the exception of sugar and specific categories of paper items, which duty has been unilaterally reinstated and derogation is being sought; and
- Zimbabwe was granted derogation from implementing tariff reductions on its sensitive products until 2012 and whose phase down is to be completed by 2014.

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[11] As can be seen, Seychelles has exhibited less ambition in its market offer to SADC and the frontloaded liberalization and exclusions appear to be products in which the SADC region has a potential to trade with the country.

[12] Upon assuming SADC chairmanship in 2002, Angola's National Assembly approved its accession to the Protocol on Trade but has not yet submitted a tariff offer.

[13] Article 3(1) (c) of the Trade Protocol allows member states which consider they may be or have been adversely affected by removal of tariffs and non-tariff barriers to – upon application to CMT – be granted a grace period to afford them additional time for the elimination of tariffs and NTBs. Malawi, Tanzania, and Zimbabwe have so far utilized this provision.

[14] Based on the findings of the 2012 Audit of the Implementation of the SADC Protocol on Trade conducted on behalf of the Secretariat as well as various periodic reports submitted to SADC policy organs.

3.3 Reform of the SADC rules of origin remains an unfinished business – replacing transparent and declining tariff barriers

Annex 1 to the Trade Protocol deals with the rules of origin, which spells out criteria on originating goods eligible for preferential treatment. Rules of origin were one of the most controversial aspects of the negotiations and implementation of the SADC FTA as they continue to be used to perpetuate protection and rents. Under the guise of development of deliberate policies for industrialization, the initial rules of origin were changed to offset the gains from tariff liberalization in specific sectors. The end result has been restrictive product-specific rules of origin ostensibly designed to 'encourage the optimum utilization of regional resources and allow forward and backward linkages in the various production chains' (RISDP, available at: www.sadc.int). This led to rules of origin becoming an effective non-tariff barrier to trade in the region. The change of tariff heading was replaced by multiple transformation rules and/or detailed descriptions of required production processes. Value added requirements were raised and permissible levels of import content were decreased. Most of the explanations offered for such rules represented efforts to increase or preserve protection in domestic markets, particularly in the most diversified South African market.

The mid-term review of the implementation of the Trade Protocol conducted in 2004 identified complex and excessively restrictive rules of origin as a major impediment to increased intra-SADC trade (Brenton et al. 2004). Although some reforms were made to the SADC rules of origin, further simplification continues to be demanded by most member states, especially by small economies.

- Great controversies still persist on the rules of origin for textile and clothing which still require double stage transformation, thereby depriving producers in economies such as Malawi, Mozambique, Tanzania, and Zambia (MMTZ countries) the opportunity to source competitively-priced inputs from global sources and increase their export competitiveness. For example, following the expiry of the MMTZ–SACU market access arrangement in 2010, which allowed single stage transformation on selected clothing imports into SACU from the MMTZ countries, this resulted in the closure of firms in these countries. To date, however, efforts to simplify the SADC rules of origin in textile and clothing towards a single stage transformation have faced resistance from SACU (largely from South Africa).

- Wheat flour in SADC is still traded on MFN basis as a SADC rule of origin could not be agreed upon. This means that preferential trade on wheat flour within the region has been effectively prohibited.

- Some processed food items such as blended teas, coffee, and mixtures of spices are also reported to have restrictive local content requirements.

- Woolworths, a South African retailer operating in various countries in the region, has reported that it does not use SADC preferences on consignments of food and clothing to its franchize stores in other SADC markets as the cost of paying for full tariffs is relatively lower.

tralac (2014) noted that some SADC rules of origin are out of tune with the characteristics of twenty-first century production and trade. More flexible rules that require lower thresholds of regional value addition would enable many smaller SADC economies to expand their production capacity and enhance their trade performance. Such restrictive rules also disrupt the development of efficient regional/global production networks and value chains.

It would be important for South Africa to promote an agenda for simplification of the SADC rules of origin. This would assist its economy to further develop regional production and trade networks with SADC countries and assist it to link further into global value chains based on these regional networks. It would also assist its outward investment to benefit more from preferences that countries have granted to South Africa.

3.4 Slow progress in implementing Annexes to the Trade Protocol

The SADC Trade Protocol contains a number of Annexes, which form an integral part of the protocol.[15] These Annexes provide for harmonization of policies and regulations, especially as they relate to customs and trade facilitation, sanitary and phytosanitary (SPS), and technical barriers to trade (TBT) measures. Application of these measures in member states often continues to constitute non-tariff barriers to trade. Most of these annexes are developed taking into account international best practices such as mutual recognition of product testing, standards conformance, and customs and transit.

Two issues are worth noting in this respect. First, most of these are 'deep integration' disciplines that require application within national regulatory regimes. This is often hampered by a 'decentralized' approach, which requires member states to implement these measures. There are also gaps in technical capacity and resources at national levels, which hamper their effective implementation.

Second, as most SADC members have overlapping membership in regional arrangements such as SACU, COMESA, and the East African Community (EAC), implementation challenges arise as a country cannot implement two set of different or conflicting rules, hence the slow progress. Therefore, successful conclusion of negotiations towards the Tripartite FTA, with its annexes, may go a long way to addressing this implementation challenge.

3.5 Non-tariff barriers have replaced tariffs

The Trade Protocol entails specific disciplines on non-tariff barriers, export duties, and quantitative restrictions as follows:

- Member states undertook, in relation to intra-SADC trade, to adopt policies and implement measures to eliminate all existing forms of NTBs and refrain from imposing any new NTBs;[16]
- Member states undertook not to apply any export duties on goods for export to other member states;[17]

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[15] Annex I on rules of origin; Annex II on customs co-operation; Annex III on simplification and harmonization of trade documentation and procedures; Annex IV concerning transit trade and transit facilities; Annex V on trade development; Annex VI on settlement of disputes; Annex VII on trade in sugar; Annex VIII on SPS measures and Annex IX on TBT.

[16] The SADC Protocol on Trade, Article 6; it defines NTBs as 'any barrier to trade other than import and export duties'. Subsequently SADC has identified the following types of NTBs: cumbersome customs documentation and procedures; cumbersome import and export licensing /permit; import and export quotas; unnecessary import bans and prohibitions; import charges not falling within the definition of import duties; restrictive single channel marketing; prohibitive transit charges; complicated visa requirements; pre-shipment inspection; or national food security restrictions.

[17] SADC Protocol on Trade, Article 5(1).

- Member states shall not apply any new quantitative import restrictions and shall phase out existing restrictions on the import of goods originating in another Member States;[18] and
- Member states shall not apply any quantitative restrictions on exports to any other member state, except where otherwise provided for in the protocol.[19]

The notable progress on intra-SADC tariff liberalization reported in Section 3.2 has not been matched by the reduction but rather an increase in NTBs. It is reported that NTBs in SADC affect products accounting for US$3.3 billion or one-fifth of regional trade (World Bank 2011). The inadequate implementation of the provisions in the Protocol on Trade – as they relate to adopted Annexes and provisions on NTBs – has contributed to this increase. This conclusion is supported by the high number of complaints registered on the existing Online NTB Reporting Mechanism – a collaborative programme of the COMESA-EAC-SADC Tripartite Coordination Mechanism.[20]

The system identifies eight categories of NTBs which are divided into various sub-categories. The main categories are: government participation in trade and restrictive practices tolerated by governments; customs and administrative entry procedures; TBTs; SPS measures; specific limitations; charges on imports; other procedural problems; and transport, clearing, and forwarding.

Most NTBs reported in the SADC region so far fall within the following categories:

- Trade facilitation (transport, clearing, and forwarding; customs and administrative entry). It is difficult to determine exactly the nature of the complaints in this broader category as they are mostly biased towards customs procedures, especially long delays at the borders. This can only mean that annexes on customs co-operation, simplification, and harmonization of trade documentation and procedures as well as on transit trade and transit facilities are not effectively being implemented in member states. This has been corroborated by the 2012 comprehensive audit of the implementation of SADC customs and trade facilitation initiatives which found low level implementation of agreed instruments by member states (See Southern Africa TradeHub 2012).
- This is followed by SPS and TBT measures. Erasmus et al. (2014) found that the SADC annexes on SPS and TBT measures reinforce international best practices. However, member states are still to domesticate them into their national regulatory frameworks.[21]
- The third category of reported NTBs relates to specific limitations, which is largely accounted for by quantitative restrictions and prohibitions, largely affecting regional trade in agriculture. This is perhaps an area where SADC is challenged by the existence of restrictive policies at national levels as a result of demands for protection from vested interest groups.

Further analysis of why some NTBs are proving difficult to resolve suggest that they are of a policy and regulatory nature whose resolution requires appropriate regulatory reform at national

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[18] Ibid., Article 7(1).

[19] Ibid., Article 8(1).

[20] The online NTB mechanism is a web-based system, which allows interested parties to report any NTB they have encountered in the region, see www.tradebarriers.org

[21] Amendments to improve SPS and TBT disciplines were only adopted by the CMT in July 2014.

levels. These are mostly measures to protect domestic industries, mostly on trade in agriculture such as periodic import bans and difficulties in obtaining import licenses or permits. The following is a brief snapshot of some NTBs as reported recently in the media:

- 'Zimbabwe bans imports of fresh fruits and vegetables with immediate effect. The ban will mostly impact suppliers of tomatoes, potatoes, mangoes, grapes and apples from neighboring South Africa', see www.freshfruitportal.com/, 3 April 2014.
- 'Consumers slam maize meal imports ban in Zimbabwe', see www.newzimbabwe.com/business- 16465, 27 June 2014.
- 'Namibia still in dark about South Africa livestock restrictions', www.namibian.com, 29 August 2014.
- 'The court sets aside dairy import limits. Import restrictions were intended to provide protection to Namibia's dairy industry, which itself struggling to compete against especially South African dairy products', www. Namibian.com, 19 May 2014.
- 'South Africa lifts Namibian livestock import ban', www.newera.com.na, 2 September 2014.
- 'Call to reinstate SA import restrictions by the SA Red Meat Producers Organization', www.namibiansun.com, 10 September 2014.
- 'Zambeef products ban imported beef in Zambia'. The company said it will deal exclusively in Zambian beef products, and will no longer sell any imported beef….' in consultation with the Ministry of Health, the company has made the decision to dispose of all imported beef products to give the Zambian public our 100 per cent commitment that only Zambian beef products will be on offer in our outlets', see www.tvcnews, tv?q=article/zambeef-products-ban.
- The lack of necessary reform has effectively made these policy and regulatory measures non-tariff barriers.

An issue that has also risen in prominence is the application of export duties, taxes or restrictions, largely driven by policy desire to add value to domestic natural resources or food security in case of agricultural commodities. Some examples in the SADC region:

- South Africa currently levies an export tax on unpolished diamonds of 5 per cent of the total value in an attempt to promote the development of the local economy by encouraging the local diamond industry to process (cut, polish, etc.) locally (Sandrey 2014).
- The WTO (2009) reports that at that time Mozambique imposed an export tax of between 18 per cent and 22 per cent of the f.o.b customs value on raw cashews.
- The 2002 SACU Agreement Article 25(1) recognizes the right to impose export restrictions such as export taxes, provided agreement on these measures is reached by the SACU Council of Ministers.
- The WTO (2011) reports that in Zimbabwe export bans/ suspensions or taxes may apply to selected products on value addition or self-sufficiency grounds. For example, unprocessed chrome ore is subject to an export ban (occasionally replaced by an export tax).
- The WTO (2009) reports that in Zambia, the 2008 Budget encouraged local value addition by introducing a levy of 15 per cent on the export of copper concentrates and cotton seed in

recognition of the availability of local capacity to process these products. An export tax also exists on scrap metal, which is considered an important input for manufacturing.

The use of non-tariff barriers to intra-SADC trade results in sub-optimal implementation of the SADC FTA, especially aggravated by ineffective enforcement and compliance mechanisms. The result is negative effects on consumers through high prices (especially of agricultural goods) and inefficient allocation of regional resources.

3.6 Trade in services – affected by a myriad of policy and regulatory barriers

Services represent about half of the regional gross domestic product (GDP) and provide the bulk of employment in many SADC countries (UNCTAD 2009). There is policy recognition in SADC of the importance of services as evidenced by the development of service-related protocols.[22] These protocols oblige members to harmonize their service sector policies. However, such protocols have not been sufficient to increase competition in domestic markets or bring about needed regulatory reform towards regional harmonization. In particular, liberalization of trade in services has been relatively marginalized in national ministries or departments related to services and under existing regional protocols. Regulatory barriers are quite pervasive in the SADC services markets hampering regional trade expansion, especially in the area of professional services where national markets remain fragmented by restrictive immigration policies. Fragmentation of services markets in the region raises the costs of doing business.

Article 23 of the SADC Protocol on Trade (1996) states that member states shall 'adopt policies and implement measures in accordance with their obligations in terms of the WTO's General Agreement on Trade in Services (GATS), with a view to liberalizing their service sectors within the community'. However, the trade in services agenda took more than two decades to be adopted. In August 2012, the SADC Summit approved the Protocol on Trade in Services, which seeks to progressively liberalize intra-regional trade in services. Six sectors of immediate interest in SADC have been prioritized. These are communication, construction, energy-related services, financial, tourism, and transport services. The first round of negotiations commenced in April 2013, yet progress is very slow. Some countries such as Angola, Namibia, and South Africa have not yet signed or ratified the Protocol on Trade in Services.[23]

While the Protocol on Trade in Services commit SADC member states to pursue an integrated regional market for services, it is not clear whether the GATS framework for negotiations will produce required regulatory reform. As the World Bank (2012) argues, it will be necessary to adopt a sector-by-sector approach to co-ordinated trade and regulatory reform rather than a broad but shallow GATS type agreement.

In the twenty-first century, the increasing prominence of global production sharing indicates that the transaction costs of global supply chain disaggregation are linked to the cost of transportation, telecommunications, financial services, and other services. The competitiveness of even the production of basic manufactures such as garments is severely hampered by high services costs and inefficiencies in many SADC countries. It is not possible to develop regional

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[22] SADC Protocols in specific services sectors include Culture, Information and Sport; Education and Training; Energy; Facilitation of the Movement of Persons (not entered into force); Health, Tourism; Transport, Communication and Meteorology; and Finance and Investment.

[23] Interestingly, these countries have also not agreed to negotiate trade in services with the European Union in the context of the SADC economic partnership agreement.

and global value chains without efficient services sector development and increased trade in services across borders.

South African service suppliers, in a range of sectors, including finance, telecommunications, wholesale and retail distribution, are operating in the SADC region, and so – apart from signing and ratification of the Protocol on Trade in Services – it is important for the country to ensure that the services agenda proceeds in a way that optimizes the competitiveness of firms in the region. In this regard, it is particularly be important to ensure harmonization of pro-competitive regulatory principles across countries of the region, so as to bring about the regulatory reform that would enhance such competitiveness.

As argued later in the section on the regional labour policy framework, given the sensitivities surrounding the movement of workers in the region, progress on mode 4 (the temporary movement of natural persons to supply a service) is likely to be a challenge.

4 The SADC industrial policy framework

Industrialization has always been an objective of regional integration in SADC. Article 4(2) of the Trade Protocol provides that the process of elimination of intra-SADC import duties should be accompanied by an industrialization strategy to improve the competitiveness of the region. SADC is made up of 15 economies at diverse levels of economic development. There exists a wide variation in economic activity and incomes within and between countries in the region. South Africa contributes about 63 per cent of the aggregate GDP of SADC.

Table 4: Sectoral composition of SADC GDP in 2013

Country	Agriculture	Industry*	Services	Manufacturing
Angola	10,1	57,8	32,1	7,0
Botswana	2,5	36,9	60,5	6,0
DRC	20,8	38,2	41,0	17,0
Lesotho**	8,3	31,8	59,9	12,0
Madagascar	26,4	16,1	57,5	13,7
Malawi	27,0	18,8	54,2	11,0
Mauritius	3,2	24,3	72,5	17,0
Mozambique	29,0	20,8	50,2	11,0
Namibia	6,1	33,4	60,5	13,0
Seychelles	2,4	11,3	86,3	6,0
South Africa	2,4	27,6	70,0	12,0
Swaziland***	7,5	47,7	44,8	44,0
Tanzania	28,4	24,4	47,3	9,0
Zambia	9,6	33,9	56,5	8,0
Zimbabwe	12,0	31,1	56,9	13

Notes: * Industry includes manufacturing (also presented separately in column 4) as well as mining, construction, electricity, water, and gas; ** Lesotho figures are for 2012; *** Swaziland figures are for 2011.

Source: World Bank, *World Development Indicators*, available at: http://data.worldbank.org/data-catalog/worlddevelopment- indicators.

As illustrated in Table 4, large shares of SADC GDP originate from primary production sectors, mainly agriculture and mining. Value addition in these primary sectors remains low. Manufacturing intensity is fairly low with industrial output heavily concentrated on low-technology products such as food, beverages, textiles, clothing, and footwear. On average, the

SADC industrial sector remains relatively undiversified. South Africa and Mauritius, however, have sizeable manufacturing sectors per regional standards (SADC 2012).

Table 5 indicates the low level of intra-SADC trade as percentage of total trade. The contribution of South Africa to intra-SADC trade is quite substantial, although the importance of SADC as its export market is relatively less compared to some SADC countries. Intra-SADC trade remains highly concentrated, such that the top ten products at the 6-digit level accounts for over 70 per cent of regional trade flows (World Bank 2011). The low level of intra-SADC trade is generally explained in terms of the limited and undiversified nature of the region's productive capacity. This does not explain the whole story. For example, intra-SADC trade, especially in agriculture could be more if the policies and regulatory frameworks at national levels were less restrictive and borders were relatively 'thinner'. Unlike other regions such as Asia, firms specializing in a wide range of manufacturing activities and services across the region have not emerged, partly because markets are not integrated. Greater regional trade has been possible with the reduction of tariffs between countries to enable movement of goods, labour, and capital within Asia (Cisse 2014).

Table 5: Intra-SADC trade in 2013

Country	% of intra-SADC exports	% of exports going to SADC
Angola	4,7	2,8
Botswana	2,2	12,1
DRC	4,5	24,7
Lesotho	0,6	27,3
Madagascar	0,3	7,9
Malawi	0,4	15,2
Mauritius	1,2	20,7
Mozambique	4,7	48,5
Namibia	4,7	31,2
Seychelles	0,1	9,6
South Africa	65	28,6
Swaziland	3,2	63,2
Tanzania	1,5	14,3
Zambia	5,3	20,9
Zimbabwe	1,5	17,6

Source: International Trade Centre (www.macmap.org).

The rationale for regional integration is deeply rooted in its ability to stimulate a wide range of manufacturing activities and related services across borders. Attempts at market integration in SADC have too much focus on tariffs to the detriment of addressing behind-the-border bottlenecks affecting the flow of goods, services, and investment across borders. Restrictive national policies that make it difficult for firms to source and move goods and services rapidly and at low cost across borders are part of the problem for SADC's inability to expand its productive base. Policy aspirations on regional industrialization are yet to be translated into workable strategies.

Since the late 1990s, SADC has been attempting to develop an industrialization policy. Discussions have often been dominated by fears of potential trade and economic polarization in favour of South Africa – the most diversified economy. For example, a draft SADC industrial policy document in 2009, which was circulated to member states for comments, was widely criticized for its inadequate consideration of the contextual specificities of the region, particularly industrial polarization.

The accession of post-apartheid South Africa to SADC was expected to play a catalytic role towards intra-regional industrial linkages. These expectations are yet to be positively met. What is known now is that despite being the most industrialized economy in the region, South Africa is equally confronted with a similar burden of large numbers of citizens that live in absolute poverty. Employment in South Africa has also fallen sharply in recent years. The predominant growth path in South Africa remains focused on encouraging a diversified and labour absorbing manufacturing sector at home.

In addition, it appears that South African companies that are opposed to the further opening up of the domestic market to regional products are increasingly vocal with somewhat influential connection within some critical government circles (such as the Department of Trade and Industry and Economic Development) and supported by organized labour. All these political economy factors suggest domestic policy constraints confronting South Africa to act as a catalyst for the emergence of intra-regional manufacturing trade.

McCarthy (2014) argues that the need for job-creating and thus poverty reducing growth exists in all the countries, but economic diversity of SADC economies may require different growth paths. This represents the challenge of harnessing the benefits of agglomeration for economic growth while coping with the impact of polarized growth in the region. Arguably, this calls for a new thinking about industrial policies and strategies in a regional setting such as SADC.

Importantly, a 'SADC Industrial Development Policy Framework' was adopted in 2012. The use of the term 'framework' appears to reflect a logical recognition of the fact that there is no 'blueprint' and 'one-size-fits-all' approach to industrialization. Instead, the framework places a heavy emphasis on the promotion of regional value chains particularly in sectors such as agro-processing, mineral beneficiation, and pharmaceuticals. The implementation matrix of the framework include the following intervention areas:

- Developing sector specific strategies, prioritizing agro-food processing, mineral beneficiation, and pharmaceutical sectors;
- Promoting industrial upgrading through innovation, technology transfers, and research and development;
- Improving standards, technical regulations and quality infrastructure;
- Developing and upgrading skills for industrialization;
- Developing a mechanism for industrial financing;
- Improving provision of infrastructure for industrial development;
- Enhancing support to small and medium enterprises;
- Promoting local and foreign direct investment and export; and
- Developing regional strategies to exploit opportunities in South-South co-operation.

Such a framework is not yet operationalized in practice. Specifically, it is not clear what national policy actions and regional interventions will be required to promote regional value chains and industrial linkages across the region. Nevertheless, effective implementation of the SADC regional trade policy framework whose objective is to increase the size of the market and reducing costs for firms through trade facilitation, coupled with infrastructure development initiatives, if effectively implemented will go a long way in promoting global value chains and economic linkages. Clearly, regional value chains will not emerge out of policy statements, but at least on progress being made to address policy, regulatory, and physical barriers to their development. National trade and industrial policies, and other complementary policies should be made more supportive of the region's industrialization objective.

With particular regard to infrastructure, South Africa has a unique role to play in the financing of regional infrastructural projects. The Development Bank of Southern Africa, DBSA and the Industrial Development Corporation already support regional projects. In addition to this, the New Development Bank regional headquarters will be located in the country. It will be essential to streamline the operations of these three institutions and to prioritize financing towards project preparation and implementation of infrastructure projects in the SADC Regional Infrastructure Development Master Plan (RIDMP). The RIDMP is a strategic framework guiding infrastructure development in Southern Africa, which is built on a foundation of harmonized policies and a joint pool of resources. It highlights key challenges for infrastructure in the region and establishes specific targets for bridging gaps and removing bottlenecks.[24] Effective implementation of this programme will assist in bolstering regional connectivity in infrastructure in SADC, which is a prerequisite for industrial development along regional and global value chains.

5 The SADC agricultural policy framework

Agriculture is a sensitive sector for most, if not, all SADC countries. Table 6 indicates that average applied MFN tariffs in agriculture are quite high, with the highest average of 24.4 in Zimbabwe and the lowest average of 1.0 in Mauritius. Agriculture is the most protected sector in most SADC countries. Zimbabwe, Zambia, Tanzania, and Malawi have the highest tariffs on agriculture, and coincidentally, these countries also score high in terms of the incidence of reported NTBs, mostly affecting trade in agriculture.

Table 6: Applied MFN agric.tariffs () in 2013

Country	MFN applied Agric.
Angola	9,8
Botswana	8,6
DRC	11,0
Lesotho	8,5
Madagascar	14,6
Malawi	18,7
Mauritius	0,9
Mozambique	13,8
Namibia	8,5
Seychelles	7,8

[24] The RIDMP is based on six pillars consisting of energy, transport, information and communication technologies, meteorology, trans-boundary water resources, and tourism (trans-frontier conservation areas). There is, however, recognition that productive activities such as mining, manufacturing, commerce, industry, agriculture, and transport are driven by access to energy.

South Africa	8,4
Swaziland	8,5
Tanzania	20,0
Zambia	19,0
Zimbabwe	23,4

Source: WTO Trade Profiles (2014).

This simply means, in the context of the SADC FTA, that they seem to have replaced tariffs with non-tariff barriers. As illustrated in Table 7, intra-SADC trade is seriously hampered by NTBs.

Table 7: NTBs that have been notified to SADC affect at least one-fifth of regional trade

Barrier	Examples of products affected	Volume of intra-SADC trade potentially affected (percentage of total)
Import bans, quotas and levies	Wheat, beer, poultry, flour, meat, maize, UHT milk, cement, sugar, eggs, pasta, sorghum, pork, fruit and vegetables	6.1
Preferences denied	Salt, fishmeal, pasta	0.4
Import permits and levies	UHT milk, bread, eggs, sugar, fruit and vegetables, livestock, liquor, cooking oils, maize, oysters	5.4
Single marketing channels	Wheat, meat, dairy, maize, tea and tobacco, sugar	5.3
Rules of origin	Textiles and clothing, semi-trailers; palm oil; soap; cake decorations, rice, curry powder; wheat flour	
Export taxes	Dried beans, live animals, hides, skins, sugar tobacco, maize, meat, wood, coffee	4.8
Standards/SPS/TBT	Milk, meat, canned tuna, beer, honey, maize, cotton, cake, poultry, batteries, sugar, coffee, ostriches	2.5
Customs-related	Wine, electronic equipment, copper concentrate, salt, cosmetics, medicines	5.2

Source: World Bank (2012).

The SADC treaty recognizes the importance of agriculture for economic growth, socio-economic development, and poverty reduction.[25] Sustainable food security is a top priority and features prominently as one of the intervention areas in the RISDP. A SADC Declaration on Agriculture and Food Security adopted in 2004 recognizes that national agricultural and food policies as well as inadequate access by farmers to key agricultural inputs and markets were among the major underlying reasons for the presence of hunger in the region. Since then, SADC has been working on the development of the regional agricultural policy framework, which was adopted in 2013. The policy framework identified the following challenges facing the sector:

- Low labour productivity in agriculture;

[25] SADC Treaty, Article 5.

- Low land productivity and low yields; and
- Low level of intra-SADC trade in agriculture.

The improvement of regional and international access to markets of agricultural products has been identified as one of the specific objectives of the SADC agricultural policy frameworks and integration of regional markets as one of its guiding principles. In fact, currently non-tariff barriers has been estimated to affect one-third of agricultural trade in the region. The policy framework seeks to achieve the following objectives:

- Enhancing sustainable agricultural production, productivity, and competitiveness;
- Improving regional and international trade and access to markets of agricultural products;
- Improving private and public sector engagement and investment in the agricultural value chains; and
- Reducing social and economic vulnerability of the region's population in the context of food and nutrition security.

The policy framework further recognizes the existence and importance of SADC protocols and policies with direct or indirect impact on the region's agriculture. These include, but are not limited to, the SADC Protocol on Trade and associated annexes including the Annex on SPS; Protocol on Fisheries; Protocol on Forestry; Protocol on Wildlife Conservation and Law Enforcement; Protocol on Shared Water Courses; Protocol on Gender and Development; Protocol on Transport, Communication and Meteorology and the SADC Water Policy, Protocol on Environment, and the SADC Industrial Development Policy Framework.

Several areas of project and programme interventions have been identified and a range of policy commitments made, including:

- Harmonizing SPS regulations and national veterinary service systems in line with international standards;
- Promoting harmonization of product standards, where these constitute barriers to trade;
- Rationalizing and simplifying rules of origin;
- Developing approaches to the successful elimination of tariffs and NTBs in intra-regional inputs and outputs (including export bans and similar trade disincentives);
- Eliminating tariffs and NTBs to trade in extra-regional inputs;
- Developing increased consultations on tariff and safeguard measures adopted;
- Promoting co-operation in international trade negotiations;
- Establishing mechanisms to address adjustment costs associated with trade integration; and
- Adopting measures to minimize the use of trade-distorting policy measures in response to food shortages.

It is important to note that this policy framework was only adopted in August 2013, and as such, its implementation remains at a very early stage. As with other regional policy frameworks, its implementation will significantly depend on the ability of member states to mainstream it into national development policy and regulatory systems.

6 The SADC energy policy framework

Since its establishment, SADC has recognized the importance of infrastructure development in regional integration. It is acknowledged that economic growth and reduction of poverty in the region hinge on infrastructure development. Regional infrastructure is defined as cross-border or national components of regional, multi-country infrastructure networks, e.g., regional power pools.

The energy infrastructure development in SADC is guided by key instruments – the Protocol on Energy and the Energy Cooperating Policy and Strategy and the Activity Plan.[26] The emphasis of these instruments is largely to harmonize national and regional policies and regulatory frameworks, to co-operate in energy development and trading through development of the necessary infrastructure, exploiting the abundant energy resources in the region, particularly hydropower, and have co-ordinated planning and institutions. However, these instruments require revision to cater for emerging paradigms of biofuels, energy efficiency, and climate change.

Significant progress has been made with the establishment of regional electricity infrastructure through the Southern African Power Pool (SAPP) in August 1995.[27] Its members are Angola, Botswana, DRC, Lesotho, Namibia, Malawi, Mozambique, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The interconnection of most members has an optimized power system production and trade. Angola, Malawi, and Tanzania are non-operating members and efforts are currently being made to connect them to the power pool. SAPP has identified priority energy projects that are likely to add a substantial amount of megawatts to the regional grid.

Experience with the implementation of the infrastructure services-oriented protocols resulted into the development of the RIDMP in 2012.

The guiding principle of the SADC energy sector objective is to ensure the availability of sufficient least cost energy services that will assist in the attainment of economic efficiency and the eradication of poverty, whilst ensuring the environmentally sustainable use of energy resources.

Notwithstanding interconnectivity achievements of the SAPP, the RIDMP has identified a number of challenges related to energy delivery, access, and price. Some highlights are:

[26] The SADC Protocol on Energy entered into force in 1998. DRC, Seychelles, and Madagascar are not party to the Protocol.

[27] Available at: http://www.tralac.org/files/2011/03/SADC-Declaration-on-Regional-Cooperation-Competition-Policy.pdf

- In some of the SADC countries less than 5 per cent of the rural population has access to electricity;

- Comparatively, the SADC region lags behind other African RECs in respect of overall access to electricity;

- Since 2007, the SADC region has been facing an electricity deficit;

- Low tariffs and lack of required policy/regulatory frameworks are hampering investment and financing;

- Coal, which has been the traditional backbone of power generation (contributing 75) is being considered as an unclean fuel under the global warming debate;

- The petroleum and gas sub-sector is plagued by volatile prices. Although the region is endowed with petroleum and gas resources, a lot of it is not available due to foreign commitments or inadequate infrastructure; and

- Large, estimated renewable energy potentials require infrastructure for grid connection, manufacturing, and quality testing, as well as innovative financing.

The region's current installed capacity is around 56,000 MW. The RIDMP has identified 73 power generation projects to surpass the projected demand of 96,000 MW by 2027. The identified 'hard' infrastructure projects include the planned electricity generation and transmission projects; refineries, storage facilities and pipelines for petroleum and gas; and transport facilities for coal distribution and exports. The total cost of the prioritized projects would range between US$42 billion and US$122 billion. Three major interconnecting projects would facilitate the interconnection of Angola, Malawi, and Tanzania to SAPP.

There are also deficiencies in the 'soft' infrastructure such as a lack of co-ordinated planning, harmonized requisite policy and regulatory frameworks, institutional support, capacity, financing and investment which should be addressed. The energy sector plan of the RIDMP emphasizes the importance of co-ordination and harmonization of national energy policy and regulatory frameworks across the region.

South Africa's enhanced participation in this section of the RIDMP is extremely pertinent as a short and medium term measure to addressing the severe energy constraints that the economy is facing.

7 The SADC competition policy framework

Competition policy refers to the broad set of measures and instruments pursued by governments to enhance the contestability of markets.

Article 25 of the SADC Trade Protocol (1996) requires that member states implement measures that foster competition and prohibit unfair business practices. This broad imperative does not specify modalities or indeed that there should be a regional policy, law, or competition authority. In 2009, member states signed a Declaration on Regional Cooperation in Competition and

Consumer Policies.[28] The Declaration provides a framework for establishment of an effective system of co-operation in the application of member states respective competition and consumer protection laws. All SADC member states have signed the declaration. Since the adoption of the declaration, a number of actions have been made:

- The SADC Competition and Consumer Policy and Law Committee was established in 2009 and meets periodically. The Committee has focused on building capacity in member states for the formulation and implementation of competition law based on best enforcement practices;

- An online database of competition cases has also been established. The database is envisaged to provide information on cases regarding anti-competitive practices in the region; and

- At country level, most member states have made significant progress in the establishment of competition policies and laws and associated competition authorities.[29]

While there is value to the development of co-operation among national competition authorities, there are a number of issues that are important to note. The 2012 audit on the implementation of the Trade Protocol illustrated that the policy context and background to the development of national competition policies and laws in SADC countries differ significantly. National competition laws differ sharply in terms of both structure and substantive provisions. For example, broader policy objectives, including public interest matters such as the promotion of employment, economic empowerment, and poverty reduction have been included in the competition laws in some SADC countries.[30] The aim of competition policy is fundamentally to promote competition, to enhance efficiency. The central focus should, therefore, be on efficiency, but the incorporation of some public policy objectives is likely to compromise its core objective. In some cases, consumer protection provisions are included in competition law; whilst in some jurisdictions, separate consumer protection legislation is promulgated.

Second, differing national competition policies and laws are likely to hinder SADC progress on trade and market integration. Markets in this region are being redefined. This means that national competition law and policy may become increasingly ineffective to counter-restrictive business practices that transcend national geo-political borders. The cross-border dimensions of restrictive practices will be imperfectly governed by competition laws that are nationally bounded, even if they include some measure of extra-territorial jurisdiction. Without regional market governance instruments such as competition law, the asymmetry between national governance instruments and the market configurations of firms, is likely to generate governance gaps, which may well permit restrictive business practices that have a cross-border effect.

Third, there is no legally binding framework for co-operation; best endeavor provisions may well mean that the benefits to addressing cross-border competition issues remain limited, and more substantively that dealing with cross-border effects of anti-competitive behaviour, using national competition law, remains inadequate. In an African context, competition policy should be part of

[28] Available at http://www.tralac.org/files/2011/03/SADC-Declaration-on-Regional Cooperation - Competition-Policy.pdf

[29] Botswana, Lesotho, Malawi, Mauritius, Mozambique, South Africa, Swaziland, Tanzania, Namibia, Zambia, Zimbabwe, Seychelles, and Madagascar.

[30] South Africa has been at the forefront of this development; having included four distinct public interest issues in its 1998 Competition Act.

the regional integration agenda. COMESA is the most advanced regional bloc in the area of competition policy, having adopted competition regulations and established a functioning competition authority.

8 The SADC labour policy framework

Economic benefits of free movement of persons, including labour have been established. Free labour movement can enhance trade, spur entrepreneurship and address skills shortages.[31] This is supported by the experience of the European Union, which has the most progressive policies on free movement in the world. Some African RECs such as the EAC and Economic Community of West African States, ECOWAS, have also taken steps to remove barriers to the movement of their people across borders.

Intra-regional labour migration in Southern Africa has become more voluminous, dynamic and complex since the 1990s than it has ever been (Crush and Williams 2010). However, efforts to establish a regional framework for the movement of workers in the SADC region have been disappointing. At present, SADC does not have a regulatory regime governing cross-border labour migration. All SADC countries have their own national immigration policies and laws, regulating access to national labour markets. Most SADC countries explicitly take into account the effect of expatriate employment on domestic employment. A number of countries specify training requirements for local workers. Other countries have specific employer limitations and/or training requirements as part of their employment permits. On the ground, economic operators, especially traders and investors, are frustrated by policy and regulatory constraints on the flow of labour across borders, effectively undermining regional integration objectives.

The SADC Treaty recognizes the importance of free flow of labour, and people in general, across the region as a critical element for a successful regional integration process. One of the key objectives of the SADC Treaty is to develop policies aimed at the progressive elimination of obstacles to the free movement of goods, services, capital and labour, and the peoples of the region generally, among member states.[32] To date, this has remained a mere dream, since all efforts to bring into effect a protocol on this aspect has not been successful. The notion of free movement of labour in SADC remains very sensitive and controversial.

Without providing a historical perspective on attempts on this matter, it is important to note that in 1995, SADC adopted a Draft Protocol on the Free Movement of Persons, which sought to gradually eliminate obstacles to free movement of people among member states. This ambitious draft protocol was rejected by a number of relatively economically stronger member states such as South Africa, Namibia, and Botswana. Arguably, at the heart of this rejection is a fear of being overwhelmed by economic migrants from the lesser developed parts of the region.

Another version, now titled, the 'Facilitation of Movement Protocol' was drafted with South Africa's leadership, significantly asserting national interests over those of the region. Specifically, the draft Protocol provides that member states shall develop a framework for the phased implementation of the Protocol. Entry, residence and establishment, and controls at borders under the Protocol are regarded as phases in the process of regional integration. The Protocol obliges member states to:

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[31] See Bertelsmann Stiftung, 'The Case for Harnessing European Labour Mobility: Scenario Analysis and Policy Recommendations', http://labourmobility.com/wp-content/uploads/2014/04/HELM.pdf

[32] SADC Treaty, Article 5(2) (d).

- Harmonize laws and administrative practices to enable citizens of member states to enter another member state for a period of 90 days per year for bona fide visits;
- Standardize immigration forms used by travelling citizens;
- Establish a separate SADC desk at each major point of entry;
- Establish a sufficient number of border crossing points with identical opening hours and ensuring that at least one such post remains open 24 hours every day;
- Issue uniform and simple border permit/border pass to citizens residing in the border areas of member states;
- Abolish visa requirements, but where visas are regarded as necessary, issue them gratis at the point of entry; and
- Co-operate in the provision of training for senior immigration, custom, police, and security officials to facilitate the movement of persons within SADC.

Clearly, these provisions do not address the issue of the movement of labour rather than temporary visitors. Permission to live in the territory of another member state must be sought through an application for a residence permit in accordance with its laws of the member state concerned. Similarly, each member state must, in accordance with its laws, grant permission for the establishment of citizens of other member states. Establishment is defined to mean permission or authority to exercise an economic activity and profession either as an employee or self-employed person or establishing and managing a profession, trade, business, or calling (Article 18).

The draft Protocol on the Facilitation of Movement of Persons was adopted and signed by thirteen members in 2005, but could not enter into force since the required two-thirds majority of member states could not ratify it, as it was only ratified by six member states.[33]

Currently domestic laws determine the migration policies in member states – with some more restrictive than others. Few countries have bilateral agreements with each other governing movement of labour, and people in general, amongst each other. These current approaches hinder regional integration. In the final analysis, the political will and commitment to embrace regional policies on the movement of labour in SADC is fundamentally lacking.

Some SADC member states are in the process of negotiating specific commitments, including temporary movement of persons supplying services in terms of the Protocol on Trade in Services. The Protocol does not deal with measures relating to persons seeking or taking employment in another member state or conferring a right of access to the employment market of another member state (Article 17(2)). The Protocol does not prohibit member states from maintaining market access limitations such as quotas or economic needs tests on the temporary movement of natural persons. Even in the case of temporary movement of service providers, discussions so far suggest the existence of sensitivities and fears about implications on domestic employment, effectively undermining services market integration in SADC.

The inflow of migrants from the SADC region is understandably a concern for South Africa and is extremely pertinent now in the face of a second wave of xenophobic attacks aimed at (mostly African) immigrants this year, after similar attacks in 2008. Apart from immediate measures to ensure that South Africa's image and status as a good neighbour is protected in the region, there

[33] South Africa, Zambia, Lesotho, Mozambique, Botswana, and Swaziland.

will be need for a holistic approach that addresses systemic causes of migration from the other countries, as well as socio-economic development and negative attitudes towards migrants that prevail in the country. With regard to trade, it will be essential to ensure that South Africa's approach to integration with the SADC region is such that job creation and development are strongly encouraged in the partner countries, so as to ensure that inflows of migrants looking for work and better living conditions are to some extent lessened. Strong regional partners would also represent increases in demand for South African goods and services, and hence positively contribute to production processes in the country. The country's 20-year review (1994-2014) encapsulates this thinking. It is important that a clear strategy on harnessing migrants through stronger political and economic relations with their countries of origin is indeed implemented as envisaged in this document.

9 Selected national policies and regional integration in SADC

9.1 Trade policies

As alluded to in Section 3, national trade policies in SADC countries are varied, ranging from the most liberalized tariff regime of Mauritius and to the least liberal of Zimbabwe. The divergent MFN tariffs of member states reflects their diverse trade policy interests. Another prominent feature, which separates their tariff regime structures is the number of tariff bands, with SACU having the highest number, followed by Zimbabwe and Zambia. Tariffs are being used as tools for industrial development; protection of infant industries or generation of public revenue. These diverse levels pose difficulties on SADC's intention to establish a Customs Union, which requires a common external tariff. As also highlighted, countries exhibiting higher MFN tariffs tend to also record a high incidence of NTBs reported by stakeholders in the region, suggesting that duty-free trade in SADC is being replaced with NTBs.

Some countries, such as Mauritius, favour a low tariff regime as a strategy to boost competitiveness. Mauritius aims to transform itself into a duty-free island, and as such, it has reduced its maximum tariff rates and increased the number of duty-free lines. The last WTO trade policy review of Mauritius confirmed that some 79 of tariff lines are duty-free. However, manufacturing is still the most tariff protected sector, with a simple average tariff of 8.8. Protection is especially high in footwear, wearing apparel, tobacco, knitted and crocheted fabrics, sugar products, and beverage.

All SADC member states draw some of their fiscal revenue from customs duties; however, the level of dependence varies among them. Tariffs are a significant source of government revenue in countries like Malawi, Zimbabwe, Zambia, Madagascar, Tanzania, and the BLNS-SACU countries. Poor economic performance appears to contribute to dependence on tariff revenue other than from other domestic sources such as VAT and corporate tax. For example, the importance of customs revenue in Zimbabwe has been rising with economic decline. On the other hand, better economic performance seems to promote a lower tariff regime such as in the case of Mauritius.

There are a myriad of barriers affecting the promotion of trade in services. Progress on advancing intra-SADC trade in services liberalization and regulatory reform has been very slow. The region has also not made substantial commitments in the context of the WTO General Agreement on Trade in Services (GATS). South Africa is the only country that has the highest number of commitments in the region standing at around 45.63 of services industry (Kruger 2011).

Professional services are among the fastest growing services sectors in Southern Africa. Dihel et al. (2010) note that the heterogeneity of professional endowments and differences in sectoral earnings and the capacity for professional training across countries suggest that there is substantive scope for increased regional trade in professional services in Southern Africa. However, trade barriers continue to limit competition and efficiency of professional service providers in Southern Africa.

Box 1: The case of professional services in Southern Africa

(1) Trade in professional services through the movement of natural persons across national borders (mode 4 in GATS) is restricted in Southern Africa by explicit trade barriers, and by stringent regulatory requirements and immigration policies. Chief among them are discretionary limits through labour market tests imposed on the entry of any type of foreign professionals by all countries except Mauritius, de jure or de facto nationality requirements to practice domestic law in all countries except Botswana and Mozambique, and limited recognition of foreign licences for accounting and engineering professionals as well as work permit issues in several countries.

(2) Trade in professional services through the establishment of foreign commercial presence (mode 3 in GATS) is also limited by different types of restrictions across Southern African countries. The restrictions on the entry of foreign accounting and law firms are generally more stringent than those applied to foreign engineering firms. The entry of foreign law firms is not permitted in South Africa, whereas ownership by foreign-licensed professionals is prohibited in Zambia and is limited in Mozambique. Ownership and control of accounting firms by foreign-licensed professionals is prohibited in Malawi, Mauritius, Mozambique, and Zambia.

(3) All Southern African countries restrict cross-border trade (mode 1 in GATS) in certain types of professional services, such as advice on matters relating to domestic law, audits as well as tax representation and tax advice.

Source: World Bank (2012).

As in the case of many services, regulatory reforms at the national level are necessary. In professional services, such reforms should facilitate the development of framework conditions to address skills shortages and skills mismatches to take advantage of gains from trade based on comparative advantage and enhanced competition.

9.2 Industrial policies

National industrial policies in SADC are diverse and un-coordinated. Most policies seek to promote economic diversification away from commodity dependence as well as employment creation. The prevalence of diverse levels of economic development in SADC makes the harmonization of national industrial policies a very challenging task. Even in the context of the oldest customs union, SACU, with an already common external tariff, the objective of the 2002 Agreement to develop a common industrial policy has not been met. The unequal nature in the economic size and level of industrial development between South Africa, which accounts for over 90 per cent of SACU GDP, and the smaller BLNS (Botswana, Lesotho, Namibia, and Swaziland) economies represents an immense challenge to the development of a SACU industrial policy. The tariff is both an instrument of industrial development (in the case of South Africa) and a major source of public revenue in BLNS with South Africa also signalling continued use of import and export duties as industrial policy instruments. It seems that South Africa prefers a path that favours a sector-based industry policy incorporating potential tariff increases and safeguarding tariff policy space. BLNS countries have often indicated frustration that the SACU arrangement has been at the expense of their own industrial development. The motor vehicle is often cited as an example of this polarization effect. Some indicate frustration that the SACU arrangement has been at the expense of their own industrial development. The motor vehicle industry is often cited as an example of this polarization effect.[34] Some SACU members want a reform of the common external tariff as a way to allow them access to cheaper inputs, intermediate and final goods, a fact which does not bode well with South African policy. SACU is in a state of flux. Meetings have been planned at technical and summit level over the past two years but have not materialized. The continued existence of these divergent concerns

[34]A Hyundai assembly plant in Botswana was forced to close in 2000, after South Africa challenged the rules of origin provision entitling the plant to the union's duty and quota-free exports.

does not bode well for coherent and progressive attainment of development objectives in the region. They would need to be effectively addressed so as to ensure coherence of the regional bloc, also as it engages with other regions on the continental level going forward.

The re-emergence of an industrialization agenda that is still based on conventional measures such as the import tariff and export duties is also being noticed further afield in the SADC region. This is the case for example in Angola. This situation is also evident in Zimbabwe, where protection of domestic industries from external competition is increasing, not only through the use of trade taxes but also through the use of non-tariff barriers.

Other SADC members vary substantially in their industrial policies. Differences in their industrial development constraints and needs may require diverse industrial development strategies. For example, it is a challenge for South Africa (a diversified economy with a sizeable manufacturing base) and Malawi (a least developed country with a very limited industrial base) to harmonize their industrial development policies. South Africa may be attracted to strategies in support of large scale import substitutes such as automotive sectors and mineral beneficiation, whilst Malawi may be interested in sourcing low cost inputs globally to support its labour-intensive garment industry. Malawi may see access to the SACU market for its garment exports a much more appropriate strategy than exporting to Brazil. Co-ordination of these policies may, however, be possible. From this perspective, SADC's industrial development policy framework that places importance in co-ordination of policies towards participation in competitive regional/ global value chains makes sense.

Most SADC member states utilize a number of instruments to promote industrial development through incentive schemes such as industrial parks, special economic zones, export-processing zones, duty-drawback schemes, and tax rebates to encourage processing activities. However, there are some policy measures that are implemented as part of these schemes that may hinder regional integration. These include export duties, export restrictions and local sourcing requirements. Such measures may undermine the development of regional value/supply chains as desired in the SADC industrial development policy framework.

The focus of industrial policy in most member states is exclusively on implementing policy instruments with less regard to an institutional framework that promote strategic collaboration between the private sector and government. A weak institutional framework has often led to such policies being captured by vested political and business interests. Mauritius provides good institutional setting as it has designed a high-level of co-ordination of industrial policy and dialogue between public and private stakeholders (UNCTAD 2014). The regional level in SADC has yet to witness a systematic public-private sector dialogue on industrialization efforts. In particular, effective implementation of the SADC industrial development framework requires active participation of the private sector.

9.3 Agricultural policies

Most SADC countries are net-food importers. Food security and safety is, therefore, an important policy objective. The down-side to this policy emphasis on food security and safety is its unintended adverse consequences on regional trade integration. Despite its potential and intra-SADC tariff liberalization, intra-SADC trade in agriculture remains very low. Non-tariff barriers are estimated to affect one third of regional trade in agriculture (SADC 2013). Reported cases on NTBs in agriculture mostly relate to sanitary, phytosanitary, and labelling requirements, periodic banning of imports and exports of certain agricultural items and onerous and costly import and export licensing procedures.

The following section illustrates the nature of agricultural policies in SADC.[35]

Botswana is a net importer of staple food commodities, such as sorghum and maize, which together account for over 90 per cent of domestic cereal production. Productivity in traditional farming is low. Commercial agriculture covers about 30 per cent of arable land, comprising mainly cattle grazing. Botswana is a net exporter of beef, exporting some 90 per cent of production, mainly chilled and frozen beef to the EU under preferences, and to South Africa. Although the country has been hailed to have open trade policies; it is important to note the following:

- Imports of fresh pork are banned; import permits are granted only on processed pork products;
- Poultry imports are permitted only when there is a shortfall of poultry products in the domestic market;
- A central feature of policy in the beef sector has been the state's monopoly over export of beef and live cattle, which has been implemented by the Botswana Meat Commission;
- Imports of maize, wheat, sorghum and related products, pulses, fresh milk, major fruits (watermelons, oranges) and vegetables (cabbages, spinach, potatoes, and tomatoes) are restricted in order to protect an infant horticultural industry, which meets about 20 per cent of domestic requirements. Import permits are withheld when there is sufficient domestic production.

Namibia has introduced a set of measures in support of downstream processing of meat and local production of horticultural products and fruits. Export levies are imposed on the export of live slaughter cattle, sheep and unprocessed hides and skins. For fresh product imports of fruit, the National Horticulture Market Share Initiative imposes a levy on fresh produce imports and currently requires fresh produce importers to source 25 per cent of their purchases locally. Namibia uses border controls to protect the viability of strategic food production industries. The government provides price support to commercial grain producers by imposing import restrictions on maize and wheat grain to ensure that grain is imported only after millers have purchased the commercial production at a negotiated guaranteed minimum price. White maize meal is excluded from imports, and further restrictions are applicable to UHT milk. The Namibia Agronomic Board is the only official marketing board of the controlled agricultural products of wheat and white maize and their flours, pear millet, and horticultural products.

Zimbabwe considers agriculture as one of the engines of economic growth necessary for its reconstruction and poverty reduction. The government intends to revive all the agriculture subsectors including maize, wheat, tobacco, cotton, sugar, beef, horticulture, and floriculture. Agricultural activities remain heavily protected and supported, including through high tariffs, a price band system, and other government incentives such as export finance, insurance, guarantees, and other related trade finances facilities. Some insights into Zimbabwe's agricultural policy:

- A new grain marketing policy was promulgated through a statutory instrument to address maize shortages and build up stocks. The instrument stipulated that maize, wheat, and their

[35] Based on the policy audit report on the agricultural sectors of SACU member states by tralac, May 2008, Vink and Sandrey (2008); select WTO Trade Policy Reviews.

milled products were 'controlled commodities' of which the Grain Marketing Board (GMB) was the sole buyer and seller. Although GMB's monopoly power has recently been relaxed, it has remained the buyer of last resort.

- Agriculture is the most protected sector in Zimbabwe. The average applied tariff on agricultural products of 23.4 per cent is the highest in the SADC region, whereas the corresponding average for non-agricultural products is 19.5 per cent (WTO tariff profiles 2014).
- Imports and exports of agricultural inputs such as fertilizers, farm feeds or remedies require permits form the Ministry of Agriculture. No pesticide may be imported into Zimbabwe, unless it is registered with the applicable authority. Export of fertilizers is only allowed when production exceeds national requirements.
- In addition to customs duty, imports of tobacco and tobacco products are subject to a multitude of other levies and taxes, together with multiple controls and the associated costs. The WTO argues that these measures, combined with other structural problems, hamper the international competitiveness of the sector.

In ***Malawi,*** agriculture is the backbone of the economy. The sector contributes over one third of GDP, almost 90 per cent of employment and about 90 per cent of Malawi's foreign exchange earnings. Self-sufficiency in maize is one of the central elements of food security in the country. Policy instruments to ensure food security include tariffs, input subsidies, minimum prices, strategic reserves, and export prohibitions.

Tariff protection in agriculture in SADC is significant. Many countries continue to maintain import, export, and price controls as well as strategic reserve stocks on certain agricultural products. Marketing boards are in place and monopolies have been granted to certain public enterprises over the importation and exportation of certain products. Despite intra-SADC tariff liberalization, regional trade in agriculture has remained low. Trade policies and agricultural trade in the SADC region are characterized by frequent policy reversals caused by temporary import and export bans, and other non-tariff barriers such as restrictive rules of origin for agro-processed products, application of SPS regulations, licensing requirements and delays in border crossings. Some SADC members have excluded certain agricultural items from preferential trade such as prepared foodstuffs and beverages; live animals and animal products and vegetable products. The need to speed up policy harmonization and capitalize on regional economies of scale remains evident. Policy aspirations in SADC to enhance the regional value chain in agro-processing continue to be undermined by restrictive agricultural policies and regulations at national levels.

10 The SADC institutional framework

Previous sections have demonstrated some critical issues. We have observed through a number examples that national policies of member states, in most cases, are divergent largely reflecting interests of individual member states. This confirms most conclusions that African regional integration frameworks are not adequately mainstreamed into national development policy frameworks (UNECA 2009).

We have also observed that, although SADC protocols and their annexes are legal instruments, which create rights and obligations, they are not necessarily complied with or fully implemented by member states. This leads us to a view that they are either regarded as best-endeavour instruments or non-adherence does not necessarily matter. In other words, it appears that SADC does not have an appropriate legal and institutional framework required for successful implementation of its regional integration approach.

A comprehensive analysis of the SADC legal and institutional framework is not made in this paper, suffice to argue that there exists tension between the linear integration approach adopted by SADC, which requires governance that transcends 'sovereign' member states and the existing regional discourse that emphasizes the need to avoid supra-national mechanisms as a way to promote regional integration.

The current SADC institutional framework comprises of eight structures, namely, the Summit of Heads of State or Government, the Organ on Politics, Defence and Security Cooperation, the Council of Ministers, the Integrated Committee of Ministers, the Standing Committee of Officials, the Secretariat, the Tribunal and SADC National Committees.[36] For the purpose of this paper, whose intention is to draw insights into the role of national policies in regional integration in SADC, only the Summit, Secretariat, and National Committees are briefly analysed.

The Summit is the supreme policy-making institution in SADC and is vested with the responsibility of controlling and giving policy directions for all SADC institutions and member states. The decisions of the Summit are taken by consensus and are binding. However, the SADC Treaty is silent as to whether these binding decisions of the Summit have a direct effect in the territory of member states. Afadameh-Adeyeni, et al. (2010) argue that this silence creates a gap in the quest for regional integration in SADC because the manner in which decisions of the Summit are implemented is left to the discretion of member states. It can be argued that even the Summit appears to have no effective powers to ensure greater policy alignment of individual member states in terms of implementation or compliance. Sanctions against non-compliance can only be imposed by Summit through consensus. This provision has weakened the ability of SADC to act against non-compliance by member states, since the defaulting member would have to support the sanction resolutions.

The Treaty also makes provision for the Tribunal. A Protocol on the Tribunal entered into force in August 2001. According to Article 16(1) of the Treaty, the Tribunal shall ensure adherence to the proper interpretation of the provisions of the SADC Treaty and subsidiary instruments, and to adjudicate such disputes as may be referred to it. Currently, the Tribunal has been suspended precisely because of the weakness of the SADC legal system, i.e., the absence of its own judgement enforcement mechanism. On 28 November 2008, the SADC Tribunal ruled that 78 white Zimbabwean farmers could keep their farms because the Zimbabwean land reform programme had discriminated against them.[37] The Zimbabwean government rejected the ruling and lobbied the Summit. Instead of compelling Zimbabwe to comply with the decision of the Tribunal, Summit suspended the Tribunal.

The Secretariat serves as the principal executive institution of SADC responsible for, among other things, strategic planning and management of the programmes of SADC, submission of harmonized policies and programmes to the Council for consideration and approval. The Secretariat is also responsible for monitoring and evaluating the implementation of regional policies and programmes. The SADC Treaty also provides the Secretariat to play a critical role in the promotion and harmonization of the policies and strategies of member states in support of regional integration. In practice, however, the Secretariat is reduced to a mere administrative

[36] SADC Treaty, Article 9(1).

[37] See Mike Campbell v. Republic of Zimbabwe SADC(T) 2/2007 (28 November 2008).

body to run the affairs of SADC. It has no supra-national authority, independent of individual member states, to pursue member states that do not implement SADC policies. Even the tenure of the Executive Secretary, who is appointed by the Summit, is not guaranteed.

The Treaty also establishes SADC National Committees, which have the responsibility to ensure the harmonization of national policies with regional policies and streamlining of RISDP activities into national development plans. These national structures are almost non-existent, and where they exist they are constrained to perform their role as envisaged under the SADC Treaty.

In February 2012, the Council of Ministers approved the SADC Policy for Strategy Development, Planning, Monitoring, and Evaluation (SDPME). The SADC Treaty (Article 14) clearly defines the Secretariat as the principal executive institution of SADC charged with 'strategic planning and management of programmes of SADC, monitoring and evaluation of implementation of regional policies and programmes' amongst others. The SDPME seeks to strengthen the framework within which the Secretariat should perform this mandate. It also applies a results-based management approach to obtain the necessary synergies in order to strengthen SADC capacity in achieving its strategic objectives.

It is necessary that the Secretariat takes advantage of the SDMPE to enhance effective monitoring of implementation of protocols and other regional policy instruments by member states. According to the SDPME, the Secretariat 'shall take initiatives to effectively monitor the implementation of protocols, declarations, MOUs and other regional policies related to specific sectors' and 'on the domestication and implementation of provisions contained in SADC protocols and other core policies and prepare, in collaboration with member states, an annual report of policy implementation in member states for presentation to the policy structures'. This can present itself as an opportunity to raise policy awareness on how national policies in member states and inadequate implementation of protocols and policy frameworks can hinder progress towards regional integration. However, the need to develop a rules-based mechanism that enhances compliance by member states remains a critical challenge for SADC. The current institutional mechanism remains inadequate to foster greater policy and regulatory convergence among member states.

11 Conclusions

Despite the adoption of a number of regional policy and regulatory frameworks, these have not led to greater policy convergence necessary to advance regional integration in SADC. National policies and regulations in SADC member states remain divergent and somewhat obstructive to greater regional integration.

SADC countries participating in the free trade area have made substantial progress towards the reduction of intra-regional tariffs. However, it is becoming more and more evident that meaningful market integration in the region is more than simply eliminating intra-regional tariffs. In SADC, tariffs have been replaced by rising non-tariff barriers. The existence of wide differences in member states' external levels of tariff protection seems to have contributed to a rise in NTBs affecting intra-regional trade, such as the need for restrictive rules of origin and other regulatory trade barriers. The rise in the prominence of non-tariff barriers, particularly in the agricultural sector, continue to hinder regional trade growth. The unfortunate reality is that most of the NTBs are not merely administrative in nature but are a result of policy and regulatory measures aimed at protecting domestic industries from regional competition, whose resolution requires appropriate regulatory reform at national levels.

The services markets in SADC remain fragmented by regulatory barriers. Work on policies to eliminate obstacles to the movement of services has to date progressed very slowly. Negotiations to liberalize intra-SADC trade in services has just started. However, it is important to recognize that liberalization of trade in services, especially following the GATS approach, does not necessarily bring about services market integration. The key challenge for the region is to develop its services sector, increase competition and enhance greater efficiency in the region's domestic markets. Appropriate regulatory frameworks towards harmonization and mutual recognition of standards can facilitate further integration of regional markets for services.

The SADC region continues to be characterized by low levels of industrial development, with manufacturing contributing a relatively small percentage of GDP in most countries. There is recognition that regional integration can stimulate industrialization as most economies are too small to enjoy the competitiveness that comes with economies of scale. Existing policies that promote restrictive rules of origin in an enlarged preferential market raise regulatory barriers to the movement of goods and services and embrace measures such as export duties, export restrictions, and local sourcing requirements amongst member states may undermine the development of regional value and supply chains as a platform for industrialization.

The difficulties to harmonize trade, industrial and agricultural policies of member states can be turned into an opportunity to re-think industrialization strategies commensurate with the twenty-first century trade and production realities and the role that regional integration can play. A new approach should prioritize trade facilitation, soft and hard infrastructure development, such as those related to energy and transport sectors, and rules on behind-the-border measures to level the playing ground for economic operators, in other words, to improve the general business climate across borders.

It is evident that the SADC objective to progressively eliminate barriers to the free movement of goods, services, capital, and labour across borders is far from being achieved. On the contrary, evidence suggests the existence of restrictive national policies that continue to frustrate progress towards regional integration. This poses an analytical question as to whether the current SADC approach to regional integration is appropriate to facilitate greater policy and regulatory convergence among member states. Furthermore, whether a top-down institutional framework, within an environment in which there appears to be less appetite for the 'sharing of national sovereignty' and respect for 'supra-national' institutions, is appropriate. The fact is, regional institutions in SADC have not been effective in making member states comply with their regional obligations. The absence of a robust rules-based governance regime to ensure compliance and effective implementation of the adopted legal instruments remains a critical issue in the SADC regional integration process.

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