

***SACU (RUN-AWAY) TRADE AGENDA: CHALLENGES AND THREATS TO  
THE SADC REGIONAL INTEGRATION PROJECT***

**A Research Prepared by**

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## **ABBREVIATIONS**

ACP	African, Caribbean, Pacific
AGOA	Africa Growth and Opportunity Act (of US)
BLNS	Botswana, Lesotho, Namibia and Swaziland
CET	Common External Tariff
DRC	Democratic Republic of Congo
EPAs	Economic Partnership Agreements
EC	European Commission
ESA	Eastern and Southern Africa
EU	European Union
EFTA	European Free Trade Area
FTA	Free Trade Area
MERCOSUR	Southern Common Market
RoO	Rules of Origin
SA	South Africa
SACU	Southern African Customs Union
SADC	Southern Africa Development Community
TDCA	Trade and Development Co-operation Agreement
USA	United States of America

## 1.0. INTRODUCTION

The dynamics of international economic relations, the interdependence of development policies across the world and the increasing scarcity of resources, have caused a large number of developing countries to search for strategies that allows them to fit into the world economy and also to grow economically. One of these strategies is the creation of sub-regional and regional unions. In these blocs, small countries use the larger markets to develop competitiveness in order to better integrate into the world economy and reap the benefits that are associated with economic integration. In Africa, Southern Africa Development Community (SADC<sup>1</sup>) and Southern African Customs Union (SACU) are such existing regional economic trade blocs.

SADC regional group has been in existence since 1980, as a loose alliance of nine majority-ruled States in Southern Africa known as the Southern African Development Coordination Conference (SADCC). The transformation of the organization from a Co-ordinating Conference into a development community (SADC) took place on August 17, 1992 in Windhoek, Namibia when the declaration and Treaty was signed giving the organization a legal character. One of the main objectives for the establishment of the bloc (as outlined in the Treaty) was to achieve development and economic growth, alleviate poverty, and enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration.

On the other hand, SACU is the oldest customs union in the world and was established through the Customs Union Agreement of 1910 between the Union of South Africa and the three High Commission Territories of Bechuanaland (now Botswana), Basutoland (now Lesotho) and Swaziland. The 1969 Customs Union Agreement between South Africa, Botswana, Lesotho and Swaziland replaced that Agreement. Namibia became a contracting party to the 1969 Agreement in 1990 upon its independence from South Africa.

The customs union currently consists out of Botswana, Lesotho, Namibia and Swaziland (also referred to as the BLNS countries) and South Africa. SACU is by definition a subset of the SADC regional group. The main reasons for the establishment of SACU were that of regional integration and the facilitation of trade between the members of the Agreement in order to improve economic development of the whole area, in particular the less advanced members ([www.tralac.org](http://www.tralac.org)).

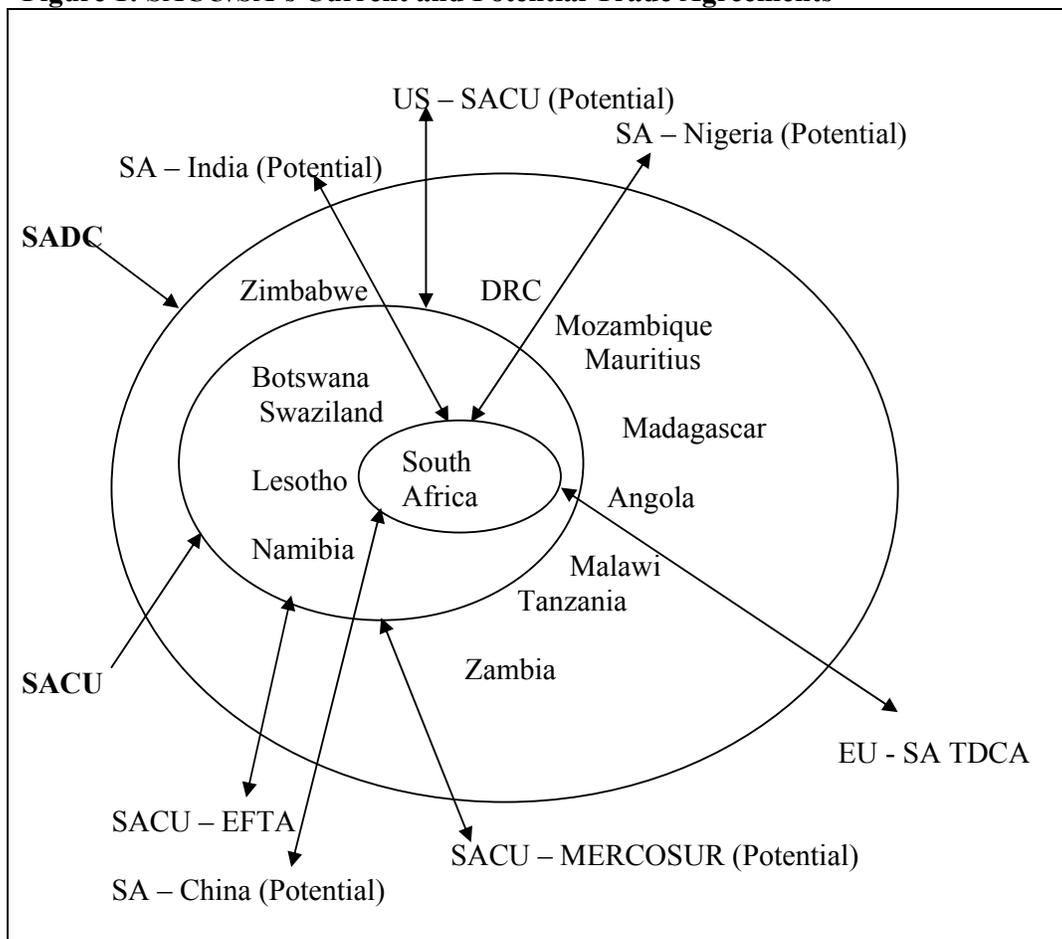
In terms of the depth of integration, in the two respective regions, SACU has gone far along the ladder towards achieving a customs union status; while SADC on the other

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<sup>1</sup> The current Member States are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

hand is still on the lower stage towards regional integration. In fact, SADC is still to achieve a Free Trade Area (FTA) status. Although in some objectives with respect to trade, the two regions have convergence, for instance, they both desire to facilitate movements of goods between member states; in some areas, however the two diverge. While SADC is concerned with a goal of establishing an FTA, SACU is concerned with the promotion of its member states into the global economy through enhanced trade and investment. It follows therefore that given these divergences, where one region is more concerned with reaching a threshold of intra-trade (i.e. SADC), and the other bloc is concerned with trade integration with outside world (i.e. SACU), the respective regional trade policies and strategies will also differ. Figure 1 below shows how SADC's trade programme may become complex given that SACU (and South Africa (SA)) has (and is still in the process of signing new agreement) signed trade agreements with other parties outside SADC.

**Figure 1: SACU/SA's Current and Potential Trade Agreements**



**Source:** Own compilation

The referred of divergence may therefore be a source of potential threat to the SADC's trade integration programme. For instance, SACU by virtue of its regional integration programme which is a step ahead than that of SADC will pursue trade agenda that may be inconsistent with the SADC's programme. A good example of such a scenario has been the EU-SA TDCA agreement that has divided the SADC region with respect to future trading with the EU.

This background provides a platform for this study, which will among other things, analyse the potential challenges towards the achievement of SADC's regional integration of the Free Trade Area emanating from SACU's trade policy.

## **2.0. SADC Regional Trade Integration Programme**

The Southern African Development Community (SADC) has been in existence since 1980, where it was formed as a loose alliance of nine majority-ruled States in Southern Africa known as the Southern African Development Coordination Conference (SADCC), with the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa. The transformation of the organisation from Co-ordinating Conference into a Development Community (SADC) took place on August 17, 1992 in Windhoek, Namibia when the Declaration and Treaty was signed. The Community vision is that of a common future, a future within a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa.

The objectives of SADC as stated in the Treaty are to:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration.
- Evolve common political values, systems and institutions.
- Promote and defend peace and security.
- Promote self-sustaining development on the basis of collective self-reliance, and the inter-dependence of Member States.
- Achieve complementarity between national and regional strategies and programmes.
- Promote and maximise productive employment and utilisation of resources of the region.
- Achieve sustainable utilisation of natural resources and effective protection of the environment.
- Strengthen and consolidate the long-standing historical, social and cultural affinities and links among the peoples of the region.

To achieve its aims, SADC shall:

- Harmonise political and socio-economic policies and plans of Member States.
- Mobilise the peoples of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region, and to participate fully in the implementation of the programmes and projects of SADC.
- Create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its institutions.

- Develop policies aimed at the progressive elimination of obstacles to free movement of capital and labour, goods and services, and of the peoples of the region generally within Member States.
- Promote the development of human resources.
- Promote the development, transfer and mastery of technology.
- Improve economic management and performance through regional cooperation.
- Promote the coordination and harmonisation of the international relations of Member States.
- Secure international understanding, cooperation and support, and mobilise the inflow of public and private resources into the region.
- Develop such other activities as Member States may decide in furtherance of the objectives of SADC.

From the above objectives one can see that the Windhoek Treaty does in principle commit SADC to regional economic integration on a wide and deep range of fronts. Thus, regional trade integration and free trade is part of a wider ambition of SADC. This is a marked departure from SADCC (the forerunner of SADC), which largely concentrated on project coordination.

However, to give the regional integration process the attention it deserves, and in accordance to Article 22 of the Treaty, SADC signed a Protocol on Trade (hereinafter called “The Protocol”) on 24 August 1996, which entered into force on 25 January 2000 although it was implemented from 1 September 2000. The Protocol mainly deals with all the trade issues of the Community.

The specific objectives of this Protocol as stated in Article 2 are:

1. To further liberalise intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements, complimented by Protocols in other areas.
2. To ensure efficient production within SADC reflecting the current and dynamic comparative advantages of its Members.
3. To contribute towards the improvement of the climate for domestic, cross-border and foreign investment.
4. To enhance the economic development, diversification and industrialisation of the Region.
5. To establish a Free Trade Area in the SADC Region.

The above Protocol has since started to be implemented, however, progress has been slow. Eleven members started implementing the Protocol in September 2000 after its ratification. Currently Angola, Seychelles and the Democratic Republic of Congo remain outside of the agreement. To date all signatories except Zimbabwe have translated their commitments into domestic enabling legislation.

For purposes of operating the FTA, products have been grouped under three main categories (**A**, **B** and **C**). Category **A** products (mostly capital goods and equipment) were liberalised in the first year. This category constitutes about 76% of SACU's trade with SADC, and carries the zero tariff rate in SACU countries. Category **B** products

(e.g. goods that constitute important sources of customs revenue) are to be liberalised gradually by 2008. Category C consists of products deemed sensitive by member states (e.g. imports sensitive to domestic industries such as sugar for SACU countries). These goods, limited to a maximum of 15% of each member's total merchandise trade, are to be liberalised between 2005 and 2012. In addition, a fourth category of products, Category E, covers products ineligible for preferential treatment under general and security exceptions permissible under Articles 9 and 10 of the Protocol. These are expected to make up a small list of products, so that by 2012 about 98% of SADC merchandise trade will be subject to zero tariffs. The phase-down offers are country-specific and are currently being implemented. Implementation of the Protocol is based on the principle of reciprocity, i.e. tariff preferences will be extended only to member states that have submitted their instruments of implementation.

SADC members made "differentiated offers" to non-SACU SADC countries plus Botswana, Lesotho, Swaziland and Namibia, and "general offers" to South Africa. Moreover, SACU members made offers to the other SADC members for immediate reductions to achieve zero tariffs after five years, except for sensitive products. SADC offers to SACU countries are differentiated. Offers for tariff reduction to BLNS countries are heavily front-loaded, while offers to South Africa are mid to back-loaded. Offers by the other SADC members to South Africa thereby delay tariff reductions on category A and B products. Moreover, tariff reductions on the sensitive products (category C) are further delayed from the eighth to the twelfth year. This asymmetrical implementation is seen as a means of enhancing equity in the region since South Africa, the principal SACU member, is far more developed than other SADC members. Zimbabwe and Mauritius also agreed to start their tariff reductions earlier than other non-SACU members.

The Trade Protocol objectives put it clear that SADC wants to achieve free trade in goods among member states, among other objectives. Since the implementation of the Protocol in 2000, a bulk of member states have been committed to the annual phasing in of their respective tariff phase downs, with the exception of a few countries that have been generally behind schedule. Overall, the movement towards FTA by 2008 can be said to be an achievable goal.

While the Trade Protocol has identified several non-tariff measures to be eliminated, such as import quotas, customs procedures and export subsidies, it excludes other important non-tariff barriers, such as local-content requirements, levies and other border charges and import (and export) licensing. Despite efforts over the last 5 years, the rules of origin on wheat and flour are still not settled, and these products are thus excluded from the implementation.

### **3.0. SACU Regional Trade Integration Programme**

SACU was established through the Customs Union Agreement of 1910 between the Union of South Africa and the three so-called High Commission Territories of Bechuanaland (now Botswana), Basutoland (now Lesotho) and Swaziland. The 1969 Customs Union Agreement between South Africa, Botswana, Lesotho and Swaziland

replaced that Agreement. Namibia became a contracting party to the 1969 Agreement in 1990 upon its independence from South Africa. The customs union currently consists out of Botswana, Lesotho, Namibia and Swaziland and South Africa.

Following the formation of the Government of National Unity in South Africa in April 1994, Member States concurred that the present 1969 Agreement should be renegotiated in order to democratize SACU and address the current needs of the SACU Member States more effectively. This culminated into a new “Final SACU Agreement” which was signed in Gaborone Botswana 21 October 2002 and this came into operation towards end of 2003. The new agreement provides for joint exercise of responsibility over decisions affecting tariff setting, a common revenue pool, and the operation of effective, transparent and democratic institutions, which must ensure equitable trade benefits to member states and the increase of investment opportunities in the common customs area. The Agreement also renegotiated the terms for disbursement of the common revenue pool, which accounts for a large portion of government revenue in the BLNS countries.

In terms of objectives, Article 2 of the “Final SACU Agreement” outlines them as follows:

- a) To facilitate the cross-border movement of goods between the territories of the Members States;
- b) To create effective, transparent and democratic institutions which will ensure equitable trade benefits to Member States;
- c) To promote conditions of fair competition in the Common Customs Area;
- d) To substantially increase investment opportunities in the Common Customs Area;
- e) To enhance the economic development, diversification, industrialization and competitiveness of Member States;
- f) To promote the integration of Member States into the global economy through enhanced trade and investment;
- g) To facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by Member States; and
- h) To facilitate the development of common policies and strategies.

The main reasons for the establishment of SACU were that of regional integration and the facilitation of trade between members of the Agreement in order to improve economic development of the whole area, in particular the less advanced members. The members fall into a customs free zone. This means that all import duties between members are abolished. Although this is also the case in a free-trade area, a customs union is more integrated than a free trade area as a common external tariff (CET) is imposed against all non-members of the customs union, whereas in a free trade area the independent tariffs of the individual members are retained against non-members.

In addition to the common external tariff, the SACU Agreement of 1969 also provides for a common excise tariff for all its members. All customs and excise duties collected in the common customs area have to be paid into South Africa’s National Revenue fund. Only the BLNS countries share the revenue according to a revenue-

sharing formula described in the Agreement with South Africa receiving the residual<sup>2</sup>. SACU revenue constitutes a substantial share of the state revenue of the BLNS countries. Recent estimates indicate SACU payments accounted for 62% of government revenue in Lesotho, 53% in Swaziland, 33% in Namibia, and 16% in Botswana in 2000<sup>3</sup>.

South Africa has a dominant position in SACU that is provided for in the agreement itself, especially as far as the laws in relation to customs, excise and sales duties are concerned. It determines tariffs and trade policies while other SACU member states lack sovereignty in the areas of monetary, fiscal and foreign exchange policy. This is because the Agreement interlinks the trade regimes of the five members as well as the value of their currencies, except in the case of Botswana ([www.tralac.org/publications/legislation/SAC](http://www.tralac.org/publications/legislation/SAC)). Largely, the grouping is dominated by South Africa, which accounts for 87% of the population, and 93% of the GDP of the customs area. SACU member states had combined real GDP of US\$201 billion in 2003<sup>4</sup>.

It is important to note however that, by virtue of South Africa's bigger economic muscle, SACU trade links and programme has been overall dominated by one country. Although, in some cases with consensus from the BLNS, in other cases, South Africa has even entered into trade agreements for which the other SACU Members were not in agreement with, although they naturally became de facto parties to those trade agreements.

### **3.1. Extent of SACU's regional trade integration**

Unlike the SADC region, SACU is way ahead as far as trade integration is concerned. Making reference to theory of customs union, the Union has passed both stages of preferential trade arrangements (PTA), FTA and is currently at the customs union stage. Although some of the SACU countries operate a monetary union, this type of integration is still in its early stage. One can therefore suggest that, given the long time these countries have been together, such type of union can easily be achieved.

### **4.0. SADC versus SACU: Analysis of respective trade integration programmes**

A closer look at the two regions' respective trade objectives shows that they converge in some areas, and also diverge in other areas. Table 1 presents a comparison of the two organizations' respective objectives where they (objectives) have been paired, to

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<sup>2</sup> The revenue share accruing to each member state is divided into three components (a customs pool, excise pool and a development component) with each following its own method of distribution. The customs component will be allocated according to each country's share of total intra-SACU trade, including re-export; the excise component will be shared on the basis of GDP; and the development component is to be fixed at 15% of the total excise pool and distributed to all member states according to the inverse of each country's GDP per capita.

<sup>3</sup> *Africa South of the Sahara, 2003 Edition* (London: Europa Publications, 2002), pp. 83, 532, 704, 1020.

<sup>4</sup> The World Bank, *World Development Indicators*. In constant 1995 U.S. dollars

see whether there is convergence or divergence. As shown in the table, there is relative convergence on the objectives numbered 1 through 3. Although the objectives are not exactly the same, both regions tend to pursue same goals of promoting free movement of goods within their region, endeavour to increase investment in their regions and also desire to diversify and industrialize their economic regions.

**Table 1: SADC and SACU Trade objectives**

Objective (Randomly numbered)	SADC Trade Protocol Objectives	SACU Objectives	Objectives Convergence /divergence
1	To further liberalize intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements...	To facilitate the cross-border movement of goods between the territories of the Member States	Converge
2	To contribute towards the improvement of the climate for domestic, cross-border and foreign investment.	To substantially increase investment opportunities in the Common Customs Area.	Converge
3	To enhance the economic diversification and industrialization of the region	To enhance economic development, diversification, industrialization and competitiveness of Member States	Converge
4	Achieve complementarity between national and regional strategies and programmes <sup>†</sup>	To facilitate the development of common policies and strategies	Divergence
5	To establish a Free Trade Area in the SADC Region	To promote the integration of Member States into the global economy through enhanced trade and investment	Divergence

**Sources:** SACU 2002, SADC 1996.

Note: + means objective from the SADC Treaty

The two regions' objectives begin to differ when one looks at respective objectives numbered 4. Though at first, one may consider the two objectives to be the same, a critical consideration points out to the fact that they are different. On one hand, SADC is aiming complementarity between national and regional strategies and programmes. This suggest that member states independently make their own national strategies and programmes, and these strategies and programmes are suppose to complement those of other member countries as well as those of the region as a whole. Whilst the objective suggests such an integration approach, there is however no obligation for member states to have strategies that are compliment to other countries' strategies. This then means that, even without other external obstacles, the integration programme effort maybe partly diluted.

On the same objective, SACU explicitly facilitates development of common policies and strategies, hence obliging its member countries to move towards the cementing of the region in as many areas as possible, ranging from trade, macroeconomic policy, to mention just two areas of integration. Given the importance of common policies and strategies in regional integration arrangements, one can see the reason why SACU has

been commended as one of the most successful economic regional trade bloc, not only in Africa, but the world over.

A major divergence between the two regions comes from the objective number 5 in Table 1. This particular objective creates a big gulf between the two blocks as far as the levels of economic integration is concerned. As is indicated, whilst SADC is aiming a Free Trade Area (by January 1 2008), SACU has already passed that stage since it is already a full-fledged Customs Union. From this objective, (as well as other objectives) it can be deduced that SADC is more inward looking, while SACU is focusing its trade wings to other countries and regions both in Africa and outside the continent. As a result of this divergence, SACU/SA has entered (and is still negotiating other) trade agreements with a number of countries/economic regions outside SADC.

Given the nature of some of SACU's trade agreements with other non-SADC countries/regions, especially where SACU benefits most in terms of investment and other developmental assistance, one may suggest that the organisation will most likely give precedence to those trade agreements before SADC agreement. As will be discussed in the next section, some of SACU trade agreements with non-SADC economic regions explicitly favour SACU when it comes to investment, development and technical assistance, to mention a few. These are some of the important areas that most developing countries will be wishing to gain from any trade agreement, especially when the agreement is concluded with highly industrialised economies.

## **5.0. SACU Trade Agreements**

WTO member states have once commended SACU trade policy for adopting more outward-oriented trade practices. The latter region's member countries have attached greater emphasis on their participation in the multilateral trading system and have been determined that their regional agreements should conform to the rules of the multilateral system. SACU has also been engaged in efforts to foster economic growth and balanced development through cooperation and integration. To that end, the region considers regional integration would help it build a competitive regional economy that would provide a basis for more effective integration into the world economy (WTO, 1998).

Following this out-ward oriented trade practice, SACU has entered a number of trade agreements, both with the developed countries, and also with other transition economies. It is also important to note that SACU started this aggressive trade policy beginning the late 1990s when SA negotiated the TDCA with the EC, and ever since the beginning of the millennium, the region has since continued with that quest of establishing free trade areas with countries both inside and outside Africa. The section below deals with some of the existing trade agreements, as well as those currently under negotiations, between SACU/SA and other economic regions/countries.

### **5.1. SACU-EFTA Trade Agreement**

In May 2003, the first round of negotiations for an FTA between SACU member states and the European Free Trade Area (EFTA) got underway. The member states of EFTA (Iceland, Liechtenstein, Norway and Switzerland) have chosen SACU as the first regional economic community with which to negotiate a comprehensive agreement on the African continent.

On the other hand SACU believes that an EFTA/SACU FTA will promote the emergence of more equitable relations between developed and developing countries. SACU intends, through the agreement, to change the structure of its trade with EFTA, from the export of mainly raw and semi-processed goods into a more balanced and mutually favourable relationship, based on high value activities and investment. ([www.tralac.org/documents](http://www.tralac.org/documents)).

Following successful negotiations between the two economic blocs, in 2006, the parties managed to conclude their trade agreement entitled “Free Trade Area Between The EFTA States and The SACU States”.

The main objectives of this trade agreement as spelt out in Article 1, paragraph 2 of Chapter 1 of the Agreement are to:

- a) achieve the liberalization of trade in goods in conformity with the General Agreement on Tariffs and Trade (hereinafter referred to as “the GATT 1994”)<sup>5</sup>;
- b) substantially increase investment opportunities in the free trade area;
- c) promote adequate and effective protection of intellectual property rights;
- d) establish a framework for the further development of their trade and economic relations with a view to expanding and enhancing the benefits of this Agreement; and
- e) in this way to the harmonious development and expansion of world trade by the removal of barriers to trade.

Among other objectives, objective (b) may be considered to be the most important one (from SACU’s point of view) given the lack of investment that generally characterizes the SACU region (with the exception of South Africa to some extent). As further emphasized in Article 18, the “Parties shall endeavour to create and maintain a stable and transparent investment framework and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments by investors of the other Parties. Parties shall admit investments by investors of the other Parties in accordance with their laws and regulations”. It rationally follow that SACU will do its best as a region to adhere to the agreement and any specific terms pertaining to any potential investment that may be coming from EFTA partners. Given the complexity of trade and investment issues, one may suggest the possibility of conflict of interest from the SACU side, where the region will have to adhere to EFTA and SADC agreements.

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<sup>5</sup> Products covered by the agreement according to Chapter II, Article 6, paragraph 1, subparagraph (a) fall within Chapters 25 to 98 of the Harmonized Commodity Description and Coding System (HS), except as provided for in Annex II;

## 5.2. 0. US - SACU FTA

The SACU member states entered into formal negotiations for a free trade agreement (FTA) with the United States in July 2003. The FTA is intended to encompass both trade and aid components. That is the potential agreement would eliminate tariffs over time, reduce or eliminate non-tariff barriers, liberalise services, trade, protect intellectual property rights, and provide technical assistance to help SACU nations achieve the goals of the agreement. The agreement will build on the US African Growth and Opportunity Act (AGOA), of which SACU member states have been major beneficiaries. The process of negotiation will have the added benefit of advancing SACU's integration agenda through enhanced close co-operation between member states. This is hoped to have the additional effect of augmenting the ability of the parties to reach consensus in multilateral trade negotiations.

From the US point of view, several possible rationales exist for the negotiation of an FTA with SACU. One impetus derives from Sec. 116 of the AGOA (Title I, P.L. 106-200), in which the US declared that FTAs should be negotiated with sub-Saharan African countries to serve as a catalyst for trade and for U.S. private sector investment in the region. Such trade and investment could fuel economic growth in Southern Africa, by creating new jobs and wealth. SACU member countries have achieved the most robust export growth under AGOA, and an FTA may be seen as a way of expanding their access to the U.S. market. An FTA may also encourage the continued economic liberalization of the SACU members, and it could move SACU beyond one-way preferential access to full trade partnership with the United States.

SACU is the United States' second largest trading partner in Africa after Nigeria—whose exports are almost exclusively petroleum products. In 2003, SACU was the 32<sup>nd</sup> largest trading partner of the United States with two-way trade equivalent to US\$7.3 billion<sup>6</sup>. Merchandise imports from SACU totaled US\$5.6 billion in 2003, a 17.3% increase from 2002 and a 126% increase from 1996. They were composed of minerals such as platinum, diamonds, and titanium, textiles and apparel, vehicles, and automotive parts. US exports have been relatively steady since 1996, however, the 2003 total of US\$2.8 billion represented an 8.6% increase from 2002. Major US exports to the region include aircraft, vehicles, computers, and construction and agricultural equipment.

Although the two parties are in the negotiation process, the negotiations have not however progressed at the expected pace, and are currently in a deadlock. There are several possible reasons for this deadlock; firstly, the United States and SACU may be

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<sup>6</sup> Goods data compiled by U.S. International Trade Commission. U.S. imports for consumption calculated as customs value; U.S. domestic exports as FAS (free alongside ship) value.

focused on different negotiating interests. Per their mandate to pursue comprehensive FTAs, the US negotiators have attempted to proceed with negotiations on intellectual property rights, government procurement, investment, and services. However, SACU officials have reportedly argued for these issues to be excluded from the negotiations. They have been more focused on locking in AGOA benefits and achieving deeper market access. Now that US has extended the AGOA benefits to 2015 through the AGOA Acceleration Act of 2004 (P.L. 108-274), there could be less incentive for SACU countries to complete an FTA with the United States. Also, the United States and SACU have different views on the inclusion of certain industrial sectors in the negotiations. The United States prefers what is called a negative list, where all industries are negotiable unless specifically excluded. Meanwhile, SACU prefers a positive list, where the industries to be included in the negotiations are specified in advance, and additional industries may be included in the agreement over time. Finally, the United States and SACU have differed on issues concerning labour rights and environmental regulations.

The Black Economic Empowerment (BEE) programme of South Africa may be another significant hurdle to the negotiations. The BEE programme involves criteria for companies to increase opportunities for non-white business partners through equity ownership and executive board positions. The BEE programme may constitute a trade barrier; and US businesses have indicated that they may have difficulty meeting these BEE criteria.

The United States recognises that SACU is still an emerging entity. SACU has not developed coordinated policies on many of the issues that would be included in an FTA, which may add to the challenges of negotiating an FTA<sup>7</sup>. Despite these challenges, there is, reportedly, a renewed political will among SACU countries for the FTA<sup>8</sup>. The United States may seek to build on this new political will and address the negotiating difficulties, including contentious issues, through further trade capacity building support.

### **5.2.1. Potential Impact of US – SA FTA on SADC Regional Trade Programme**

Whilst it maybe premature to evaluate the potential problems that maybe caused by the above FTA on SADC regional integration programme, experience from similar arrangements may give an inference. As a point of departure, the fact that SACU will be legally obligated to perform according to the two FTAs become a problem. For instance, goods maybe coming into SACU from US under the FTA, and end up being re-exported to other SADC member states (purporting to be originating from SADC region), depriving non-SACU SADC countries of potential import revenues. Although intra-SADC trade in goods require certification of rules of origin (RoO), in reality it maybe difficult to verify the RoO. Also given the fact that the envisioned US – SACU FTA will be an agreement between poor partners (SACU countries), on one

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<sup>7</sup> “U.S.-SACU Free Trade Negotiations Put on Hold; New Mechanism Being Created,” *International Trade Reporter*, December 16, 2004.

<sup>8</sup> “Administration, Business Pressure SACU for Comprehensive FTA,” *Inside U.S. Trade*, December 10, 2004.

hand and US, a major economic powerhouse, the agreement maybe lopsided in favour of the latter partner. In such a case, the US may dictate some areas of the agreement to the detriment of non-SACU SADC countries.

### **5.3. SACU – MERCOSUR Trade Negotiations**

SACU has also been in negotiations with the Southern Common Market (Mercosur) for a possible FTA. At the initial negotiations, the agreement was supposed to be formulated as a two step process, where the first step involved a fixed preferential tariff agreement whereby those business sectors that were not controversial (from both parties) were supposed to access their opposite markets easily. The second phase was to be the negotiation of a full FTA. However, the negotiations has not progressed well up to now due to the fact that SACU preferred the option of going straight into a full-fledged FTA, while the MERCOSUR wanted the agreement to begin with the first step.

### **5.4. SA-EU TDCA**

One of the trade agreements that have received much attention in the new millennium in Southern Africa has been the EU – SA TDCA. Although the agreement is *de juries* an agreement between EU member states on one hand, and South Africa on the other, it has widely been considered to be a *de facto* agreement between EU and SACU. This follows from the fact that SACU is dominated by SA.

According to Article 1 of the TDCA, the objectives of the Agreement are to:

- a) provide an appropriate framework for dialogue between the parties, promoting the development of close relations in all areas covered by this Agreement;
- b) support the efforts made by South Africa to consolidate the economic and social foundations of its transition process;
- c) promote regional cooperation and economic integration in the Southern African region
- d) contribute to its harmonious and sustainable economic and social development;
- e) promote the expansion and reciprocal liberalization of mutual trade in goods, services and capital;
- f) encourage the smooth and gradual integration of South Africa into the world economy;
- g) promote cooperation between the Community and South Africa within the bounds of their respective powers, in their mutual interest.

Added to these objectives, the agreement also goes further in describing how the EU will endeavour to positively help SA in some of the areas of cooperation between the two parties. For instance, Article 52 talks about investment promotion and trade development between the two parties, and how EU will support, through appropriate instruments, the promotion and encouragement of investment in South Africa and in

the Southern African region. The same can be said about Article 53, where the EU undertakes to develop, diversify and increase trade between the parties and to improve the competitiveness of South African production on domestic, regional and international markets. All that can be inferred from the TDCA is that, if both parties perform according to the agreement, South Africa will gain in investment. This means that the country will have a potential incentive to be more inclined to integration through the TDCA, than through the SADC route.

### **5.5. Other Potential SACU/SA Trade Agreements**

SACU is examining the possibility of further trade agreements. SACU is thus looking forward to negotiate FTAs with India, China and Nigeria. This endeavour emanates from the region's trade policy whose aim is that of integration of its member states into the world economy through trade agreements with as many regions/countries as possible.

### **6.0. SACU Trade Agreements as Potential Threat to SADC Regional Trade Agenda**

The EU – SA TDCA has received much criticism from most Southern Africa countries as it has proved to be divisive in nature. This agreement has divided the SADC region as far as trade and other relations between SADC on one hand, and European Union on the other hand. A clear example is the way in which EPAs trade negotiations has divided SADC into three groups. The first group comprising South Africa alone, the second group consisting of countries that are negotiating the Economic Partnership Agreements (EPAs) with EU as purely SADC member states (the so-called SADC 7) and the last group comprising SADC members that are negotiating the EPAs under COMESA region (ESA countries). This partition of SADC region has weakened the solidarity that once existed between the member states, to such an extent that attention towards achieving same regional objectives has been diverted.

This complexity is also a potential feature characterising any of the above outlined SACU trade agreements (current and potential). The fact that SACU will be obliged to 'save two masters' (SADC on the one hand, plus other SACU trade partners) creates a conflict of interest, and in most cases SADC will suffer. To give a picture of the potential threat of SACU's trade agreements towards achievement of the SADC regional integration project, the paper will discuss two issues: market complementarity and potential benefits and show how they may be a source of potential threat to SADC's trade agenda.

### **6.1. Trade Complementarity**

It is a well known fact that most, if not all, SADC economies are similar in nature when it comes to the products they produce, hence the export products they offer. The same is true when it comes to the region's imports, they all import more or less same type of products for which none of them produce. It follows that the output of regional

countries does not at all complement each other. Table 2 below shows a list of the regions' imports and exports.

**Table 2: SADC's exports and imports products**

<b>Export Products</b>	<b>Import Products</b>
Crude oil, refined petroleum, ores & minerals, diamonds, gas, coffee, fish & fish products, meat & meat products, hides & skins, textiles, vehicles & parts, cobalt, zinc, copper, rubber, gecamines, food and live animals, tobacco, chemicals & by-products, tea, rice, pulses, clothing, yarn & thread, aluminum, prawns, timber, cashew nuts (raw & processed), sugar, horticulture and floriculture products, Ferro-alloys, asbestos, gold and cut flowers.	Machinery and electric equipment, vehicles and spare parts, machines, military goods, fuels, textiles & footwear, consumer goods, transport equipment, miscellaneous manufactured items and industrial raw materials.

**Source:** Official SADC Trade, Industry and Investment Review 2005

Mainly primary raw material items dominate export products, while the imports side is composed of value added manufactured products. From the table it can be seen that intra-SADC trade does not offer enough the import requirements of the member countries since none of the countries produce them, especially in right quantities that are required by the region<sup>9</sup>. On the other hand, the trading bloc does not absorb the exports products of member states as most countries produce the same export products.

This lack of complementarity may be one of the reasons that SACU has of late realised and hence started to engage the North regions/countries (EU, US) so that it can find markets for its primary intensive exports, while satisfying its capital-intensive import requirements. Whilst SACU maybe seeking both preferential markets for its exports and preferential import sources, the whole process will jeopardise SADC's regional integration endeavour. This follow from the potential conflict of imposed on SACU where the region may end up putting other trade agreements ahead of SADC.

## **6.2. Potential Benefits offered by various trade agreements**

One of the driving force behind trade agreements between the North – South (rich – poor) countries of late have been the potential benefits that may accrue to the poor countries from the rich partner countries. An innumerable list of benefits ranges from financial aid/loans, technical assistance (for instance to efficiently implement the agreement) and development aid. Existing trade arrangements between the developing and developed world which have an inbuilt of these benefits include the US's AGOA and the EU – ACP Cotonou Agreement (Lome Conventions).

The lack of these benefits within SADC region, might have been the driving force behind which SACU has considered engaging, among other potential trade partners, the highly industrialised economies so that SACU could be a recipient of such benefits (if they are/will be delivered at the end of the day). Such moves will again

<sup>9</sup> It should be noted that South Africa do produce some of the manufactured products that are imported by other SADC Member States, but it produces them in quantities that do not satisfy the region's import requirements.

play down the efforts that SADC region is placing on the need to further integrate the region.

### **6.3. Way forward**

Given this potential threat to the SADC regional integration project arising from SACU's trade agenda, the possible question that could be asked is: what then is the way forward with regard to elimination/minimization of the threat? Having alluded to the complexity and dynamism of trade issues, the paper is not in a position to provide the answer since the solution may depend upon the compromises of a number of interesting groups/countries. However, it maybe pointed out that addressing the issue of complementarity may partially reduce the threat. If the SADC countries may become diversified, it means that regional intra-trade may increase, reducing the probability of SACU looking out of the SADC region for exports destination or for imports sources.

The threat brought out by lack of investment, aid and development benefits in the SADC region, may be a problem to deal with, though it (the threat) can be minimized if some of the benefits that accrue to SACU out of the various trade agreements spillover to SADC in a way that enhances the latter region's integration. An example of such benefit maybe railroad investment that links not only SACU countries, but also other non-SACU SADC countries. In this way, the latter region's objective of contributing towards the improvement of foreign investment in SADC region will be enhanced. Also the objective of furthering intra-regional trade in goods and services will be fostered by improvements in transportation of goods between member states.

### **7.0. Conclusion**

The study has detailed how SACU's trade agenda poses challenges and threats to the SADC's regional integration process. The fact that the former economic bloc is more out-ward oriented in its trade policies and strategies has meant that it entered into a number of trade agreements with both the rich economies and other developing countries. Given the potential conflict of interest imposed on SACU by the various trade arrangements that it entered into, its commitment towards SADC's regional integration process will be minimal, hence jeopardising the SADC's regional integration programme.

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