

SCHOOL OF LAW  
OBLIG. ESSAY  
1994/95

**THE MERGER OF  
THE COMESA & SADC  
REGIONAL GROUPINGS:  
A REALISTIC PROSPECT?**

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1995  
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by

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October, 1995

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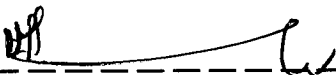
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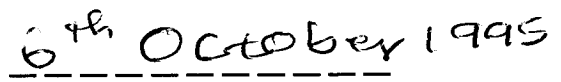
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# **THE MERGER OF THE COMESA & SADC REGIONAL GROUPINGS: A REALISTIC PROSPECT?**

by

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**An obligatory essay submitted to the University of Zambia Faculty of Law  
in partial fulfilment of the requirements of the award of the  
degree of Bachelor of Laws (LL.B)**

University of Zambia  
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Lusaka

October, 1995

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**DEDICATION**

I dedicate this work to my Dad and Mum for all the support; morally and financially. Without your love and encouragement nothing would have been achieved. I Love you and I am very grateful.

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### *Acknowledgments*

I want to thank God for always being with me, especially for guiding me. I wish to express my heartfelt thanks to the following;

- Dr. Hansungule; my supervisor, for his assistance, support and patience throughout my work. Nothing went unnoticed. Thanks alot.
  - Mr Chitambo at SADC, Mining Sector; Dr. Hawa Sinare, Director of Legal Department at COMESA Headquarters and Mr David Frost of Associated Printers, you just don't know how your cooperation and ideas helped me.
  - Mrs Zulu and her staff at the COMESA Library, your help was truly appreciated.
  - Milimo Moyo for the encouragement and having read part of the essay. I will forever have you in my heart. Thank you.
  - Sekelebaka Muwamba for being a sweet roommate, be good always.
  - To all my friends out there, for the assistance, support and love that I have received at any time throughout my stay on CAMPUS. It has been nice having you guys around and I will always know that with you around, I will be forever truly blessed. Take care because I care.
  - Masauso Sylvester Lungu, thanks for everything. I wish words could express my gratefulness but I just cannot seem to find a suitable word. I will forever remain indebted to you. A million thanks.
  - My Family - you guys are great! I wish the whole lot of you could understand the love I have for you. You could be surprised, because I love you so much but, it's only my heart that knows. What's more, is that I am proud of you. Take care because your elder sister cares a lot and always work hard in all you do.
  - It is necessary to add that the responsibility, mistakes and inadequacies remain mine alone.
-

## **INTRODUCTION**

Regional economic co-operation is not a new phenomenon but has grown to an enormous proportion in recent years especially in the post war era. All over the world, countries have come together to form economic blocks, and these are geographically based. There are various reasons as to why economic integration is preferred to nationalism. These reasons range from prompting peace, like in Europe (Since economic groups mainly sprung up just after the second world war) to improving the poor economies and promoting self-reliance as in Africa and South America. However, the most important factor of economic integration has been the improvement of trade amongst the member states in a given economic block by removing existing trade barriers, hence enhancing rapid economic development.

Europe has sustained growth and development. In fact, it has been said that it has created the largest and richest common market in the world today by incorporating two major economic groupings to form one large European Economic Area. As for Africa, there has been a number of economic groups, some of which have failed, for example the East African Community and the Central African Federation. And others are struggling to succeed. The main objective of regional integration as a basis of economic development in Africa is to assist member states to attain transformation and social advancement and to address the problems of economic dependency on external institutions, mass poverty and general development.

In this paper, we will concentrate on two particular economic groupings and these are The Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). These two groups are of special interest because of their peculiar setting; that of having almost all members of one group in the other group - nine of the eleven SADC member states are also members of the COMESA group, which has twenty-two members. Since the reasons for regional economic co-operation are one and the same, it is then the task of this paper to find out why the two economic groups cannot merge. Having two separate economic groupings in one area with almost the same members may have some advantages but this does certainly create some problems. Problems such as those relating

to rules; that is which rules or rather regulations to apply when it comes to inter alia tariffs and trade liberalisation.

To illustrate the above, let us take three countries; Angola, Zaire and Zambia as belonging to both COMESA and SADC. An Angola businesswoman wants to import sugar from Zambia, both states being members of the two organisations and COMESA has introduced tariff cuts of about 10 per cent whilst SADC has reduced to 13 per cent. The question here is which of the two reductions if the customs officer at the Angolan border going to implement as regards the sugar? The customs officer faces a problems of which regulation to impose. It may seem to be a question of preference.

Another problem that may arise is as regards resources; where do member countries find the resources to fund both COMESA and SADC? One has to take into consideration that the member states of these two institutions are developing countries with very limited resources. Another difficulty here is that of donor funds. By this we are looking at a situation whereby, if say the European Union (EU) decides to give COMESA some financial assistance, will the EU find it necessary to give SADC as well, in that the latter can be regarded more or less part of COMESA. It is like donating money to the same group twice. And what criteria can the donors use when trying to fund one of these institutions.

Although there are many problems that arise, the most important is that of institutional hatred. These two organisations are striving to attain one goal, why then should there be hatred, infact they are in the same region. Is it impossible for the two to merge? This paper looks at this problem and a solution will be suggested.

The paper is divided into four parts. Chapter one, will be dealing with the concepts of regional integration and co-operation. This is to enable us determine in which stage the two institutions belong to, if they belong to any. Reference will be made to the current existing European Communities.

Chapter two will basically look at the formation of the two groups; who created them and



why they were created. The objectives of COMESA and SADC, are there any similarities. We also focus on the structures and the organisation of the two.

Our chapter three, concentrates on the trade and investment carried out by the two groups; the regulations and policies that have been put in place. Another point worth mentioning in this chapter is that of resources, we have to find out where these resources come from and whether they are enough to sustain the two organisations.

The fourth chapter will conclude this paper. In this chapter, the questions to address are whether there should be similar organisations operating in a single region. And if we cannot have two, then which of the two institutions should we be left with. At the end of this chapter, a recommendation as to which is the best available solution will be given

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# CHAPTER ONE

In this chapter, we focus our attention on the factors that come into play as regards the establishment of regional integration and cooperation. After some of the factors have been outlined, reference will be given to existing regional economic groupings drawing our examples from European Communities, in that these have been very successful. This will also enable us to explain a particular stage further and to show the practical side of these regional economic integration.

It must first be understood that regional economic integration is said to 'involve international economic integration on a more localised normally geographic basis'<sup>1</sup>. This means that certain countries in a given region would come together integrating their economies to achieve a desired goal. One may illustrate this by taking Angola, Zaire and Zambia, as an example. If these countries come together to exploit each other's resources at large scales and to remove truncated markets, they would be forming one whole market hence integrating their economies. A typical example is the BENELUX formed by the three countries of Belgium, the Netherlands and Luxembourg.

Regional integration fall within successively integrated and evolving economic units, in that in assessing the extent or rather the degree of economic integration which has been achieved between nations, there are certain characteristics of economic relations which test the kind of integration existing. Most writers<sup>2</sup> on this subject have outlined the stages as starting with a free trade area which is the least integrated, those units move on to a customs union, a common market, an economic community and finally an economic integration can be realised.

## ***(a) Free Trade Area***

In a free trade area, the parties agree to abolish custom duties on each other's products and they agree to remove quantitative restrictions and other barriers to trade. However, each individual state remains autonomous, though not autochty, in it's commercial policy or tariff policies towards third party states. To take the above given example, that of the three countries, Zaire, Angola and Zambia, coming together and have agreed to remove trade barriers among themselves, but, still each country has the right to keep her separate national barriers against trade with the outside world. Hence, Zaire can maintain tariff or prohibit trade against Botswana without involving Angola and Zambia, in her decision.

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1. R.H. Folsom, Corporate Competition Law in European Communities; Lexington Books, 1978 P1

2. Ibid. P13

The European Free Trade Area (EFTA) and the European Coal and Steel Community (ECSC) are two European communities that are in this stage. In the ECSC, there has been an agreement to do away with tariffs, quotas and other barriers to trade in coal and sell among the member countries, whilst no common trade barrier against third party states has been created.

### ***(b) Customs union***

Customs union is a step further from the free trade area in that 'it is reached when all restrictions are removed in the trade between the parties and a common tariff is established against third states.'<sup>3</sup> This means that there are three things that ought to be done in order for member states to attain this stage and these are as follows;

- i. the trade barriers such as tariffs, quotas must be done away with amongst the member countries in that it is the liberalisation of trade;
- ii. there has to be an adoption of a common external tariff and common customs regulations against non-member states<sup>4</sup>. Here one may distinguish the customs union from a free trade area in the concepts of a common external tariff and common customs regulations are absent in a free trade area. For this reason, in a customs union, common trade barriers against third states are created thereby eliminating the need for customs inspection at internal borders;
- iii. this issue is the most contentious in the development of a customs union that it involves the finding of a mechanism for the division of customs revenue among the member states;

What this stage entails is that; Zambia, Angola and Zaire, having come together, they liberalise economies towards each other, and also adopt a common external tariff and common customs regulation against third countries - lets say Botswana and Malawi - hence when, for instance, Zambia imports goods from Botswana or Malawi, these goods will be accorded the treatment that was agreed upon among the three member states. This means that these goods can pass from Zambia to Angola without any customs inspection on the Angola border. Finally, there must be a way of sharing customs revenue among the three member states.

The BENELUX was initially created as a customs union, but today this economic community has moved on to being an Economic Union, which is a much wider stage. Another union that was first created as a customs union is that of the European Union.

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3. P.N.C Okigbo, Africa & the Common Market; Longmans Green & Co. Ltd, London, 1967 P20

4. M.K Hansungule PHD Dissertation, 1992 P17

### ***(c) Common Markets***

This is a stage which entails the total abolition of all restrictions on the movement of goods and services across individual national boundaries of member countries. As Roll said 'only when complete freedom of capital and labour is also present within the customs union, a common market may be said to exist.'<sup>5</sup> Therefore, the common market provides for the free movement of factors of production among its member states.

If this stage is fully realised one may say that there is free movement of capital which removes restrictions that are based on the nationality or place of residence of the nationals of each member country. There is also the freedom of labour movement which may take the form of establishing branches, agencies or subsidiaries of certain industries in the area by the nationals. This means that there is free movement of persons across the borders of the member states.

An example of a common market is that of our own regional economic grouping which is the Common Market for Eastern and Southern Africa (COMESA). The COMESA is the one under discussion in this paper hence it will be fully dealt with in the later chapters.

### ***(d) Economic Community***

Economic communities do not only establish common markets but also introduce some harmonisation of basic national policies related to the economy of the community for example regional growth, taxation and transport. The participating states attempt to achieve either economic cooperation or integration or the combination of the two.

The economic policies which are to be harmonised must go to an extent which tries to remove the gross factors that may distort competition among the members such as legislation in regards to monopolistic practices.

### ***(e) Economic Unions***

This stage encompasses a combination of national policies which are related to the union such as company laws, governmental subsidies and many more. In this stage one may note that if fully developed the political boundaries, due to the closeness of the states, become economically irrelevant. Furthermore, it should be stated that the only difference between the economic community and the economic union lies in the number of important harmonised policies. It can then be said that full economic integration exists if monetary and social matters and fiscal policies have been established.

Therefore, an economic union can be described as a complete unrestricted market be-

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5. E. Roll, *The World after Keynes*; Pall Mall Press, London 1968 P111

tween previously independent markets which would be governed by a set of rules and institutions that are similar to those of national government, however these rules and institutions are created and maintained at supranational level. As a result these common rules cover all aspects of a single internal market.

The European Union is the only regional economic integration that can be equalled to this wider level of integration. Having being a success a bit more can be said about this union. Infact, the union will act as a comparison with the less developed economic groupings throughout this paper.

The European Union (formerly known as the European Economic Community) was created in 1957 when the Treaty of Rome was signed by only six countries. But, today, there are currently 12 members and some more are set to join soon. This shows that the EU is growing into a much wider economic concern than any other European Community. The EEC Treaty, when it was signed incorporated as many sectors of the economy as possible and these included finance, transport, agriculture, manufactures and services. The Treaty also provided for the removal of all tariff barriers inside the community within twelve years, however the developments, that took place were at a much faster pace than anticipated, in that the original six members completed the process 18 months early. Later entrants completed the process in stages, whilst the very latest, these that joined in 1986, completed it in 1992.

The period from 1989 to 1992 saw the transition of the EEC from an advanced international organisation to a budding European Union, which today is close to realising its goal. By 1992, there was created a single Economic Market through the single European Act 1986. At this very time, the Union's aims were declared to be the achievement of balanced and lasting economic expansion, along with social progress, through the completion of the internal market, economic policy cooperation and monetary union, leading 'in the longer term' to a single currency.

It must be noted that the European Union does meet most of the requisites of an economic union, in that, with the exception of only one member state,<sup>6</sup> there is the suppression of internal frontier controls which entails that political boundaries are finally becoming irrelevant; there is also the free movement of persons hence no restrictions based on nationality; the free movement of capital services and factors of production are present as well and there are common rules which cover competition and behaviour rules for business. This shows that in the near future it is very likely that there will be an end to the system of sovereign

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6. The United Kingdom has not joined; Single internal market. Newsletter september - october 1992. P2

state in Europe since Europe is becoming a single community.

### ***(f) Preferential Trade Area***

The above mentioned five stages are the evolving units that basically make up a regional integration and cooperation. However, there is one more type of level of integration which must be brought to our attention and that is the preferential trade area, which is more like the free trade area. In this area, the member countries grant each other a limited preference in their tariffs; however the rates of duty on each other's products are not harmonised and there is really no obligation to reduce them further unless agreed upon. If we, once more, take our example; that of Angola, Zaire and Zambia. These countries agree to form a preferential trade area, and Angola wants to import cassava from Zambia and Malawi. Angola may reduce her tariffs towards Zambia as regards the cassava still maintain her normal tariffs against Malawi, since the latter is not a member of the area.

The former PTA (presently COMESA) was established to facilitate trade among member countries through the reduction of tariffs and putting in place a number of measures to liberalise and promote regional trade. Instead of opting for a formal economic integration in the form of a free trade area or customs union at the outset, the idea was to work gradually towards economic integration.

Thus, it can be seen that in a preferential trade area there is not really a formal agreement in matters of harmonising trade and removing trade barriers, unlike in a free trade area where barriers are removed amongst the member states. In a preferential area only marginal preference is given to each member's products.

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## CHAPTER TWO

Having dealt with the various forms of regional integration, we shall now turn our attention to the two systems of regional economic groupings which are the main subject of discussion. These two groupings are the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Emphasis in this chapter will be on the reasons behind the creation of the two organisations. We will also look at their structural and institutional arrangements.

### ***1. The Southern African Development Community (SADC)*** **BACKGROUND**

The roots of SADC have their base in the idea of counteracting the pressures the southern part of Africa had to endure from the then apartheid South Africa. The destructive impact that South Africa brought on her neighbours ranged from sponsoring political instability in some countries such as Angola and Mozambique to creating dependency on her powerful economy particularly in countries like Botswana, Lesotho and Swaziland. This in fact, led to the formation of the customs union agreement among the four countries; the fourth being South Africa herself. The objectives of the Customs Union (SACU) were reflected in the preamble of the agreement. The South African dominance in the Southern region was the origin of the then Southern Africa Development coordination Conference (SADCC), which wanted to do away with the dominance.

It must be noted that the central goal of SADCC was to reduce dependence on South Africa. This was a geographic as well as economic logic; it made no sense to send cargos all the way to a South African port, instead of a much nearer SADCC port and it retarded development to buy goods from South Africa that could be made within SADCC. The establishment of SADCC was not a precursor to imposing sanctions on South Africa, nor a totally cutting links but rather of extricating economic independent countries of southern Africa from the malign shadow of South Africa which was restricting economic development. Sir Seretse Khama explained; What we are trying to achieve is the ability to exercise some degree of choice which involves us against domination by one powerful partner<sup>1</sup>.

The Heads of State or Government of the SADCC region realised that their countries

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1. *SADC Handbook*, Gaborone, Botswana; 1984 p4

had been members of economic bodies which were unsuccessful because they were dominated by one member. Tanzania was a member of the East African Community (EAC) dominated by Kenya, Malawi, Zambia and Zimbabwe had been member of the Central African Federation dominated by the Southern Rhodesia (now Zimbabwe). Angola and Mozambique had been members of Lusophone union dominated by Portugal, whilst Lesotho, Botswana and Swaziland were members of SACU dominated by South Africa. The architects of SADCC looked for a different kind of structure which would lead to balance development. The founding fathers rejected the ideas of a customs union or a free trade area. To them a balanced regional development and cooperation would be achieved through the coordinating of projects which were seen to be of mutual benefit. Therefore, SADCC qualified regional integration as genuine and equitable.

Another factor that led to the creation of SADCC is that the countries of the region inherited mass poverty and economic and social backwardness from their colonial masters, after they were granted independence which mostly in the 1960's.

For these reasons, the need to work together, rather than individually become increasingly apparent to the leaders of Southern Africa. They had to survive politically, economically and socially, hence they, began to seek out areas of mutual interest, first through bilateral cooperation, and later through the frontline states grouping. In fact, it is said that the most immediate basis for the formation of SADCC was the Frontline States. This was seen as a tool which the region could use to coordinate its efforts, resources and strategies to support national liberation movements, and at the same time, resist the aggression of apartheid South Africa. The Frontline states composed of Angola, Botswana, Mozambique, Tanzania, Zambia, Zimbabwe.

### *THE BIRTH OF SADCC*

In July, 1979, an international conference was held in Arusha, Tanzania which was conceived earlier on in May, the same year, at the meeting of Foreign Ministers of Frontline States in Gaborone, Botswana. The Arusha conference discussed regional cooperation among the countries of Southern Africa in the presence of donor governments and international development institutions. The meeting prepared the ground on which the landmark Lusaka summit was held in April 1980. At this meeting, SADCC was born with eight majority-ruled countries of southern Africa; Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe. Tanzania was the only country from East Africa and it

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was a tribute to her for the role she played in the liberation struggle of Southern Africa.

During the meetings, these countries committed themselves to pursuing 'political program for economic liberation reducing dependence and disengaging themselves from South Africa<sup>2</sup>, as a way of realising their goals. SADCC did not have a formal treaty, hence had no binding rules and regulations. Nevertheless, international recognition was granted to it by the United Nations General Assembly on the 21st of December 1982<sup>3</sup>. The objectives<sup>4</sup> of SADCC were set in the declaration and were:

- (i) the reduction in economic dependence, particularly but not only, on the Republic of South Africa;
- (ii) the forging of links to create equitable regional integration;
- (iii) the mobilization of resources to promote the implementation of national inter-state and regional policies, and
- (iii) Concerted action to secure international cooperation within the framework of a common strategy of economic liberation.

The SADCC Declaration placed it's emphasis on food and agriculture, industry manpower development and energy. Moreover, the Heads of State and Government identified transport and communications as its major priority for the regional cooperation. This was so because of the war situation in this part of Africa, hence the reliance on the South African transport network. Most countries had no option since the Angolan and Mozambican trade routes and ports were not safe due to rebel attacks. Thus, almost all the trade that was being carried on by Zambia, Zimbabwe, Lesotho, Swaziland and Botswana passed through South Africa. Up to date it is said that 'the dependence of Botswana, Lesotho and Swaziland on South Africa transport is in the range of 80 to 100 per cent either to and from South Africa or through South Africa or through South Africa's rail and port system to and from world markets<sup>5</sup>. For this reason, SADCC acknowledged the fact that if it had to survive, it's first aim was to rehabilitate and further develop the region's physical infrastructure and services which are based on the sectors of transport and communications.

SADCC, committed itself to the realisation of development projects which included the above mentioned areas of cooperation before it moved on to achieving greater height in the areas of trade and investment. It was felt that without good infrastructures and transport and communication networks, their aspirations would remain an illusion for a long time to come. In actual fact, trade and investment was accorded second priority on the SADCC's list of things they hoped to achieve.

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2. M. Nyirabu, *African Development: South Africa Versus SADCC* P54

3. Resolution 37/1248

4. *The SADC, South Africa: Towards Economic Liberation* (Lusaka Declaration) 1st April 1980.

5. Ibid . . . p55

SADCC's structure was in such a way that functional responsibilities were allocated to member countries for coordination while the role of the small Secretariat in Botswana was primarily administrative. Accordingly, Angola was assigned the task of coordinating energy development in the region and its conservation; food security and land conservation for Zimbabwe, crop research and control of animal disease for Botswana, transport and communication for Mozambique; training and manpower development for Swaziland; industrialisation and trade for Tanzania; soil conservation and land utilisation for Lesotho in collaboration with Zimbabwe; mining for Zambia; and fisheries and wildlife for Malawi. What this means is that coordination was not done by the SADCC Secretariat but individual member states.

The group had firmly established itself and the member states were fully committed to the implementation of the objectives and the group's programs. This was the only way of ensuring its success.

However, SADCC's dreams of fully achieving its goals were frustrated by a number of factors. The first being the lack of a treaty or legally binding instrument establishing it. This meant that its agreements and decisions were not legally binding on its members. SADCC was, thereby, dependent on its members carrying out its decisions out of courtesy. In other words, the SADCC organisation was merely based on a Gentleman's Agreement, without any legal status in international law. This gives the impression that SADCC was not really carrying itself seriously. Unlike SADCC, most economic communities such as EU, ECOWAS and the Preferential Trade Area (PTA) which is now COMESA, were from the very beginning created by treaties. This means that their decisions are legally binding upon their members and third parties. Therefore, if one takes the ECOWAS Treaty to illustrate this point, it can be seen that Article (1) states that, 'the community, as an international organisation shall enjoy legal personality'. It goes on to state in sub-article 2 that 'the community shall have in the territory of each member state; the legal capacity required for the performance of its functions under this treaty.' This is the capacity that SADCC lacked.

Another major weakness that was manifest in SADCC, was that it concentrated on coordinating programmes designed by individual members instead of implementing its own programs. As long as, a member states' project received a ministerial and technical approval to be enlisted a SADCC Programme, then it became the organisation's funded project. This applies not only to SADCC member states but also some donor agencies could come up with a project which SADCC can adopt. This kind of approach has been criticised

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as not having 'a rational mechanism for allocating projects or sectoral responsibilities to the member states<sup>6</sup>. Besides, this approach meant that SADCC was not an integrated organisation but a loose one.

In addition to these weaknesses, there was a problem of achieving integration. The problem was in finding ways of compressing the different ideologies of member states into one. It must be noted that when African Countries achieved their political independence, they embarked upon different types of ideologies. Some went to the extent of trying to Africanise the already existing concepts. For example, the first president of Zambia, Dr. Kenneth Kaunda, brought about the philosophy of Humanism, which placed man at the centre of everything. This was a cross-breed of communism and socialism, and total rejection of capitalist ideas. Other countries of the region had their own ideologies, for instance, there was Marxism-Leninism in Angola and Mozambique, absolute dictatorship in Malawi, Socialism in Tanzania, the mixed economy system was present in Zimbabwe, liberal democracy in Botswana and monarchies in Swaziland and Lesotho. This created a situation in which parallel forces were trying to come and work together in harmony.

Furthermore, before the post apartheid era, South Africa, as already stated, was preoccupied with evil intentions, and that was the destruction of her neighbours. All that she wanted was to hinder her neighbours progress in all the areas of human endeavour: socially, politically, culturally and economically. This destabilisation put a stop on development in the region which led to these countries relying on foreign help. And this was in form of debt relief. Thus, debts accrued whilst economic development stumped. There, then existed a negative situation in that countries borrowed without producing, thereby having no means of returning the borrowed money. Moreover, this meant that for a long time to come Southern African countries would depend on donor funding for their survival. Another hurdle, that these countries would not overcome was the dependence on South Africa. They still used South African transport, traded and invested with her and the SACU was still in existence.

The problem meant that one of SADCC's objectives was doomed to fail from the very beginning. This objective, the reducing of economic dependence, was in fact the most important. The SADCC region would not only depend on overseas help but also South Africa.

These have been the weaknesses of SADCC, however it must be remembered that it was seen as 'a tower of strength to its members. It helped them develop a step further the sense of regionalising the area of Southern Africa. As the Late Samora Machel pointed out,

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6. E.G. Mukonoweshuro, *Development & South - South Cooperation*, Vol. VI No.II 1990 p61

that 'in the initial phase it is necessary that we carry out concrete actions, that we gain experience in order better to define the modalities and areas of cooperations<sup>7</sup>.

## *THE TRANSFORMATION TO A COMMUNITY*

Although, the Declaration of SADCC,' never included the possible transformation of the conference to community, this was nevertheless done in August 1992, when the Heads of State of Government met in Windhoek, Namibia. This was after four years preparations. In 1989, the summit of Heads of State or Government met in Harare, Zimbabwe and decided that SADCC should be formalised to 'give it an appropriate legal status taking into account to replace Memorandum of Understanding with an Agreement, Charter or Treaty<sup>8</sup>. Not only were they interested in giving it a legal status but also sought to integrate SADCC economies into a single whole. Hence, the meeting in Windhoek which was concluded with the signing of the Declaration and Treaty establishing the Southern African Development Community (SADC)

Article 3 of the Treaty gives an international status and legal personality. And it will have the legal capacity as is necessary for the proper exercise of its functions. Therefore, the decisions, policies and agreements entered into under the auspices of SADC are legally binding.

The SADC Treaty is an all encompassing framework by which the member states shall coordinate, harmonise, rationalise their policies and strategies in order to sustain development in all areas of human behaviour. Under the Treaty, it is expected that governments and non-governmental organisations will fully commit their efforts to the processes of regional integration.

## *THE OBJECTIVES OF THE COMMUNITY*

The objectives have been increased. All of SADCC's objectives have been retained with a bit of alteration to include the changed political scenario in Southern Africa. As stated above, the Treaty is all encompassing, it aims at facilitating the common political, social and cultural values among the peoples of the region. It has also acknowledged the need to promote and defend peace and security in the region, that has for a long time only known violence. The objectives of SADC in full are as follows<sup>9</sup>:

- (i) achieve development and economic growth, alleviate poverty, enhance the

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7. Lusaka 1st April

8. SADC Handbook p6

9. Article 5

standards and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;

- (ii) evolve common political values, systems and institutions;
- (iii) promote and defend peace and security;
- (iv) promote self-sustaining development on the basis of collective self-reliance, and the inter-dependence of member states;
- (v) achieve complementarity between national and regional strategies and programs;
- (vi) promote and maximise productive employment and utilisation of resources of the region;
- (vii) achieve sustainable utilization of natural resources and effective protection of the environment and
- (viii) strengthen and consolidate the long standing historical, social and cultural affinities and link among the peoples of the region.

## *ORGANISATION STRUCTURE*

The structure of the Conference has not really changed in that most of the institutions have been maintained. Those that have maintained still play the same role. The new institutions are the National Contact Points, the Sectoral Contact Points and the Tribunal. The SADC has further, reserved the right to add other institutions to the community whenever it is necessary. Therefore, the structure consists of the following institutions:

1. **SUMMIT** - it is made up of Heads of State or Government. It is the ultimate policy-making institution of SADC. The Summit is responsible for the overall policy direction and control of functions of the group.
  2. **COUNCIL of MINISTERS** - this comprises of Ministers from each member state. Usually, but not only, these ministers are those responsible for economic planning or finance in their respective countries. The Council oversees the functioning and development of SADC. In addition to advising the Summit on policy and approving projects, it also ensures that policies are properly implemented.
  3. **SECTORAL COMMITTEE and COMMISSIONS** - SADC has allocated specific sectors or areas of cooperation to individual member states to coordinate and provide leadership. Sectoral committees chaired by the ministers representing the sector supervise sectoral activities.
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Commissions are regional institutions established when necessary. Whereas Commissions are supported by all member states, sectoral coordinating units established to service sectoral commissions, are part of the national governments and are mainly staffed and supported by the coordinating country.

4. **STANDING COMMITTEE OF OFFICIALS** - Members of this committee are Permanent Secretaries or officials of equivalent rank. The officials usually come from Minister responsible for economic planning or finance. The committee technically services the council to which it also reports.
5. **NATIONAL CONTACT POINTS** - These are the link between SADC organs and other agencies or government in member states. Responsibilities include regular liaison with relevant government institutions, business community and media on SADC matters.
6. **SECTORAL CONTACT POINTS** - These are the grassroots level in the SADC organisational structure. The Sectoral Contact Points, in the member states work closely with Sectoral Coordinating Units based in the Coordinating country. Contact points assist Coordinating Units in preparation of sectoral policies, strategies and is in the formulation of projects. They also assist coordinating units in monitoring projects.
7. **SECRETARIAT** - This is headed by an Executive Secretary appointed by the Summit and implements summit council decisions and organises and services SADC meeting. The Secretariat is also responsible for diplomatic representation of SADC. The Secretariat is based in Gaborone, Botswana.
8. **TRIBUNAL** - The Tribunal will soon be constituted through a protocol. It will ensure adherence to and proper interpretation of the provisions of SADC Treaty, and adjudicate upon disputes which may be referred to it. Its decisions shall be final and binding.

The Tribunal is a new institution. This is so because of the Treaty is now the formal document of the community and it legally binding on all member states. Hence, the Tribunal has to ensure that it is strictly adhered to.

The Sector Coordinating units basically remain in the same countries as before. It is now that South Africa has been assigned the Finance portfolio which was under the industry

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and trade, while fisheries has gone to Namibia from malawi which has remained only with wildlife.

## ***MEMBERSHIP***

The question of who is eligible for SADC membership is dealt with last due to recent developments in the group. When it was first established, its membership was drawn from independent southern African countries, Angola, Botswana, Mozambique, Tanzania, Zambia and Zimbabwe, who formed the Frontline States. Other that were allowed to seat in as observers were the liberation movement groups of South Africa such as African National Congress (ANC) and Pan African Congress (PAC) and of Namibia, South-West African People's Organisation (SWAPO). Later on membership grew to include Lesotho, malawi and Swaziland. After the independence of Namibia and post apartheid South Africa, the two countries joined the organisation in 1992 and 1994 respectively, as independent sovereign states.

As SADCC was being transformed into a community 10 members were present to sign the Treaty. South Africa was the latest, being the eleventh member. The SADCC states had one thing in common and the is they all, except for one, in the Southern part of Africa. And that they all gathered together to fight apartheid in South Africa and colonialism in Namibia.

The SADC Treaty does not explicitly provide for the requirements an applicant must fulfill before acceding to it. It only states that the summit reserves the right to determine the procedure for the admission of new members and that this admission shall be affected by an unanimous decision. In other regional groupings such as the ECOWAS and EU, a country has to satisfy certain conditions for it to become a party.

In ECOWAS, Article 62(1) provides that 'any West African state may accede to this Treaty on such terms and conditions as the authority may determine'. With this in mind, it is evident that only a West African state can join ECOWAS. Whereas, in the EU only a country that can satisfy three basic conditions can qualify and such a country must be of European identity, democratic status and respect for human rights. Although, we may never know what attributes a country needs to possess in order to be of 'European identity,' it is all the same a stipulated requirement to fulfill.

Recently, the Council of Minister of SADC, sat to make recommendations on the criteria a country should conform with in order to become a member. The following was what they came up with; that an applicant must fulfill all these requirements;

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- (a) geographical proximity to the SADC region;
- (b) commonality of political, economic, social and cultural systems of the applicant with the system of the SADC region;
- (c) feasibility of the cost effective and effective coordination of the applicants economic, social and cultural activities under the SADC framework cooperation;
- (d) absence of the record of engagement in subversive and destabilization activities and territorial ambitions against SADC or any member states;
- (e) must be a democracy, observing the principles of human rights and rule of law;
- (f) must share SADC ideals and aspirations.

This development is a welcome move, in that an applicant country may have something to refer to. However, these conditions will need 'aspiring candidates to turn to their fortune tellers to ascertain whether they meet the requirements'<sup>10</sup>. For instance, the criteria of geographical proximity to the SADC region, is ambiguous in that it does not necessarily require the prospective candidate to be in the Southern part of Africa. This is so in that Zaire, for example, which is in Central Africa may apply and argue that she is closer to the SADC region; having three neighbours who are SADC members. This means that each time a new member is accepted, its neighbours automatically qualify for membership. Taking Zaire, again, if she became a member, that would mean that Rwanda and Burundi would qualify since they would be surrounded by Tanzania and Zaire.

If, on the other hand, one argues that what should be born in mind, when bidding for membership, is the concept of southern Africa region defined by physical geography which limits the geographical proximity principle. This is true to some sense but where does one draw the line? This is very difficult considering that Tanzania is considered to be in East Africa although one would consider demarcating her (Tanzania) in two, so that one part remains in Southern Africa. Mauritius<sup>11</sup>, an island which is on the furthest side of East Africa has been admitted as the twelfth member of the region. A question that will be left unanswered for now is whether countries like Kenya, Rwanda and Burundi can be denied membership and what reason SADC would give for this denial.

The other criteria is that of cost effectiveness of coordination. SADC says that, if officials have to fly beyond a certain geographical area for consultations, then the country concerned does not meet this criteria<sup>12</sup>. This means that if the country is included there would be additional financial burden.

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10. *Southern African Economist* Vol. 8 No. 1, 1995, p9

11. *Times of Zambia*, 29th August, 1995, p1

12. *Ibid* p10



The requirement that an applicant country must have common political, economic, social and cultural systems with the a SADC region. The problem that arises here is that the application can be subjectively scrutinized principles such as those stated are open to different kinds of interpretations. Infact, each country embraces different political, economical, social and cultural systems.

If the prospective candidate fulfills all the requirements laid down, then the country must lodge an application with the Secretariat and wait for a year, so that the application must be assessed. The Council of Ministers will then make recommendations and the application is submitted to the summit which must approve by an unanimous vote.

Mauritius, it could be said had fulfilled all the requirements, nevertheless, there is the question of geographical proximity. The criteria will make SADC a 'closed shop,' because there are no countries in the sub-region that can safely claim to meet all it's provisions.

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## 2. *The Common Market for Eastern and Southern Africa (COMESA)*

### *BACKGROUND TO PTA INTEGRATION*

The background of the Preferential Trade Area (PTA) dates way back to the early 1960's the UN backed Economic Commission for Africa (ECA) started promoting the idea of a wider economic grouping for Eastern Africa. In 1965, the ECA specifically proposed the establishment of an Eastern African Economic Community. Regional economic integration was prompted by the fact that the 'East African Community and the Conference of the East and Central African States had collapsed. Hence, there was a gap that has to be filled<sup>13</sup>. There was also the destabilisation by South Africa of the countries of Southern Africa. Their economies worsened therefore there was the urgent need to restructure their economies, so that they could become self reliant. And there was the need for African countries to become self reliant through an economic community.

Although, it was of urgent need to establish an economic community, the ECA's proposal of a community remained only on paper<sup>14</sup>. And a new pattern of regional integration especially within the scope of the ECA's sub regional ideas. In March 1977, there was held a conference in Kinshasa, which marked the beginning of Multinational Programming and Operational Centres (MULPOC). At the conference, a resolution was adopted which stipulated that five MULPOC's should be established in as many sub-regions of Africa. 'Except Zimbabwe, which had yet to become independent, the 18 countries of Eastern and Southern Africa which are presently members of the Lusaka - based MULPOC, and members or potential members of the PTA, were specified in the resolution<sup>15</sup>.

In November 1977, the third MULPOC Council of Ministers' Conference which was held in Lusaka, called for a joint meeting of the Ministers of Trade, Finance and Planning to formulate principles for the establishment of a Preferential Trade Area (PTA) and Clearing and Payment system for the sub-region. And in March 1978, the decision to establish the PTA was made at the first Extra-Ordinary meeting. At the meeting there was established an Intergovernmental Negotiating Team (INT) entrusted with task of negotiating a related treaty and its protocols. This was made possible by the signing of the 'Declaration of Intent and Commitment to the Establishment of a Preferential Trade Area for Eastern and Southern African States.'

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13. PTA Development Report, *A Decade of Economic Intergration 1982 - 91* 92 p9

14. A. Adedeji, *Special Africa Trade Bulletin on the PTA*, February 1982 p1

15. A. Adedeji . . . . Ibid p5

The principles laid down for, and embodied in the Treaty were:

- (i) the reduction and elimination of tariff and non-tariff barriers;
- (ii) the reduction and eventual abolition of quantitative and administrative restrictions;
- (iii) the gradual evolution of a common commercial policy;
- (iv) the gradual harmonisation of financial, monetary and fiscal policies;
- (v) the 'fair and equitable' distribution of benefits;
- (vi) offering compensation and development assistance to members states, incurring losses suffered as a result of the trade liberalisation arrangements.

These principles were aimed at restructuring the devastated economies of member states and the promoting of intra-African trade. And another aim was the reduction of over dependence on trade and other economic links with the metropolis. The result that was expected was that 'of developing mutually beneficial linkages between regional poles of growth and taking advantage of complementarities of markets and resources endowments'<sup>16</sup>.

The barriers that the INT face were the differences vis-a-vis protocols on 'rules of origin' and 'harmonisation and coordination' of agricultural policies. By the time of the signing of the PTA Treaty in Lusaka in December 1981, those differences were resolved. The Treaty came into effect almost immediately following its ratification by 14 members, twice the number stipulated in Article 50 of the Treaty.

The objectives and provisions of the Treaty went beyond a normal preferential trade area. It provided for more than the liberalisation and promotion of intra-sub-region trade, in that it also catered for the inter-state cooperation and specialisation in the development of basic and strategic industries, production of food crops and livestock, science and technology, human resources and creation of inter-country transport and communications network. Actually, what this means is that the Treaty and its protocols addressed key productive sectors of the economy - namely agriculture, industry, transport and communications.

The Treaty also provided for the transformation of PTA into a common market and eventually an economic community for Eastern and Southern Africa<sup>17</sup>, ten year after its entry into force. This provision fit in well with the Lagos Plan of Action in that it wants Africa to be an economic community by the turn of the century.

Article 43 permitted PTA member states to be members of any other regional organisation. And as it can be seen, many members of the PTA were also members of SADCC. The PTA Treaty also under Article 30 recognised the special position of Botswana,

16. N. Mwase, *Journal on World Trade Law (JWTL)* Vol. 19 No. 6: 1985, p623

17. Article 29

Lesotho and Swaziland (BLS countries) vis-a-vis relations with Pretoria, which were formed out of hopelessness rather than choice. This was also the case of the Nkomatic accord of March 1984, although its recognition was not provided for in the Treaty.

Article 46 allowed any neighbouring African State outside the Lusaka MULPOC orbit, to join the PTA as full or associate members. In the latter case, they would participate in such PTA activities as may be mutually agreed upon.

Before we proceed to discuss the COMESA, it is imperative that we mention the success or failure of the PTA, if any. The first success story of the PTA was in trade performance. There had been a reduction of tariffs to about as much as 70 percent. According to 1992 figures, the combined import bill of the member states stood at US\$ 18 billion. This meant that there are greater opportunities now to increase intra PTA trade.

There were also Trade fair organisations intra - PTA, which demonstrated the high prospects of increasing trade within the PTA. Export and Import business were negotiated by businessmen of member states.

The second achievement under the PTA was the capacity building. These were the measures taken to promote trade and development which included the gradual reduction and eventual elimination of the tariffs, the removal of non-tariff barriers, the PTA wide computerised trade information network, supply and demand surveys, buyers and sellers contact promotion meetings and follow up missions.

Furthermore, some institutions were created to strengthen the capacity of member states to respond to and maximise advantages from regional integration:

- a. The PTA Regional Customs Bond Guarantee Scheme which eliminates the need to fill up so many declarations for intra PTA trade and harmonises transit charges.
- b. The PTA Clearing House provides settlement facilities and services in the intra - PTA transactions, thereby reducing the amount of hard currency required to off set or settle trade among the member states.
- c. The Eastern and Southern African Trade and Development Band, which provides financing for trade and development projects and private sector ventures.
- d. Another institution created was the PTA Federation of Chamber of Commerce and Industry (PTA/FCCI) which promotes cross border cooperation among national chambers of commerce and industry.

Turning on the leaf, the failures of the PTA had been led by the Southern African

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problem, PTA was not into fighting South Africa's apartheid, it merely wanted countries in this region 'to end or even reduce their trade and other dealings with South Africa'<sup>18</sup>. The PTA Treaty should have made it a point to fight apartheid because South Africa was enjoying her role as the aggressor. It was her main aim to make her poor neighbours more dependent on her. To make the situation even more critical was the fact that Zimbabwe, the PTA's strongest economy was very dependent on South Africa. This was in terms of import - export trade, which even surpassed her trade with fellow PTA countries. Besides, most PTA countries could not offer Zimbabwe anything in terms of markets, technical know-how and reliable routes to the sea than what South Africa provided.

The initial failure to fight apartheid contributed to the ever increasing debts in countries like Angola and Mozambique, because of the never ending civil wars in those countries. This was due to the fact that South Africa helped the guerillas fighting the established governments. Hence, the local people could not engage in any productive ventures. Therefore, the reduction of the dependence on South Africa was only to remain a dream, since South Africa would have her way.

Another problem that the PTA failed to address was that related to agriculture. Agriculture being the backbone of the economies of the sub-region, it was mentioned in the Treaty but without much importance. Mwase, argued that the Treaty states intentions, but is inexplicit on the aim and extent of cooperation. It is not clear, for example, whether the end in view is free trade in agricultural commodities or structural changes in this important sector. Agriculture should have been made a major priority in the PTA, due to food shortages in the sub-Saharan region.

The PTA Treaty did not come up with a mechanism on how the problem of unequal access to the benefits of the groups would be dealt with. It only referred to the special status<sup>19</sup> accorded to the BLS countries, that these countries should perceive tangible economic benefits with South Africa, as members of the SACU. These countries, therefore, were granted temporary exemptions from full application of certain provisions of the Treaty. Such a provision was extended to two tiny countries; the Comoros and Djibouti. This was due to their special economic conditions<sup>20</sup>.

The above were the successes and failures of the PTA, which was the predecessor of the now Common Market for Eastern and Southern Africa.

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18. Opcit . . . p632

19. Article 30

20. Article 31

### *The Common Market for Eastern and Southern Africa.*

Unlike SADCC's Memorandum, of Understanding which did not provide for the transformation of the Conference into a Community, the PTA Treaty did foresee the need to transform the regional group from a preferential trade area to a common market. This was to be done gradually and was provided for in Article 29 of the Treaty. The common market was to come into existence at the end of a ten year period, hence it came into force in November 1993. Like the PTA Treaty, the Treaty establishing COMESA, also gave the organisation a legal personality, binding its member states.

If one goes back to the definitions of a common market and preferential trade area, it will be noted that the former is a higher measure of regional integration. It comes after the customs union has been achieved and when there is complete movement of capital and labour. Thus, there are some principle elements embodied in the COMESA, that were not present in the PTA and these are

- a) a full free trade area involving liberalisation under which there is a free movement of goods and services production within the common market and removal of non-tariff barriers;
- b) a customs union involving zero tariff on all products originating in the common market, and the adoption of a common external tariff on imports from non - COMESA countries;
- c) free movement of capital and finance and a common investment procedure so as to create a more favourable investment climate for foreign direct investment, cross border investment and domestic investment;
- d) a payment union and eventual establishment of a COMESA monetary union and
- e) free movement of persons, common visa arrangements including the right of establishment and eventually the right of settlement.

### **THE OBJECTIVES**

The aims and objectives of the Common Market were set out as follows

1. to attain sustainable growth and development of the member states by promoting a more balanced and harmonious development of its production and marketing structures;
  2. to promote joint development in all fields of economic activity and the joint
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adoption of macro-economic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its member states;

3. to cooperate in the creation of an enabling environment for foreign cross border and domestic investment including the joint promotion of research and adoption of science and technology for development;
4. to cooperate in the promotion of peace, security and stability among the member states in order to enhance economic development in the region;
5. to cooperate in strengthening the relations between the common market and the rest of the world and the adoption of common position in international fora; and
6. to contribute towards the establishment, progress and realisation of the objectives of the African Economic Community.

From the look of things, it seems like the COMESA Treaty really puts trade and investment as its first priority.

## ***STRUCTURAL ORGANISATION***

COMESA is headed by the Authority, which is the supreme policy organ. It consists of the Heads of State or Governments of the member states. The Authority is responsible for the general policy and direction and control of the performance of the executive functions. The directions and decisions of the Authority are binding on member states.

The other organs are as follows:

**1. THE COUNCIL OF MINISTERS** - this consists of ministers designated by each member state. It monitors the functioning and development of the Common Market and makes recommendations to the Authority on matters of policy. The Council also adopts regulations within the ambit of the provisions of the Treaty which apply directly in the member states. They will lay down the same law throughout the Common Market and apply in full in all member states. Due to their direct applicability, regulations will not have to be specifically incorporated into domestic law<sup>21</sup>.

**2. THE COMMITTEE OF GOVERNORS OF CENTRAL BANKS** - this is what was formerly the Clearing and Payments Committee. The committee consists of the governors of the monetary authorities designated for that purpose by the member states. It is responsible for the proper implementation of programmes and plans and finance and monetary affairs. The Committee has power to determine its own rules of procedure subject only to the Treaty.

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21. H. Sinare, COMESA: What is new? What future prospects? 1994 p4

**3. INTERGOVERNMENTAL COMMITTEE** - this consists of Permanent Secretaries designated by each member state. Their function is to look at the development of programmes and action plans in all sectors of cooperation stipulated under the Treaty, except in the finance and monetary sector. Its main function is to oversee the implementation of the provision of the Treaty. And it can also determine its own rules of procedure.

**4. TECHNICAL COMMITTEES** - these are composed of representatives of member states. There are separate technical committees responsible for various sectors. For example, the Committee on Administrative and Budgetary Matters; Committee on Legal Affairs and Committee on Tourism and Wildlife. The council may establish additional technical committees, whenever necessary.

Technical committees can determine their own Rule or Procedure.

**5. CONSULTATIVE COMMITTEE OF THE BUSINESS COMMUNITY AND OTHER INTEREST GROUPS** -the representatives of this committee are drawn from member states' business community and other interest groups. This provides a link and facilitates dialogue between the business community and other interest groups and other organs of the Common Market. This ensures that interest of the former are taken into consideration by the latter when implementing policies and programmes.

**6. THE SECRETARIAT AND THE SECRETARY GENERAL** - the Secretariat is headed by the Secretary General, who is appointed for a term of five years by the authority. He is also eligible for reappointment for another term of five years. He is the chief executive and represents the COMESA in the exercise of its legal personality.

**7. THE COURT OF JUSTICE** - this was formerly the PTA tribunal and it was established under Article 7. The court has been given wider scope of jurisdiction compared to the PTA tribunal, a separate budget and closer links between the Court of Justice and the national courts of the member states have been provided for.

The COMESA Treaty allows the individuals (natural and legal persons) to refer matters directly to the court provided that where reference relates to a decision or action by a member state local remedies must first be exhausted.

The judges of the Court are appointed by the Authority and they are seven in number. No two or more judges shall at any time be nationals of the same member state<sup>22</sup>.

It must be noted that the Court of Justice not only replaced the PTA Tribunal but the PTA Administrative Appeals Board as well.

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22. Article 20 (2)



## *MEMBERSHIP*

Article 46 of the PTA Treaty allowed any African country that was an immediate neighbour of a member state to become a member of the PTA. This meant that country regardless of its geographical position would become a member. However, this provision has been left out in the COMES Treaty and membership has been restricted to the PTA member states and Botswana and South Africa. Botswana was once a member of PTA but later pulled out. Before the COMESA Treaty came into force, Zaire joined the economic grouping hence becoming the twenty-third member. Egypt had also applied, but she ceased to be eligible when the COMESA Treaty came into force. Nevertheless, it has been suggested that had she pursued the matter, she would have been admitted as a member<sup>23</sup>. This goes to show that if a country persists in its wants to join the grouping, the country may be admitted. Therefore, COMESA membership is not after all limited to countries stipulated under Article 1.

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23. H. Sinare (Director Legal Division: COMESA), in an interview; 29th August 1995

## *Analysis of the Chapter*

### *1. HISTORICAL ASPECT*

To begin with, it must be noted that the two organisations were formed for different reasons. SADC, was initially created to fight apartheid South Africa and to liberate its member states economically so that they liberate their fellow neighbours politically. This was in view of the fact that they (member states) wished to become independent of South Africa economically, and to some extent of other countries as well. In order to achieve this, SADCC was to coordinate aid through development projects.

The PTA on the other hand was created basically to promote regional cooperation and integration. The PTA Treaty explicitly stated the areas of cooperation which was not the case for SADCC Declaration. Nevertheless, in both economic groupings, the fields of co-operation were prioritised. For PTA these were trade, customs, industry, transport communications, agriculture, natural resources and monetary affairs. Whilst, as earlier pointed out, SADCC opted for transport and communications, manpower development, industry, natural resources, energy, mining and food and agriculture. The difference were that SADCC did not include customs and monetary affairs and the PTA did not list mining. As for trade, SADCC's Lusaka Declaration included it but possibly not a sector for immediate cooperation. Energy and manpower development in the PTA were to be components of industrial development.

In spite of the fact that SADCC stated the areas of cooperation, it has been noted concentrated on development projects especially in infrastructure. Whereas the PTA embarked on a program involving trade liberalisation and facilitation, improvement of physical infrastructure in the region as well as the development of the productive sectors of agriculture sectors of agriculture and industry.

The objectives of the PTA also differed from those of SADCC in three other respects. First the PTA looked upon fostering closer relations among members states as a means towards raising the standard of living of the people of the subregion. Although, its activities might lead to the same ultimate goal, the SADCC did not put it down as its objective. Secondly the PTA set out to create a common market by the year 2000 and an economic community later on; and thirdly, to contribute to the progress and development of the African continent, both of which did not feature among the objectives of SADCC.

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Furthermore, the PTA is a direct creation of the Economic Commission for Africa (ECA) and it was created within the context of the Lagos Plan of Action. This means that PTA was formed in line with the broader goal of establishing the African Economic Community (AEC), which has a long term strategy to tackle Africa's problems of declining economic cooperation and integration<sup>24</sup>. SADCC was, as Frontline States, born out of the Organisation of African Unit (OAU) and its Liberation Committee on the basis of the liberation struggles in Southern Africa. The SADCC: Southern Africa: Towards Economic Liberation, was adopted before the Lagos Plan of Action had been adopted. The reference to the Lagos Plan of Action was recently introduced in the preamble of the SADC Treaty when it was formalised.

The above shows that the creators of the two organisations had different reasons for forming each economic grouping. They knew exactly what it was they wanted to deal with and how they would achieve their goals.

## 2. *INSTITUTIONAL STRUCTURES*

COMESA is a large group and is composed of many departments, while SADC is small. The institutions that are found in SADC are similar to those of COMESA, such as the Supreme organs of both are composed of Heads of state or Government from each member state. The second most important department are the councils of ministers, which are entrusted with the same duties; that of overseeing the functioning and development of the economic groupings as well as formulating policies. The third organ is that of the Secretariat. The Secretariat in both, SADC and COMESA, is charged with the implementation of decision made by the top two institutions. Another organ that has been created in SADC is the Tribunal, which will perform the same task as the Court of Justice in the COMESA.

SADC, differs from COMESA in that it has adopted a loose type of integration whilst COMESA has taken up the supranational type. SADC employs the concept of decentralisation of activities. As seen above they have sector coordinating units in each country and these countries are responsible for a specific sector. In COMESA, all activities are coordinated by the group and not by specific member states, which is more advantageous. The advantage is that the grouping will ensure that its programs, strategies and policies are implemented because it is striving to succeed. If left to an individual member state, there is usually reluctance due to lack of commitment, resources and funds, hence the

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24. D.A. Ijajaye; *The African Economic Community Report*, 1991 p4

programs may not be implemented.

There is an argument that has been advanced against Supranational structures, which is in support of the decentralised structure of SADC. Kiljunen<sup>25</sup> states that SADC is a somewhat unique scheme by its institutional structure. He argues, that what SADC was trying to avoid were the previous set backs in regional cooperation hence opposed to common market with heavy bureaucracies and possible detailed regional development strategies. SADC opted for a step by step approach committing to concrete actions. By having a decentralised system there is minimum bureaucracy. This explicit approach reflects among other things acknowledgment of the fact that internal development strategies and national interest diverge quite substantially among member states.

Establishing of a large central headquarters would be both costly and control would be lost to a bureaucracy which is out of touch with realities on the ground. Sir Seretse Khama argued that, 'the basis for our cooperation, built on concrete projects and specific programs rather than on grandiose schemes and massive bureaucratic institutions, must be the assured mutual advantages of the participating states'<sup>26</sup>.

The SADC states would rather have a decentralised system and not a bureaucratic body imposing policies which are not realistic on the ground.

### 3. *MEMBERSHIP*

We have already discussed the problems that deal with membership. It has been noted that in both groups, there are features that show that membership is reserved to neighbouring states (geographical proximity). This is so because there is likely to be a high level integration, informal trade would be high and common understanding since they share the same cultural, political, social and economic affinities (this is expressly stated by the SADC grouping). There is also the possibility that communication would be easy. Thus, there seem to be a lot of advantages to the neighbourhood concept.

The regional groupings, as we have seen, are not closed but open for more membership. The COMESA which is the largest with twenty-three members is open to two more countries. Whilst the SADC, which is quite small, is open to other countries that fulfill its requirements, but at the moment it has twelve member states. The problem between the COMESA and SADC is as regards the members. The SADC contends that the other group is too large and it is expanding more quickly than any other grouping. Usually, economic groupings start off

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25. K. Kiljunen *NORDIC - SADC Cooperation* 1987 p52

26. *SADCC Handbook*, Gaborone, Botswana, 1984 p8

as small groups, such as the EU which initially has six members. The argument is based on the view that 'had COMESA started off as a small group, it would have strengthened itself and got hold of the right direction to follow'<sup>27</sup>. It could have had achieved its goals by today. As a small group, it would also be easy to manage therefore growing as a successful regional economic community.

On the other hand, the COMESA defends itself by pointing out that 'it is not a matter of size for an economic grouping to succeed. Examples can be given by the East African Community (ECA), which had three states, Economic Community of the countries of the Great Lakes (CEPL) with three members and the Kagera River Basin Organisation which had four countries, these groups have gone no where even though they were small groups'<sup>28</sup>. The view that the COMESA is too large, is myopic especially if compared to the EU. One of the ways of looking at the issue objectively is by determining how fast the member states are willing to carry out activities, policies and programs of the COMESA. This is what distinguishes the EU from any other economic grouping. The EU leaders are consistent in implementing the policies they undertake. Moreover, they are committed to the EU, this is what the COMESA leaders lack. As Dr. Sinare<sup>29</sup> contends that the African leaders lack the vision to decide on what they really want, hence no political will.

It is actually fascinating to note that African leaders seem not to know which direction they are heading to. Most of the member states usually join out of courtesy; seeing it as a means of being associated with Pan-Africanism. They fear that they may be labelled anti-Pan Africanists if they left or did not join these groupings<sup>30</sup>. One cannot even explain why some countries have joined both organisations which are striving for the same goal. The same people (Heads of State or Government) are the ones that make conflicting decisions. When they are attending the summit meeting, they do not want SADC to merge with COMESA. The same people when they shift (to other camp) they want or agree that the two groups should merge. This is unfair to both organisations. The leaders it seems are undecided as to what is best for them. All they do is divert their efforts and attention from the main thrusts of the organisations they form, transforming them into mere politicians' talk shops, decorated with diplomatic niceties and devoid of any substantive economic development goals. This explains why it has become so easy to sign treaties regardless of whether they are feasible or not. Mozambican president Joaquim Chisano, went ahead and signed the COMESA treaty, even though "he had openly declared at the Swaziland SADC summit in

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27. A. Chitambo, (Mineral Resources Economist: SADC) in an interview 28th August 1995

28. Dr. H. Sinare in an interview, 29th August 1995

29. Dr. H. Sinare in an interview, 29th August 1995

30. *Southern Africa Political & Economist (SAPEM)* Vol. 7 No. 12: 1994 p31

July, that his country had 'very little if any economic, trade and cultural contacts" with non-SADC, PTA members<sup>31</sup>.

It would help if the African countries definitely knew what they wanted from regional economic cooperations. The original members of the EU, all had reasons for joining the EEC. The main purpose behind the formation of the EEC was that of peace due to the fact that national states would surrender sovereignty to supranational institution. In addition, each country had something to gain or offer and some went in for protection, for example Belgium hoped to boost the sales in steel and coal and build new industries and Greece, which joined later, hoped that membership would not only consolidate its democracy but also offer new opportunities for economic advancement<sup>32</sup>. This shows that the countries of Europe did not join the EEC out of courtesy, this explains the reasons for their commitment.

Thus, it is not a question of being too large. Because, the EEC when it started out the number of membership was not closed but countries had various reasons for not joining. The only way to solve this problem is for our leaders to be committed, and become active participants in regional integration.

Today countries in the sub - region are taking steps to change their social, economical and political ideologies. The adjustments such as liberalisation of the economy and privatisation, conform with policies of economic groupings like COMESA. However, countries adopt such policies not because of COMESA or SADC have come up with them but they are imposed by institution such as the International Monetary Fund (IMF) and the World Bank (WB). Usually the policies and programs of the two regional groupings take the last seat in national policies.

Another problem facing the two economic blocks is that of 'democracy'. Democracy has been hailed as the ideal political philosophy. However, this is not usually the case in Africa. Leaders fear of losing elections do not adopt certain policies, which may be good for the nations but adopt policies and programs which please the voters. The leaders protect their posts instead of doing something bold and visionary.

Again, one may state that the accusations levelled against COMESA are not fair. COMESA would be showing signs of success if African leaders were prepared to act and implement its policies. Furthermore, SADC could also collapse if the habits of the leaders remain unchanged, since size is not a determining factor for success.

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31. Ibid . . . p19

32. B.H. Simamba, *An African Preferential Trade Area*, 1st Ed; Lusaka, Zambia 1993 p16

### 3.1 *South Africa's Membership*

The whole issue of the merge is now centred on South Africa. Both regional groupings wanted South Africa to join their side. Infact, 'it was not only the two groupings that wanted South Africa. She had been sought after to join every international and regional organisation<sup>33</sup>. It was SADC however that won when South Africa finally decided to join the small regional grouping.

For the SADC grouping this was applauded for a number of reasons. The first was that South Africa is an economic giant, whose Gross Domestic Product (GDP) is five times that of the whole SADCC region combined. And it is twice than that of COMESA combined. South Africa's exports to all the other countries of SADC is five times as high as what it imports from them. Hence, this move was seen as the only chance of being recognised by the world's major economic powers if in association with South Africa rather than as small, bankrupt entities of Southern Africa.

Although South Africa's exports is five times higher than what she imports from them, there is a possibility that the high trade deficit can be corrected by new export of services to South Africa such as electricity, water and transport. An example of this is the South African involvement in the multi million dollar highlands scheme to supply water from Lesotho<sup>34</sup>. And there is also the keen interest to restore the import of electricity from Cahora - Bassa. This will be dealt with in chapter three.

South Africa joining SADC will affect COMESA, in terms of funding, as we shall see later. The other likely difficulty that could occur is that member states, especially non-SADC members, losing confidence in the grouping. The member states might fear that there is something wrong with the COMESA for South Africa not to have decided to join.

The reason why South Africa joined SADC was because she felt that COMESA was too big. However, most businessmen in that country expected their country to join COMESA, so that they get access to a larger market than that already in existence in Southern Africa.

Some people are accusing South Africa of being a cheat<sup>35</sup>. They say that her excuse of COMESA being too big is not fair, because in addition to SACU and SADC, she has signed a number of bilateral agreements with other countries. This only goes to show that she is in search of many trading partners. Besides, Mr. Frost argues that South Africa joining SADC was a way of paying homage for the hard work the Frontline States played in the struggle against apartheid. They never thought about the implications of joining SADC only.

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33. Opcit . . . p19

34. Ibid . . . p20

35. D Frost (Businessman and Publisher) 14th August 1995 & H. Sinare

In conclusion, one would say that South Africa is very important and her decision to join SADC is likely to have negative effects on COMESA. It would have been more advantageous had South Africa joined the latter group because it would have helped strengthen the organisation. Not only that but also the hopes of a merge between COMESA and SADC would have been lifted.

### 3.1 *South African Customs Union (SACU)*

Another controversial issue facing the two economic groupings is that of SACU. The question is what to do with the Customs Union. Studies that have been carried out show that the SACU issue was to be dealt with when South Africa became a nonracial democracy<sup>36</sup>. This position was adopted because the SACU, as we have seen, was formed by apartheid South Africa to enhance her dominance in the region.

The SACU issue is now regarded as contributing to the problems being faced by the two groupings with reference to a possible merger. The fundamental question is whether SADC must subsume SACU or the latter to subsume the former or whether the two organisations should co-exist separately. The best solution would be that SADC subsumes the SACU and not the latter subsuming the former. It would be unfortunate for SADC to be subsumed because SACU was initially created with anti-democratic sentiments. Thus, it would be a great achievement for SADC if SACU was subsequently incorporated into it.

As for the last option; that of the two co-existing separately. This would bring about confusion since it would mean member states being over three different organisations. As Mr Frost put it as being an entangled mess with COMESA at the outside, SADC in the inside and smallest group, SACU further inside with almost the same membership. This would affect the implementation of policies, programs and strategies. Therefore, the SACU issue has to be solved as soon as possible.

## 4. *SOVEREIGNTY*

In order for regional integration to succeed, there is need for national governments to surrender their (limited) sovereignty in the sphere of economic decision making<sup>37</sup>. In almost all cases of regional integration in Africa, except perhaps Union Afraine et Malgache (UAM), powers have always remained with national leaders. This puts a huge obstacle to progress and compromises any chances of ever succeeding to implement the process how-

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36. *PTA/SADC Merger: An Agenda for the Future*; December 1992 p19

37. U. Kitzinger, *The European Common Market & Community*, London, Routledge Ltd., 1967 p4



ever good or innovative the treaty may be. The problems of leaders have already been discussed above. For any economic grouping to succeed, governments must be willing to concede the fundamental issue of sovereignty. Hence, COMESA and SADC Heads of State or Governments should leave their supranational powers in their Secretariats. This would ensure independent initiatives and direct integration.

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## CHAPTER THREE

In this chapter, we will evaluate the programmes, policies and strategies that have been put in place, as regards trade and investment in both groupings. We will also outline some of the failures.

The chapter will emphasise on trade and investment because trade has been termed as the 'engine of economic growth'<sup>1</sup>. Trade expansion includes among other things increased investment, production, trade and employment. These are prerequisites for economic recovery and substantial development. Because of trade, producers increase production of goods and services as the market becomes large. Moreover, trade growth provides 'scope for specialisation of the production of goods in which each country has a comparative advantage based on its resources endowment and benefits from economies of scale'<sup>2</sup>.

### *SADC*

A brief background will be appropriate in order to put in context the strategy SADC has adopted today. The first point to note is that SADC (then SADCC) was initially created to fight the dominance of apartheid South Africa. In order to succeed, there was need to coordinate efforts, resources and strategies so that it supports national liberation movements and at the same time reduce the economic dependence on South Africa. As SADCC was maturing and particularly in view of majority rule in South Africa, SADCC saw it fit to pursue policies aimed at economic liberation and it integrated development of each state's national economy. SADCC was a loose type of association and under its system of decentralisation a sector was allocated to Tanzania to carry out the responsibility of coordinating both industrial and trade departments. This begun operations in 1982. This has been mentioned because throughout this chapter we will be discussing trade and investment, otherwise there are many more sectors in SADC.

SADCC's investment objectives<sup>3</sup> included the need to reduce external dependence on imports of industrial products and inputs from outside the region, especially on South Africa, which had the largest single source of such products and inputs. SADCC also wanted to increase the size of the industrial sector, both nationally and regionally. One of the objectives was to increase the scope and diversity of the industrial sectors of the member states and the region by increasing the range of final products, intermediate goods and

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1. Z. Demissie; *Trade, Liberalisation, Facilitation & Promotion in the PTA 1982 - 1994* Lusaka, Zambia 1994 p1

2. Ibid . . . p1

3. *Action Plan in Memorandum for Industrial Cooperation* 1981

capital goods produced. The last plan for SADCC was to increase the linkages within the national and regional industrial sectors to make a more integrated and self reliant and less dependent on raw materials, intermediate inputs and spares from outside the region.

Investment was not SADCC's number one priority. It has been constantly stressed that SADCC's major priority was infrastructure particularly transport and communications, 'with individual projects grouped by way of the novel concept of transporting corridors bringing together roads, rails, telecommunications and other links<sup>4</sup>. SADCC recognised the importance of transport rehabilitation through Southern African Transport and Communication Commission (SATCC) in Mozambique. This was successfully done and it was only in 1986 when the corridor programmes were well under way that SADCC turned its attention to the productive sectors. At a SADCC workshop on rehabilitation<sup>5</sup> it was decided the industrial rehabilitation should be undertaken. It was proposed that the rehabilitation should be taken on selective basis, focussing primarily at industries using indigenous resources. And those with export possibilities and with the potential to satisfy basic needs. In carrying out the project rehabilitation exercise, there was need to take into account existing and potential inter linkages between the industrial sector and other sectors of the economy especially agriculture and transport.

There was also a new openness to foreign investment and wanted an enterprise sector which comprised both the private and parastatal business. The parastatal business was included because most countries had by then nationalised their industries. The SADCC's theme in 1987 was 'investment in production.' This embraced both direct investment in the productive industry, and, improving trade mechanisms to develop the regional market.

The region was in need of foreign private investment but SADCC was determined to let the local enterprises take the leading role. There was foreign direct investment that dominated the region especially by South African Transnational Corporations (TNC's). Some TNC's were mainly from Britain, United States of America and Portugal for example the Banco Standard Totta Allianca which was found in Angola and Mozambique. The balance between private and parastatal and between foreign and domestic, varied between the member states. It was stressed that there was need for new policies and administrative mechanisms to make local and foreign investment easier and more profitable. What SADCC needed was a special foreign exchange allocations rather than 'a free market or auction that would be more likely to favour the importation of luxury goods over local production<sup>6</sup>.

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4. *SADCC in the 1990's*, EIU & BI; London 1989 p2

5. O. Saasa, *Regional Cooperation in Industrial Projects: The case of SADCC*; UNZA 1985 p27

6. *Opcit* . . . p18

By 1988, the Industry and Trade Unit<sup>7</sup> reported that all SADCC states had investment promotion schemes, which generally included tax allowances, guarantees of repatriation of profits and security of tenure. All these were done in the hope of attracting foreign investors in the region which needed hard currency to boost its dying industry.

As for trade, SADCC did not adopt a linear process. Its approach involved the implementation of a range of measures conventionally seen as corresponding to several stages of an investment and trade integration process. SADCC had always denied that it was a common market. Simba Makoni<sup>8</sup> (former SADCC Executive Secretary) explained that their approach to trade in the region was not based on the orthodox trade liberalisation strategies. That they believed - in fact, that reduction or even elimination of tariffs and other barriers to trade does not always yield increased trade, in the absence of tradeable goods. He wondered how tariffs inhibit trade when there was nothing to trade. SADCC states insisted that the greatest single barriers to trade was lack of production. Hence, the grouping's motto was, 'Let production push trade, rather than trade pull production.' This will be contrasted with trade liberalisation scheme in the new SADC Treaty later on.

Tariffs, cannot be said to hinder trade because there is diversity in the tariff regimes in force in SADCC countries. Four of the ten SADCC member states were members of SACU. These four countries were bound by the SACU agreement to give each other member and South Africa (which was also a member), complete duty free access to their domestic markets. Eight of the ten were members of the PTA. The PTA Treaty committed members to the gradual reduction and eventual elimination of customs duties and non-tariff barriers on trade conducted among themselves on goods on a common list which satisfy the PTA's Rules of Origin. Apart from the trade covered by SACU and PTA provisions, there was also in existence a number of bilateral trade agreements involving tariff reductions or removals, which were entered into by various member states at different times.

When SADCC set upon itself the task of weaving a fabric of regional cooperation and development based on equitable regional cooperation, it understood that in a free trade zone, industry migrates to the most developed country. This is why SADCC undertook the development of the region, first. And as in other areas, SADCC eschewed any attempt at region wide accord between member states. These included balanced trade agreements (under which one country agrees to buy a certain amount from the other), detailed planned trade agreements, multi-year purchase agreements (which can cover only a limited number

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7. SADCC: Industry & Trade cooperation, Dar - es - Salaam, Tanzania, 1988 p5

8. *Opcit* . . . p65

of products), counter purchase up to a certain level, preferential import licensing, reciprocal preferences and reciprocal guaranteed market arrangements. The basis of all the above might be political or specific joint venture agreements.

In 1989, an Intra Regional Trade Development Programme was started to encourage more bilateral agreements<sup>9</sup>. SADCC member states were to conclude bilateral agreements so long as they did not involve items on the PTA Common List, this will be dealt with below. There was seen a possibility of the PTA Common List subsuming the SADCC bilateral agreements in that the items on Common List were likely to increase.

The above is what SADCC had to offer in terms of trade and investment. There is little that SADCC achieved worthy mentioning in the two sectors, due to a number of reasons. The first, was the different policies taken up by the member countries in trade and investment. As we earlier noted, some countries followed socialist ideologies which entailed that the economy was largely controlled by the government. In other countries, they had mixed economies, which meant that only a few of the productive sectors were owned by private enterprises and the rest were owned by government.

The ideologies adopted by the member states kept away investors in that they felt setting up businesses in countries which had unsuitable trade and investment policies. Besides, the policies that were adopted were to ensure that local industries were protected. The theory of trade liberalisation did not apply.

There was also instability in the region. Most countries were subjected to South Africa military attacks and in some countries like Angola and Mozambique, there were civil wars. The brought about insecurity on potential foreign investors setting up businesses elsewhere including South Africa, where it was safe. However, it had been argued by SADCC member states that the foreign media had exaggerated on their reports on the region. They stated, 'that investors were misinformed because destabilisation only affected restricted areas'<sup>10</sup>.

The attacks on the countries made them change the trade route patterns. This meant that the states had to rely on apartheid South Africa, herself. Because, almost all routes were destroyed, for example the Nacala (Malawi), Maputo (Limpopo) and Beira-Sena corridors had been closed during the 1984/85 to 1988 period due to insurgency<sup>11</sup>. The reduction of dependency on South Africa, was therefore out of sight.

When it came to trade, the dependence was reduced only insignificantly. Infact trade with South Africa far exceeded intra-SADCC transactions. The trade relationship was ex-

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9. Ibid . . . p65

10. Opcit . . . p9

11. E.G. Munkonoweshuro; Development & South-South Cooperation, Vol.VI No.11, 1990 p68

tremely one-sided, with 'SADCC imports from South Africa far exceeding exports by a factor of more than five to one<sup>12</sup>. This meant that SADCC provided a valuable surplus of foreign exchange which allowed South Africa to strengthen minority rule at home and increase dependency in the region. It must be noted that at this time, South Africa was not a member of SADCC.

Another sighted constraint on intra regional trade was the traditional attitude. This problem goes back to the colonial trading patterns, and the disruption caused by the UDI and the sanctions against Rhodesia. Because of this, most SADCC business people and even officials know more about buying in Europe or South Africa than in neighbouring countries. This in turn discouraged the manufacturing sectors in most member SADCC states, which meant that production stood at a loss.

Trade not being a major conceptual priority neglected by SADCC, there was no explicitly defined trade framework. The sector, was like any other sector in SADCC, left to the coordinating country to administer or work out policies on trade. If SADCC did not want to harmonise its trade policies it would have at least, tried to encourage intra trade with the little that was produced. This means that intra trade encouragement should not have ended only on paper as a mere objective.

As a result of many disruptions in the region, the underdeveloped manufacturing sector and the lack of an integrated trade and investment framework, intra-SADCC trade failed to grow. Even at present, the information available from both the trade flows study and the study on SADC trade development and promotion strategy indicates that 'intra SADC trade has remained low at only 5% of the total SADC trade<sup>13</sup>.

Before South Africa was assigned the Finance and Investment Sector, the Industry and Trade Development came up with draft protocols on trade and on finance and investment<sup>14</sup>. On finance and investment, the objectives in the protocol is to facilitate mobilisation of financial resources and cross-border investment through the creation of a common financial market. Cross-border investment will foster greater integration by removing barriers to investment and payments on the basis of reciprocity within the overall framework of SADC. This will allow capital and technology to cross borders, for example a Zambian would be allowed to invest in Mozambique with capital or technology.

The protocol on trade cooperation is aimed at facilitating, increasing and promoting intra-SADC trade through the elimination of tariffs and non-tariff barriers. It is also aimed

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12. Ibid . . . p71

13. *SADCC: Industry & Trade Cooperation*, Lilongwe, Malawi 1995 p6

14. Ibid . . . p2

at allowing competition and free and fair trade amongst SADC countries. The draft trade strategy provides a framework for the development and promotion of both intra and extra SADC trade. Its objectives are:

- (i) to facilitate the creation of a regional market and thus enhance the development of a strong regional community;
- (ii) to enhance the establishment of export oriented investments by opening up opportunities for new products and markets.

For the above, one can see that the SADC region is proposing a freer movement of capital and financial institution among its members probably a regional bank to be created, so as to ease financial problems thus boosting investment.

In the area of trade, one may conclude that the protocol is advocating the creation of a free trade area. On this proposal, SADC member states are 'finding it difficult to obtain consensus among themselves as to what the protocol on trade should achieve'<sup>15</sup>. South Africa does not accept the free trade area suggestion in SADC, due to her obligations under the SACU Agreement. South Africa also fears de-industrialisation in Southern Africa as a result of global trade liberalisation. South Africa's fear of de-industrialisation is surprising in that most of the SADC members are accusing South Africa of destroying their local industries. For this reason, Zambia Malawi and Zimbabwe teamed up to exert pressure on South Africa so as to 'agree to an interim trade agreement to resolve the trade imbalance'<sup>16</sup>. South Africa still refuses to sign bilateral trade agreements with her fellow SADC members. A suggestion of a free trade area has been rejected and yet the country which is objecting is enjoying the market of her neighbouring states.

The protocol on trade cooperation and the SADC Treaty are strongly advocating for a free trade area, this is a move from the old views held by member states in the SADC which never wanted to follow any form of trade liberalisation strategies. This is a new era, in that trade liberalisation is the one that is being adopted in most African countries because of IMF and World Bank policies on Structural Adjustment Programmes.

Another development to note in this area of trade facilitation is that a trade directory is being prepared which will include addresses of import and export companies, manufacturers, transporters and clearing and forwarding companies in the region. Furthermore, efforts are being made to harmonise standardisation and quality assurance. In the area of trade promotion, trade financing facility is being put in place. This is the Export Pre-Financing

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15. *ESABO paper*, July 1995 p1

16. *Times of Zambia*, August 24th 1995 p7

Revolving Fund Schemes (EPRFS) and the NORSAD Fund which is limited to joint venture companies with equity from a Nordic country.

The funds were created due to the non-availability of foreign exchange which was identified as a major constraint to growth of industry and trade. Hence, to tackle this problem, the EPRFS were set up by the World Bank (WB) in Zimbabwe and by Sweden in Tanzania. These two funds were the first in the SADC region. The Zimbabwe fund began in 1983 and operates as follows; when a firm has an export order in which imported inputs account for less than 60 percent of the export price, it automatically obtains money from the EPRF to purchase the needed inputs. The fund is repaid when the export revenue is received.

As for the NORSAD fund, it was signed at the Luanda Consultative Conference in January 1989. NORSAD is a long term EPRF specifically tied to Nordic joint ventures. It is a revolving fund underpinning purchases by joint ventures in SADC states of equipment as well as inputs, although repayments are made out of export earning. Some Nordic countries like Norway and Sweden have also signed double taxation agreements with Zimbabwe which reduce taxes in Sweden and Norway on dividends, royalties and technical fees paid in Zimbabwe<sup>17</sup>. This could therefore increase the attractiveness of investments there for Nordic firms.

Under SADC, there was what was known as the SADC Regional Business Council (SRBC), which later merged with another similar institution under the PTA.

## COMESA

The PTA, in contrast to SADC, had a number of advocates of trade and investment. At the time of the Treaty, professor Adebayo Adedeji<sup>18</sup>, put it as follows, that although the Treaty is designated as a Treaty for the Establishment of a Preferential Trade Area, its objectives and provisions go far beyond promotion of intra sub-regional trade. It provides not only the liberalisation of trade but also for other areas of cooperation. Nevertheless, the main emphasis of the PTA was trade; that of facilitating trade through out the subregion. For this reason, the PTA embarked on trade market integration that would see the grouping move in a linear fashion from a preferential trade area to a free trade area, then a common market and on to an economic community.

The PTA focussed on trade liberalisation thus they adopted measures such as tariff

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17. *SADCC in the 1990's*, EIU & BI, London 1989 p57

18. *PTA: Towards a Subregional Economic Community*, Lusaka: 1982 p35

19. Article 13



reduction and eventual elimination of customs duties<sup>19</sup>, referenced was to be made to the commodities set out in the Common List. The selected commodities had to be given preferential treatment by member states and this provided trade opportunities among these countries. And in order to stop the sub-regional market from being invaded by extra-regional corporate affiliates of TNC's who would be the main beneficiaries of the larger market to the detriment of indigenous agents of production and trade. The PTA members, were therefore to adhere to the Rules of Origin in trade in relations. The other measures adopted were the common tariff classification method as well as common methods of evaluation of goods for the purpose of customs duties and simplification of customs procedure and documents.

In this paper, we will briefly outline three of the above measures that were implemented.

- a) **Elimination of Tariffs** - This was in line with the implementation of Article 12 of the PTA Treaty. This stipulated that member states should generally eliminate customs duties and non tariff barriers to trade. The gradual elimination of tariff barriers on intra-PTA trade was expected to be completed by the year 2000. And was to be accomplished by adhering to the time table which provided that tariff reduction would be done every two years from 1988 to 1996. Reduction was by 10%, then in 1996 after review and bearing in mind the objectives of the common market the 50%, that was to remain had to be eliminated in two stages. The first of the last two stages was to be in 1998 by 20% and the last 30% in the year 2000.

By 1994, a number of member states had reduced their tariffs by 60% for goods produced and traded within the subregion<sup>20</sup>. This was a good sign since goods from PTA subregion were encouraged to be competitive over goods from third countries. Thus, there existed a possibility that PTA intra trade would increase.

- b) **Rule of Origin** - This was provided for in Rule 2 (1) (a) of the protocol on the Rule of Origin. This was reviewed in 1992. Originally, the rules were said to be rigid. They were envisaged so as to encourage production and investment within the sub-region, but the opposite was achieved. The rigidity was due to the fact that the rule allowed only products produced by enterprises with national equity holding of more than 51% and majority local management could enjoy preferential treatment. This was deleted in January 1992, hence even products produced by enterprises which

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20. Z. Demise . . . Supra p2

are 100% owned and managed by foreigner could enjoy preferential treatment in the PTA market. It is evident that the needs of structural adjustment have forced the cancellation of the nationalism behind the rules. Most countries hence, are allowing more foreigners to own business enterprises.

- c) The Common List - One of the requirements for commodities to enjoy preferential treatment in the PTA subregion was that they must be included in the common list. Commodities were included in the Common List of the member states expressed both import and export interest. The compilation of the commodities to be included in the Common List by the member states as well as the grouping, matching and classification of the commodities by the Secretariat was time consuming, costly and cumbersome. What is more, under the Common List vast numbers of commodities were excluded from the preferential scheme. For example, the latest number of commodities was only 769. However, the common list, which was restrictive to foster growth in intra-PTA preferential trade, was abolished by the Authority in January 1993. Therefore, now all commodities produced and traded in the PTA subregion can enjoy preferential treatment provided they qualify under the provisions of the PTA Rules of Origin.

There was also trade facilitation, which was aimed at removing bureaucratic barriers, which hinders free movement of goods and services across national boundaries. Then governments were protective of national markets and hence lacked efficiency as regards foreign investors. Trade facilitation is 'systematic simplification, harmonisation and standardisation of trade documents and procedures relating to the movement of goods from their origin to their destination'<sup>21</sup>. Hence, the following were adopted to facilitate intra-PTA trade; Road Customs Transit Declaration Document (RCTD), uniform classification of goods for customs purpose, simplification and harmonisation of trade documents and procedures, PTA Customs Bond Guarantee Scheme, PTA Regional ASYCUDA/EUROTRACE centre which is an acronym for Automated System for Customs Data. This is a computerised customs management system. And there is also, the PTA Trade Information Network (TINET), Supply and Demand surveys for priority products of member states and the PTA Federation of Chambers of Commerce and Industry (PTA/FCCI).

As for trade promotion, the PTA, introduced the following;

- a) The PTA bank was established in November 1985. Its primary objective was to

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21. Ibid...p4

mobilise financial and technical resources required for the implementation of projects and programmes that promoted the PTA integration process. The main activity of the PTA Bank was to finance trade and development projects in its member countries. The PTA Bank has a Trade Finance Division which offers a range of trade financing for promotion of trade both within the PTA region and outside the PTA. The Bank offers, inter alia, Bills purchase and discounting to commercial banks and other financial institutions that hold foreign bill and are in need of liquid funds in order to finance imports, pre-shipment advances to companies executing export contracts whose cycle time is within six months. The facility enables exporters to buy raw materials and inputs and Guaranteed, Bill and Tender Bonds for companies that wish to tender or bid for contracts in the region.

- b) Establishment of the PTA Clearing House - it was evident that one of the serious problems to the faster expansion of intra PTA trade was the acute shortage of foreign exchange faced by member states. This was caused by, among other things, the declining prices of the primary commodities which were the main exports of the member states, sky rocketing of import prices, high interest rates and mounting debt burden. To overcome, at least to some extent, the problem of foreign exchange and thereby facilitate intra-PTA trade, the PTA Clearing House was established in February 1984.

There was a committee on clearing and payments which was instituted under Article 11 of the PTA Treaty, it worked out a monetary unit called the UAPTA for the PTA region. The UAPTA was to be used for payment for a number of transactions determined eligible. The procedure that would be followed was that all member states would 'participate in determining the eligible products, though now this applies to all products and services through their various Central Bank Governors<sup>22</sup>. The Clearing House in Harare, Zimbabwe would record the payments and receipts of member states, at the end of a transactions period. This was done through the communications it would have received from national Central Banks who would, in turn, be informed by their national Commercial Banks.

- c) Another way of trade promotion was done through the holding of PTA specialised trade fairs. Five were held under the PTA.

PTA achieved most of its intended goals although, for trade liberalisation, it was diffi-

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22. M.K. Hansungule, *PHD Dissertation* 1992 p252

cult to eliminate trade barriers and the steps taken to do away with non trade barriers were slower. This means that 'Policies and programmes on liberalisation were never on schedule under the PTA, but the common market is hoping to achieve them on time'<sup>23</sup>.

As regards investment, the PTA was keen to harmonise investment Codes of member states. Moreover, a charter on Multinational Enterprises was signed in 1990, which allowed different members states to pool together their resources into a single investment. It was acknowledged, that the establishment of a number of manufacturing activities requires a substantial amount of investment due to economies of scale.

The PTA Treaty outlined its trade and investment strategies comprehensively, thus all the Common Market has to do is to work on the failures of its predecessor. In relation to trade and investment, there are two aspects of the COMESA, that are noticeable, which were absent in the PTA are as follows;

- 1) the COMESA in combining the concepts of 'production led' and 'market led integration because the two aspects are two sides of the same coin. Another important aspect is that for purposes of investment in production, the entire COMESA is now considered as a 'domestic market';
- 2) and, COMESA is based on the concept of multi speed development by which two or more member states can agree to accelerate the implementation of specific COMESA Treaty provisions or other common agreements, while allowing others to join in later on a reciprocal basis.

In addition, the COMESA Treaty has an agreed macro-policy on the promotion and protection of private sector investment. Some of the factors that have taken into consideration are; firstly, the provision of conducive investment incentives and benefits determined largely by the development strategy adopted by each member state. Conducive environment include the deregulation of the investment and export trade and investment process, removal of fiscal barriers and other non-tariff barriers and allow for movement of capital and people; secondly fair and equitable treatment of private sector investors; thirdly, the removal of administrative fiscal and legal restriction to private sector investment and to intra Common Market investment; fourthly, conclusion by member states of agreements on the avoidance of double taxation and fifthly the accession by member states to international agreements on the promotion or protection of private sector investment is an added encouragement, particularly, to foreign investors.

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23. *Final Communiqué of the First meeting of the COMESA Authority, Lilongwe, Malawi 1994* p6

## COMPARISONS

In the area of trade and investment cooperation, COMESA has done more than SADC. It can be noted that all the sub sectors in the trade regime: trade liberalisation, facilitation and promotion are well developed in COMESA and very underdeveloped in the SADC programmes. SADC member states have always thought that democratic South Africa could accelerate liberalisation and monetary harmonisation, but this is not the case today. As seen above, South Africa does not want to contradict the SACU Agreement, thus objects to the formation of a free trade area or any other kind of economic regional integration.

COMESA, has developed a more elaborate trade regime than SADC<sup>24</sup>. In fact, it is only now that SADC has added an area of trade cooperation while COMESA and PTA before it had treated trade as one of its areas of specialisation. The COMESA, has thus created an enabling trade environment through the elimination of tariffs and non tariff barriers and has put in place a number of functioning systems for facilitating and promoting trade.

The problem that could be brought about by tariff cuts by both groupings at the same time is the choice of which one to implement. This is as regards those countries who are members of both organisations. Lets say that COMESA reduces its tariff to 15% whilst SADC 18%, the customs officer at the border here in Zambia will have a tough time to pick out which tariff to levy on goods (for example cassava) coming from Angola. Both Angola and Zambia are members of the two groupings.

COMESA has been having problems with the Clearing House. We noted that its establishment was to allow the business community in member states to use national currencies for intra-PTA transactions due to the non-availability of hard currencies. Nowadays, most countries in the region have had their exchange regulations relaxed and even removed like in Zambia, hence hard currency is available to business women and men. This has led to the Clearing House losing its business. Moreover, it has been argued that the local commercial banks are more efficient<sup>25</sup>. Another problem is that those countries economies depend on dollar economies thus, making UAPTA a Sunday school exercise.

Nevertheless, COMESA and SADC seem to be heading the same direction in terms of trade and investment policies. SADC, at the moment, depends on bilateral agreements among its members, this is the position the COMESA has taken up as well. In the COMESA region, there is a regional bank and SADC wants to set up one, this can be seen as duplication

24. *PTA/SADC Joint Study*, Harare, Zimbabwe July 1994 p14

25. D. Frost (Businessman & Publisher) in an interview on 4th September 1995

of institutions. Another trade promotion venture that SADC wants to create is that of trade fairs these can be found under the COMESA, as well and several have been held. There are many similarities in the trade promotion and facilitation field thus the consolidating of similar ideas would be of benefit to COMESA and SADC. The only organisations that have linked up and formed one organisation in the two groupings are the business communities of the different groupings. The PTA/FCCI and SRBC of SADC merged to form Eastern and Southern African Business Organisation (ESABO), in August 1994. This is an example to other institutions in the two groupings, which must be seriously thought about. Especially, in terms of investment promotion, in which both groupings want to harmonise the investment codes of the member states. Since it is impossible to have two investment policies in one country, this is clearly an area where joint planning and action is required.

## RESOURCES

Having so far established that the two economic groupings are similar in many ways, it is necessary to see how they manage to fund themselves. The two rely on contributions from member states to the budget of the Secretariat<sup>26</sup>. The COMESA, gets extra monetary resources from direct levy of members for financing Common Market activities<sup>27</sup>.

The COMESA members states are finding it difficult to honour their contributions on stipulated dates. The experience in the past 10 years has shown that the level of contributions has deteriorated,<sup>28</sup> due to the increasing economic hardships facing member states. The problem stems from the fact, that budgeting for the COMESA if done together with that for all international organisations to which member states are partly and usually the money budgeted for this purpose is inadequate.

It must be proposed that sanctions must be imposed on defaulting states such as withdrawal of appointment from nationals of defaulters. This would mean that those who are committed to the grouping will remain and this would enable member states to take COMESA seriously.

Another source of finance is donation from donor countries and International Organisations (IGOs). SADC largely depends on aid unlike COMESA and it has been noted that 'in no other African regional organisation is the involvement of aid donors as intimate and as far reaching as in *SADCC*<sup>29</sup>. COMESA finances its activities mainly through membership subscriptions and business transactions amongst its member states and not so much

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26. Articles 26 & 28 - SADC Treaty and Articles 166 & 167 COMESA Treaty

27. Article 168 COMESA Treaty

28. H. Sinare; *What is New? What Future prospects?* 1994 p4

29. T. Mkandawire; *Africa Perspectives on Peace & Development*, Zed Books Ltd, London 1987 p165

on donor help. When SADC was established, it had to mobilise international involvement based on mutual benefits. From the outset, a 'high priority was given to the subregional coordination of foreign aid and consultation with potential donors'<sup>30</sup>. Strong donor commitment was expected and SADC was originally seen as a vehicle for soliciting foreign financial and technical support. As a matter of fact, SADC has not succeeded in mobilising internal resources of expected magnitude, which has made several projects totally dependent on foreign funds. This led to most critics observing that a 'patron-client' dependency relation may be created if SADC countries devote their primary efforts to seeking foreign aid instead of mobilising their own.

However, late President Samora Machel argued that donors are not necessarily donors but cooperating partners. He remarked that 'there is neither help nor charity and we do not want them. What exists are interests. Therefore, we should not talk about help but rather cooperation. It is economic interest which moves different countries. They are going to Angola because they want oil, diamonds and coffee . . . Our mutual resources are targets and therefore, also tools of cooperation'<sup>31</sup>. For this reason, SADC refers to donors as cooperating partners.

With South Africa joining the grouping, SADC has been chosen as main instrument to further the interest of some of the most important western powers in the region for example the EU. This is nevertheless, a welcome move to the SADC region which still depends on aid to administer its projects. Hence, for SADC to succeed it will have to transform itself from an organisation primarily empowered to dispense development aid, into one that clearly defines its priorities in terms of an overall integration strategy that will emphasise on greater and better production, trade and economic development.

### COMPETING FOR DONOR AID?

When SADC decided not to merge with PTA to form COMESA, the member countries of the rest of the PTA saw this as a hostile act, divisive and selfish<sup>32</sup>. In fact, it has been said that, the reason for the COMESA-SADC conflict is essentially based on the competition for aid and donor support for regional cooperation ventures. This has, however, been denied by people, who feel that there is alot of donor cooperation than the countries in the regional groupings<sup>33</sup>. This then, means that there is no competition for aid and donor support. On the other hand, it is felt that donors cannot keep funding the two organisations which have overlapping goals and operations. Sometimes both of them go to the donors with a begging

30. K. Kiljunen, *NORDIC - SADCC Cooperation*, 1987 p159

31. *SADCC Handbook*, Gaborone, Botswana 1984 p8

32. Ibbo Mandaza in *SAPEM* Vol.7 No.12 1994 p31

33. H. Sinare (Director Legal Division: COMESA) in an interview on August 29 1995

bowl for the same projects. It is not possible to inform each other on the projects they wish to undertake, hence donors end up receiving similar project proposals.

Donors must help the two organisations to find the best solution for the region in that they have to find out whether its economically viable and justifiable for the two groupings to operate side by side with more or less the same objectives.

The issue of whether or not there is donor competition is likely to affect COMESA than SADC. The reasons being that SADC will have more aid due to South Africa's membership. The EU has a lot of interest in South Africa, because they hope to have access to her minerals. And the other reason is accused of being too large. The donors might find this as an excuse to stop funding the COMESA on the basis that it cannot operate efficiently if its too big. As Dr. Sinare states, 'at the end of the day, its public opinion that matters'<sup>34</sup>.

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34. H. Sinare (Director Legal Division: COMESA) in an interview on August 29 1995.



## CONCLUSION

In this paper, various forms of regional integration have been discussed. These are tested by looking at certain characteristics of economic relations that have been achieved. This was then referred to the unique regional groupings COMESA and SADC. Unique in the sense that they are composed of almost the same member states and are operating in the same region. Of the 12 member states of SADC, 10 are members of the COMESA, which in turn has 23 member states. In addition, five of SADC member countries (there are also in COMESA) are members of SACU.

As for the reasons behind their creation, it is evident that COMESA was initially created to promote regional economic cooperation and integration. Whilst SADC, was formed to fight economic dependence especially on apartheid South Africa. Today, COMESA is identified as a common market but, it has not yet attained that position, whereas SADC has not adopted any form of regional integration. It was further established, that although these organisations were created for distinct reasons, they are moving in the same directions in terms of mandates they strive to achieve.

The institutional structures are different; the COMESA has an established supranational structure and SADC has a decentralised type. Nevertheless, power in both groupings is vested in the leaders of the member states instead of their Secretariats. Moreover, the institutional framework of the two are basically the same.

COMESA and SADC raise their funds from contribution to the secretariats budgets from member states. The COMESA gets some extra resources from direct common market levy. Both groupings receive aid for their respective projects from donor states and IGO's, however, SADC is more dependent on aid than the COMESA.

In chapters two and three, the importance of South Africa's membership was noted. South Africa is a member of SADC and this is proving to be disadvantageous to COMESA.

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## RECOMMENDATIONS

From the findings of this paper, there are three recommendations that can be made. At present, there is institutional conflict between two economic groupings striving for the same goal. COMESA wants to merge with SADC and SADC does not want the grouping to merge claiming that they have different mandates. Thus, the recommendations are as follows:

1. The two groupings must try to compromise and find a way to merge. One solution is that of letting COMESA deal with all areas of cooperation that are related to trade only. This is so, because COMESA has already put in place an environment appropriate for trade, which SADC wants to start doing. This can further be necessitated by the fact that trade is international in character and it crosses the boundaries of politics, race and religion and depends more on the factors of communication, delivery and payment. COMESA being a large trading bloc can easily incorporate this. The duties of SADC would then be to look into the intimate areas of cooperation and integration that are appropriate for the Southern African countries, such as close political, economic, social and ethnic affiliations. This is what SADC advocates for; closer affiliation between member states. The countries in East Africa must form their own eastern bloc as well.  
If this is done, it will enable COMESA to become a very focussed organisation, thus, increasing its chances of success. And, in order to sustain itself, COMESA should actively concern itself with the collection of revenue from the common external tariff. Besides, it would be pointless for SADCC to start establishing new institutions for trade and investment which would be catered for under the SADC umbrella.
  2. SADC members should withdraw from COMESA or the member states should choose which grouping to belong. For it seems that dual membership is the source of confusion and indecision. Moreover, African countries are poor hence, cannot afford to contribute to two budgets of regional groupings that duplicating each other and striving for the same goal; the improving of living standards in member states through regional integration. This could also help donors in deciding which grouping to fund in that they will be totally separate groupings and no need
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which grouping to fund in that they will be totally separate groupings and no need for donors to feel as if they are funding the same organisations.

There are legal difficulties that may accrue due to such withdrawal. However, a legal framework should be worked out, if the two groupings are to succeed. These legal difficulties would come about when, lets say, SADC member states pull out of COMESA, hence their assets and liabilities in the COMESA Bank Clearing House and other similar institutions in the COMESA, must be determined.

In future, the two organisations may find it inevitable to come together to strengthen cooperation as one region which would in fact conform to the Abuja Treaty. This is more like the European Economic Area which has been established by the coming together of the EU and the EFTA. These two groupings were separate entities with different member states in the same region, hoping to achieve a similar goal, thus they came together to form one big economic grouping. This could also apply to COMESA and SADC, if they had to separate because they could find that there are merely duplicating each other's idea like at the present moment.

3. The final recommendation is that of the five SACU countries withdrawing from the other two regional groupings. The other SADC member states should be subsumed in COMESA. The SACU countries seem to understand and are closer to each other, this can be shown by the fact that South Africa cannot accept to go against the SACU Agreement. More so a report by Mwase and Maasdorp, states that, 'save for SACU . . . industrial monetary, financial and fiscal policy coordination have been negligible<sup>1</sup>, in other regional groupings in Eastern and Southern Africa.

This recommendation has taken into account the changed geo-political situation in Southern Africa, as well as the role that South Africa plays today. South Africa as we noted earlier, does not want products from the neighbouring countries such as Zambia, Zimbabwe and Malawi to penetrate her market hence this retards development even more than it is already.

Like recommendation number two, a legal framework must be worked out to assess the assets and liabilities of the member states of both SADC and SACU before they leave the former grouping, to either join COMESA or SACU.

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1. N. Mwase & G. Maasdorp; *The Southern African Customs Union*, Nairobi, December 1994. p2

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