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SACU – One Hundred Not Out: What future for the Customs Union?

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South African Institute of International Affairs

African perspectives. Global insights.

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ABSTRACT

This paper is based on research conducted recently in South Africa (SA), Namibia, Angola and Botswana. Policy and decision makers were asked to complete a questionnaire about the future of the Southern African Customs Union (SACU). Although the responses to the questionnaire were low, the interaction with respondents was of a high quality. The SAILA workshop held on 20 May 2010 provided an opportunity to receive further contributions and to refine the arguments developed previously. A scenario-planning exercise, which was held concurrently, was published as SAILA Occasional Paper 63, 'What does the Future hold for SACU? From Own Goal to *Laduma!* Scenarios for the Future of the Southern African Customs Union'. This paper remains the reflections of the author, who writes in her personal capacity.

SACU is the world's oldest surviving customs union. However, following recent developments, such as the Economic Partnership Agreement (EPA) negotiations and the loss of value in the revenue pool, SACU is now in crisis. For the first time in its history the organisation faces a real threat of collapse, ironically just as it celebrates its centenary.

The paper is divided into two sections. The first analyses current developments in SACU, while the second deals with the results of interviews that were conducted in the region using two questionnaires, one for Angola and one for SACU members. The Angolan questionnaire was developed, in light of the proposed Angola–Namibia–South Africa 'axis', to test views on the future of the SA–Angolan relationship and the country's regional ambitions related to SACU. The SACU questionnaire was developed to test intra-SACU views on the future of the organisation and recent developments.

The interviews and general analysis show that all member states feel the current SACU arrangement needs to be improved, but the direction of this change contested.

All the member states have a key interest in a future SACU that does not regress on regional integration. Economically, Botswana, Lesotho, Namibia and Swaziland can not survive without South Africa's support and, politically, South Africa cannot afford to have any more failed states on its doorstep. The outcome of SACU's current dilemma will also affect the broader regional integration agenda – if regional integration is seen to result in tangible benefits for participants, a strengthened SACU could have positive spin-off effects for the Southern African Development Community and the tripartite process.

ABOUT THE AUTHOR

Talitha Bertelsmann-Scott is an independent consultant and research associate of the South African Institute of International Affairs. She specialises in Southern African trade policy and has worked on numerous projects in this capacity as an expert. She has in-depth knowledge of European Union (EU) trade agreements with third countries, including the SA–EU Trade, Development and Co-operation Agreement and the EU–ACP (African, Caribbean and Pacific Group of States) EPAs. In addition, she has extensive experience in regional integration, especially in Southern Africa. Talitha has hosted, designed and trained at a number of training workshops related to the EPA negotiations. She has been the project manager of a few large projects, which have involved advising national ministries of trade in Southern Africa. Talitha has lectured at both undergraduate and post-graduate level, and at a number of institutions, including the South African Foreign Service Institute, the Defence College, the EU Press Officers' training course and the Universities of the Witwatersrand and Stellenbosch.

ABBREVIATIONS AND ACRONYMS

ANSA	Angola, Namibia and South Africa
AU	African Union
BLNS	Botswana, Lesotho, Namibia and Swaziland
BLS	Botswana, Lesotho and Swaziland
CET	common external tariff
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Union
DIRCO	Department for International Relations and Cooperation
DNA	Development Network Africa
DTI	Department of Trade and Industry
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
HoS	heads of state
IEPA	Interim Economic Partnership Agreement
MFN	Most Favoured Nation
NEPRU	Namibian Economic Policy Research Unit
SA	South Africa
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAIIA	South African Institute of International Affairs
TDCA	Trade, Development and Cooperation Agreement
TOR	terms of reference

INTRODUCTION

The Southern African Customs Union (SACU) is the world's oldest surviving customs union, established in 1910 between the then Union of South Africa and the High Commission Territories of Bechuanaland, Basutoland¹ and Swaziland. The independence of these territories and consequent formation of independent states heralded a change in SACU, which relaunched in 1969 with the Republic of South Africa, Botswana, Lesotho and Swaziland as member states. In 1990, following independence from South Africa (SA), Namibia officially became the fifth member of SACU.

Since its inception, the organisation's vision, objectives and outlook have transformed considerably, with the most significant changes made in 2002, following South Africa's democratisation. Pretoria's ambition was to address the old apartheid institutions and to extend the benefits of democratisation beyond SA's borders. Therefore, the 2002 SACU Agreement provides for: democratic institutions²; a dispute settlement mechanism; the requirement to have common policies on industrial development, agriculture, competition and unfair trade practices; and, importantly, a new system to manage the common revenue pool and its sharing formula.

However, the 2002 Agreement has largely not been implemented and SACU is now in crisis. For the first time in its history, the organisation faces a real threat of collapse, ironically just as it celebrates its centenary.

SACU's *raison d'être* differs from that of other customs unions (CU) in existence. Most CUs have followed the path of economic integration theory, as explained in the Southern African Development Community (SADC) Secretariat report.³

Balassa identified five different regional economic integration forms. These forms are normally considered to represent a progression, with each being a further step on the road to economic integration than the ones that come before. The five steps are as follow:

- 1 *Preferential Trade Arrangement* which is the simplest form of economic integration; it requires only that participating countries grant each other preferential – but not necessarily free – access to each others markets.
- 2 *Free trade area* in which both tariffs and quantitative restrictions are abolished between member countries, which, nonetheless, retain their own external tariffs on imports from outside the free trade area and so do not have harmonised trade policies.
- 3 *Customs union* in which members establish a common customs area. At a minimum this generally requires a common external tariff (CET) applied to imports from non-members and no import tariffs on trade among members.
- 4 *Common market*, which is a CU that allows the free movement of capital and labour among members and a harmonisation of trading standards and practices, together with a common trade policy that goes beyond a simple CET.
- 5 *Economic union*, in which the members of a common market also harmonise their economic policies including some co-ordination of monetary and fiscal policies, and also transportation and competition policies.

When SACU came into being, most member states had little or no self-determination. Prior to 1910, Southern Africa was predominantly under the control of the British

Empire, while Namibia was a German colony until the Treaty of Versailles of 1919, when it became a South African protectorate. In 1910, the Union of South Africa united the Cape and Natal colonies, and the two ex-Boer republics of the Orange Free State and Transvaal, which had fallen to the British after the second Boer War in 1902. At the time, the incorporation of the other three territories (Bechuanaland, Basutoland and Swaziland) into the Union was discussed, but did not transpire.⁴ Instead, SACU was created to retain the area's economic integrity, while recognising some of the political differences. Although Southern Africa was never fully integrated, it was governed by the same colonial power under Lord Gladstone. Ettinger wrote in 1974⁵, about the lack of participation in the 1910 negotiations of SACU: '[In 1910] indeed Lord Gladstone as Governor of the Union of South Africa and High Commissioner for the three protectorates had only to agree with himself and then sign the Agreement four times.'

The SACU agreement was negotiated during the 1960's. The 1969 negotiations led to improved participation from Botswana in particular, but South Africa dominated the talks. SACU also has a common monetary area, to which all SACU states belonged until 1974 when Botswana withdrew.⁶

Several historical developments led to the region fragmenting, by choice not accident, first into four (1960s), then five (1992) independent states. While sovereignty and policy space are often sacrificed for the common good when countries move deeper into regional integration, the 1969 SACU Agreement came about in recognition of Botswana, Lesotho and Swaziland's recent independence. The 2002 SACU Agreement was negotiated in the spirit of extending sovereignty and policy space to the states of Botswana, Lesotho, Namibia and Swaziland (BLNS). In reality, South Africa pursued its own interest of policy co-ordination, which meant less sovereignty space for the member states. Recent developments in SACU show that Botswana, Lesotho and Swaziland (BLS) aspire to greater policy and sovereign power. Such ambitions, if acted on, come at a cost and could very well mean that SACU collapses, from a customs union to a free trade area.

BACKGROUND TO THE PROJECT

In our modern interpretation of economic integration, what then is at the core of SACU's existence? Do the various member states perceive that the benefits of belonging to SACU outweigh the costs? And what does the future hold for SACU? Are current problems insurmountable and will SACU be downgraded to a Free Trade Agreement (FTA)? And would this necessarily be seen as a failure for Southern Africa? Or could it lead to a deepening of SACU?

The SAIIA project came about in recognition of the questions that abound around the future of the organisation, as well as in response to several developments in Southern Africa, including:

- The Economic Partnership Agreement (EPA) negotiations between the BLNS and the European Union (EU) within the SADC–EPA grouping, which have become fraught with tensions and disagreements.
- The decreased SACU revenue pool due to the global financial crisis, which will have a negative welfare effect on the BLNS states.

- The South African National Treasury's request for a formal review of the revenue-sharing formula in response to the two points above, which the heads of state (HoS) endorsed at their meeting on 15 July 2010.⁷
- The formulation by the South African Department of Trade and Industry (DTI) of a sector-based industrial policy, which would mean increasing tariffs on certain products – something SA would like to do without having to consult the BLNS first, as required by the 2002 SACU Agreement;
- The Department of International Relations and Cooperation (DIRCO) and the DTI's desire to strengthen ties with both Namibia and Angola, which supported SA during the EPA negotiations. President Zuma's state visit to Angola is evidence of the warming of ties. A strong Angola, Namibia and South Africa (ANSA) alliance could become a driver for regional integration and development, which could well threaten SACU's future.
- DIRCO's ambition to become a development partner on the African continent will have to be financed and one likely source is the current revenue pool.

The political economy of SACU's future is complex. Over the next few years, decisions taken in South Africa are likely to determine the outcome, as South Africa dominates and underwrites the organisation. But the likely direction of these decisions under the Zuma administration remains unclear and contested.⁸

STRUCTURE AND LIMITATIONS

The paper is divided into two sections. The first analyses current developments in SACU, while the second deals with the results of the regional interviews that used two questionnaires, one for Angola and one for the member states of SACU. The Angolan questionnaire was designed to test views in Angola on the future of the SA–Angolan relationship and Angola's regional ambitions. The SACU questionnaire was developed to test intra-SACU views on the future of the organisation and recent developments.

The bulk of the observations on current developments came from South Africans close to the process. Policy and decision makers in Angola, Namibia and Botswana appeared hesitant to participate, which implies a region in crisis where national consultation processes at the highest level do not allow for discussion with third parties.⁹ It reflects perhaps unease within the BLNS about the future of SACU, and Angola's lack of ambition or interest in playing an important role in shaping Southern Africa's future.

GENERAL ANALYSIS

Eight years after the signing of the 2002 SACU Agreement, the anticipated results, of a more democratic and mature customs union that meets the needs of all its members, have not been realised and a high level of discontent exists within the organisation.

Recent developments show that SACU has to confront the difficult issues that have been unaddressed since the signing of the 2002 SACU Agreement.

Key developments are the ongoing EPA negotiations, which have caused a rift between the BLS countries and South Africa and Namibia. In addition, the global financial crisis has highlighted the precarious position of the BLNS countries and their reliance on the revenue pool for the bulk of their fiscal income. According to some reports, the pool has shrunk by as much as 40%.¹⁰ In addition, the Zuma administration in South Africa has consolidated its thinking on the preferred content and structure of regional integration in Southern Africa. The new minister of DTI, Dr Rob Davies, prefers 'production-led' rather than 'market-led' regional economic integration, which could mean the CU and formal tariff arrangements become less important, or the CU is downgraded to an FTA, in favour of building network infrastructure (transport, communications and energy).¹¹

The different intra-SACU interests are hampering negotiations, resulting in inaction. Consensus decision-making is perhaps desirable but not effective or efficient. Difficult issues include: South Africa's desire to conclude its own trade agreements with other countries; the BLNS states' possible wish to seek special treatment in trade agreements, which is not available to South Africa whose economic profile differs sharply. For instance, when South Africa sought full membership of the now expired Lomé Convention in 1995, the EU felt that the South African economy was too advanced to join a grouping of least developed and developing countries. The Trade, Development and Cooperation Agreement (TDCA) and EPA negotiations show that reaching an agreement that applies to SACU as an entity is complicated and time consuming. South Africa's thinking around assuming a development partner role in the region is sensitive, as it would jeopardise the BLNS's current automatic revenue transfer. Common industrial and trade policies, which are necessary for a common vision for the organisation, will also be very difficult to agree on.

ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS: THE CRISIS CATALYST

SACU has survived many critical moments in the past, but this crisis is of a different dimension, as South Africa has expressed its intention to leave the organisation if the problems are not sorted out.¹²

The current crisis has been at least two years in the making and began with the EPA negotiations between the EU and four (BLNS) of the five SACU member states. Negotiating trade agreements as a group without a common external tariff is always going to be more problematic than negotiating as a single unit represented by one body, such as SACU. In the negotiations between SADC and the EPA, four countries (BLNS) shared a CET with South Africa, which had a separate agreement with the EU. A further complication was that Mozambique and Angola – not members of SACU – formed part of these talks and had their own tariff structure and negotiation objectives.

Some years earlier, South Africa and the EU had negotiated, signed and implemented a TDCA without consultation with the BLNS, which should not have happened as South Africa is a SACU member. The TDCA has been implemented de facto across SACU, as most imports into SACU come via South Africa. Only a small residual comes via Walvis Bay in Namibia or through the northern borders of Swaziland. As the SADC–EPA negotiations would clearly have to address the TDCA issue, the review of the TDCA was therefore incorporated into the SADC–EPA negotiations.

The problems created by the EPA negotiations are well documented¹³ and started with the negotiating units or blocks' composition. EPAs are intended to promote regional integration, at least in Southern Africa, and yet the EPA negotiating groups do not reflect any of the existing regional organisations and have incompatible integration agendas.

South Africa vehemently objected to the outcome of these negotiations and the draft text of an Interim EPA (IEPA). Although there were a number of concerns, the main objection was to the Most Favoured Nation (MFN) clause, which mandated the SADC–EPA group to extend any new trade preferences granted to third parties to the EU.¹⁴ Despite South Africa's clear wish that no SACU state should sign up to the IEPA on these grounds, Botswana, Lesotho and Swaziland went ahead anyway. The signing of the IEPAs (rather than the content per se) catapulted SACU into crisis. Furthermore, the IEPA and the freight negotiations have also meant that the TDCA Review has not been concluded.

WHAT HAVE THE ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS SHOWN?

The EPA negotiations highlighted a number of problems within SACU, namely the de facto non-implementation of the 2002 Agreement, which stipulates in Article 31 that trade agreements with third countries must be entered into collectively. In turn, the lack of a common negotiating position highlights the organisation's lack of common vision, mission, and industrial and trade policies.

Whether it is feasible to develop common industrial and trade policies in SACU is not clear. The process would have to be initiated at national level and then a common policy extended to regional level. The idea of a sector-by-sector or project-by-project approach is perhaps more feasible. However, the idea that certain industries could be ceded to certain states – such as the leather industry to Botswana, or the motor industry to South Africa – rings hollow in a global environment where such planning has seldom achieved results.

South Africa and Namibia reacted to the signing of the IEPAs with deep concern about SACU's future. The implementation of the IEPAs would undermine the CET, and so the CU would effectively become an FTA. It would also affect the revenue pool. Theoretically, a country such as Botswana that offers the EU a cheaper tariff is in fact decreasing its contribution to the revenue pool, although in fairness Botswana would then receive less from the common pool. While South Africa is the main contributor to the pool and the effects of Botswana offering a different tariff would be very small, the principle needs to be considered.

Another theoretical area of concern is the import of cheap EU products via Botswana and Swaziland into the rest of SACU. Despite being highly unlikely, the South African DTI minister, Rob Davies, has argued that South Africa would have to increase border controls in order to ensure that cheap EU imports do not flood the South African market via its BLS neighbours. More favourable rules of origin under the IEPA could also threaten South Africa's already vulnerable clothing and textile sector.¹⁵

What is not clear is whether these concerns were taken into account by the BLS. In contrast South Africa has clearly stated that it will withdraw from SACU should the IEPA be implemented in its current form. A South African withdrawal from SACU would impact

deeply on the BLS, given their dependence on the revenue pool. For the first time in the organisation's history, the BLNS face the real possibility of losing a large chunk of their revenue.

South Africa is acutely aware of the dangers of the BLNS collapsing should they lose their revenue pool. If the CET continues to be undermined and SACU collapses into an FTA, South Africa will have to find alternative ways of supporting the BLNS. Hence the idea has emerged of a development fund through which South Africa can give discretionary support.

WHAT WOULD IT TAKE TO CONCLUDE AN ECONOMIC PARTNERSHIP AGREEMENT?

It is in the interest of all parties involved to conclude the EPA and to start healing the rifts that emerged during the negotiations. Recent interviews with negotiators on both the EU and South African teams revealed confusion about the rifts and ways to heal them.¹⁶

While most issues were apparently resolved in Swakopmund, Namibia in March 2009, the legality of the text that dealt with outstanding issues came under scrutiny. The EU had already sent the draft IEPA to its council for approval and was uncertain how to 'attach' the Swakopmund declaration. A joint declaration of intent followed but questions remain over the legally binding nature of the Swakopmund text. In addition to this stumbling block, the BLS countries and Mozambique decided to sign anyway, whereas the ANSA group want to resolve certain issues before final signature.¹⁷

The EU is increasingly eager to finalise the SADC-EPA and TDCA review, having dealt with most of the issues. ANSA would like some assurances on the agreement reached. In sum, it would seem that the following points need to be addressed in order to proceed to final signature:¹⁸

- Confirmation of the alignment of the EPA tariff offer with the TDCA;
- Assurance that the ANSA group's fears regarding trade deflection and the need for stronger internal borders are allayed;
- Confirmation of the EPA Rules of Origin alignment with the TDCA; and (perhaps)
- Goodwill gestures from the EU (that they are not placing any pressure on the BLNS to sign) and from South Africa (that it is not delaying the negotiations for other purposes).

HOW WAS THE CRISIS ADDRESSED?

The EPA talks created confusion and tensions within SACU, and highlighted numerous issues, other than trade agreements with third countries, that needed resolving. Since the beginning of 2009, several council meetings and two HoS meetings have taken place in an effort to address areas that could otherwise lead to SACU's demise.

In the wake of the Swakopmund talks and the ensuing confusion around finalising the EPA, in May 2009 the SACU Council decided that, in accordance with Article 31(3) of the SACU Agreement, the BLNS were free to enter into agreements with the EU. However, in

an interview, a senior SA government official revealed that South Africa was nonetheless surprised by the subsequent signing of the IEPAs by the BLS. A council-level retreat in Kasane, Botswana, convened in September 2009, concluded that, in order to save SACU, four areas needed urgent attention:

- The development of a common industrial policy for the member states;
- The agreement to have common negotiating positions in respect of Article 31, before entering into negotiations with third parties;
- The current revenue-sharing formula and the South African National Treasury's dissatisfaction with its composition and sharing mechanism; and
- The development of a common trade policy for SACU.

Namibia's position on the signing of the IEPA differs from that of the BLS. Throughout the negotiations, Namibia has been well prepared and has articulated its objectives and interests. Windhoek had deep concerns during the negotiations about a number of technical points, which will need to be resolved before Namibia can sign an IEPA. Recognising the strategic importance of maintaining a close relationship with South Africa, Namibia remains reluctant to sign a trade agreement that excludes its major trade partner.¹⁹

An alternative view is that the organisation has always been in crisis because the revenue-sharing formula is unsustainable. Brought to the fore by the global economic crisis, which is putting pressure on the pool and members' fiscuses, it is only now being addressed as a part of the IEPA negotiations, which are already well-advanced.

South Africa's priority is to address the SACU region's lack of co-ordinated industrial policies, and to see movement towards common trade policies and tariff discussions. Once these are in place, the sharing of the revenue collected would be adjusted to fund industrial and trade policies. The funding instrument would be the proposed development fund. At a council meeting in December 2009, these issues were discussed and a plan to address industrial and trade policies and the revenue pool was laid out:²⁰

Trade Policy: South Africa has repeatedly stated that implementation by the BLS of the IEPA would mean the end of SACU. In the long term, the organisation has to prioritise formulating common negotiating positions before engaging with third parties.

Industrial Policy: SACU must develop an industrial policy framework at national and regional level, and specifically look at comparative advantages and how member states can complement each other.

Revenue Sharing: In the short term, the immediate crisis of the pool's 34–60% decline needs to be addressed. Shortfalls are expected to be even higher in coming years. South Africa is willing to assist the BLNS in the short term and, in December 2009, the BLS approached South Africa for help. However, they withdrew their applications in January 2010, probably because of fears that South Africa would impose conditions on any loans. These conditions seem more probably under the Zuma administration than before and could force the BLS not to implement the IEPA, nor to commit themselves to certain changes in the revenue-sharing formula. As the debate on these issues continues, and not wanting to pre-empt anything, the BLS instead approached the African Development Bank,

the World Bank, and the International Monetary Fund for assistance.

The first ever SACU HoS meeting took place during the centenary celebrations in April 2010. At the celebrations, South African President Zuma took the opportunity to convey the seriousness with which SACU problems are currently viewed in South Africa and stated that he is seeking resolution.²¹

In a step towards addressing the revenue-sharing issues, all member states agreed to terms of reference (TOR) for a review of the formula, which included exploring a possible development fund. A shift towards a development fund would clearly have to be accompanied by structural adjustments to policies in the BLNS.

The next HoS meeting took place in South Africa in July 2010 and was chaired by President Zuma. South Africa asked member states to prepare for the meeting by reflecting on what the SACU arrangement currently means to them. If the revenue pool is seen as a mechanism to compensate the BLNS for their lack of trade policy, then the IEPAs should not to be implemented. Member states were also asked to reflect on issues of sovereignty, such as how sovereign are their states if the source of large portions of their budgets is outside their borders?

OTHER POLICY AREAS MENTIONED

SACU outcome impact on SADC and the tripartite process

All SACU member states have to grapple with a key policy debate – that of SADC’s ambition to become a CU in the near future. SACU member states are all member states of SADC, while Swaziland is also a member of the Common Market for Eastern and Southern Africa (COMESA), which has already announced a move towards implementing a CET, although in practice a CU remains far off.

Are efforts towards the consolidation of SACU a threat to the SADC CU, or could a strong SACU become the building block of the SADC CU?

As a building block, SACU would have to consider expanding the organisation to include other SADC member states, starting with Mozambique and Angola (the two countries who are part of the SADC–EPA) and expanding to the other SADC member states. It will not be an easy task. For instance, Mozambique’s tariff structure differs markedly from that of SACU, reflecting different approaches to industrial policy. Before accepting any new members, the revenue-sharing formula would also have to be overhauled. Negotiations for the 2002 SACU Agreement lasted eight years, which gives an indication of how long any changes or new negotiations could take.

In South African government circles, the prospect of a SADC CU is being treated with increased scepticism. The time and capacity required to negotiate such an agreement does not seem to equate with the potential gains. However, an FTA with COMESA and the East African Community – also known as the tripartite process – is seen as holding high promise and gains for all countries concerned. The tripartite process depends on SADC making significant progress to implement its FTA. A collapse of SACU could either be a move away from integration or strengthen SADC, as the foremost regional organisation that includes South Africa.

Political will

The analysis of regional integration organisations across the globe shows that considerable political will is needed to push through meaningful, deep and lasting integration. Political will in Southern Africa is lacking in most organisations, especially in SADC. Whereas, on the surface, commitment seems higher in SACU, implementation of the 2002 SACU Agreement suggests otherwise.

At the recent centenary celebrations, the SACU heads of state were all present for the first time. The organisation's decision to hold regular HoS meetings indicates how important the ironing out of current problems has become.²² The July HoS meeting adopted a twelve-point agenda:²³

- Strengthening the capacity in the secretariat;
- Developing the necessary policies and procedures to conclude the establishment of institutions;
- Ensuring that all work on industrial policy, agricultural policy, competition policy, unfair trade practices and other priority commitments in the SACU Agreement are being implemented;
- Developing a SACU trade and tariff policy, and trade strategy that support industrialisation in SACU;
- Developing deliberate initiatives to promote intra-SACU trade;
- Following the principle of unified engagement amongst SACU member states in trade negotiations with third parties, while recognising different levels of development and capacity of member states;
- Investigating financing options for cross-border projects;
- Exploring the possibility of a review of the 2002 SACU Agreement;
- Developing SACU positions on new generation issues, taking into account ongoing negotiations;
- Defining a roadmap for moving towards an Economic Community and Monetary Union;
- Consideration of the sharing of SACU revenue; and
- Positioning SACU at the centre of the regional economic integration agenda.'

The communiqué makes no reference to the harsh words exchanged over the outcome of the EPA negotiations in the lead up to the July HoS meeting. Instead it focuses on the road ahead in order to strengthen the organisation and position SACU as the nucleus for broader regional integration. In addition, the next HoS meeting has been scheduled for October 2010, only three-months after the previous meeting, which highlights the urgency and importance now awarded to sorting out SACU's problems.

QUESTIONNAIRE RESULTS

Two questionnaires were developed for policymakers and analysts in the region. One was specifically aimed at Angola, which is currently not part of SACU. The other was designed for the SACU member states and was distributed in South Africa, Botswana and Namibia.

Time and budgetary constraints meant that the questionnaire could not be distributed in all the SACU countries.

The aim was to survey as many policy and decision makers in the region as possible, but the methodology did not follow a strict representative approach. As government officials were increasingly reluctant to talk to outsiders about SACU's future, the aim instead was to survey as many government officials and independent analysts as possible. Therefore, the results below are neither strictly representative nor expressions of official perspectives. Any assumptions and/or mistakes contained in the analysis below are the author's own and should be interpreted as such.

Angola

The primary objective of the Angolan questionnaire was to test Luanda's view of South Africa and its ambition to develop a bilateral axis of influence in Southern Africa.

The results, which are based on the questionnaires and a research trip to Luanda, show that little interest in, or commitment to, such an axis exists on either the South African or Angolan side. Angolan foreign policy lacks clear strategy and vision; foreign and trade policies are seen as rather reactionary; and, within the SADC-EPA, Angola has always been a low-key member lagging behind on protocol ratification and implementation. With a plethora of offers from countries such as China, Portugal and Brazil, Luanda is not actively seeking South Africa as a partner. From the South African perspective, little appears to have been done since President Zuma's visit to Angola in 2009. The embassy in Luanda currently does not have an ambassador and staff expect a new appointment only sometime in 2010.

However, contrary to these observations, according to conversations with government officials in South Africa, the ANSA axis is still being treated as of high importance. Whether action will follow this thinking remains to be seen.²⁴

Southern African Customs Union

The aim of the SACU questionnaire was to explore seven broad themes. The results are discussed and observations made in a table (see page 15) that lists the most significant responses or response trends from respondents in each of the countries interviewed.

Based on the general analysis presented above, the results of the questionnaires are not entirely surprising. Responses to the final question (what should happen to SACU?) attest to the difficult position that SACU is in. Whereas respondents in Botswana and Namibia firmly believe in the deeper integration of SACU, South African responses varied from disbandment to deeper integration. As decision power probably lies with South Africa, this disparity clouds our understanding of where SACU is heading.

1 Reasons behind a desire for change in SACU

Most parties seem keen to see a change in the way in which SACU currently operates and how the 2002 Agreement has (or rather has not) been implemented. Participants were asked for their views on South Africa's ambitions to become a more active donor in Southern Africa, with potentially the SACU revenue pool as the main source of funding.

Questions	South Africa	Botswana	Namibia
Should the revenue distribution system be replaced by a more proactive 'development/regional' policy?	Yes, more discretion for South Africa on where funds go. Would improve transparency. Transfers could then be weighted in favour of poorer members with conditions of sound fiscal management.	Current revenue formula already has a development component, which could be expanded. But otherwise no, don't want to lose control over funds.	Yes, the funds could then be targeted for use rather than be taken up in the general budget.
How would a development partner/donor role for South Africa in Southern Africa be perceived in your country? Especially if SA were to use SACU revenue pool funds for this purpose?	Positive.	SA can not claim to be a donor and be in a CU. Over the years Botswana has sacrificed industries so revenue is just compensation.	Non-starter.
To what extent has the 2002 SACU Agreement promoted democratisation of SACU institutions?	Non-implementation recognised by all respondents.	See democratisation in SACU Secretariat, the Commission and Council. Process weakened by lack of tariff board. Democratisation is de jure not de facto. Lack of capacity to implement fully the provisions.	Has not fully been implemented, lack of capacity to take advantage. Technical liaison committees are in control of setting the agenda.

Observations: Respondents had different perceptions of a development fund. They felt that it would be useful if proponents of the idea put forward a position paper. At the HoS meetings held in April and July 2010, a decision was taken (and confirmed) to review the current revenue formula. Tender documents have also already been submitted. Therefore, some concrete ideas of what the formula could look like in the future should become clearer in coming months.

2 South Africa's industrial policy

With the shift from the Mbeki to the Zuma administration in South Africa, the policy outlook and strategy of the DTI has also shifted. DTI minister, Rob Davies, has said that he prefers production-led regional economic integration to the market-led integration favoured hitherto. Under this policy, the importance of the customs union and formal

tariff arrangements would be downgraded, in favour of building network infrastructure in transport, communications and energy, along with conscious efforts to diversify the industrial base in each country.

The question asked whether this policy shift was understood elsewhere in SACU, had received broad consensus, and could lead to a unified industrial policy. Or would such a policy be obstructed in the region.

Questions	South Africa	Botswana	Namibia
Is it feasible or desirable to have common policies in SACU?	Yes. It could assist smaller countries in areas of capacity deficiencies. Could encourage investment. Essential component of a functioning CU.	Yes, customs unity would be more meaningful. Could encourage different industries to develop.	Yes. It would give all member states goals to work towards and be evaluated against.
Which common policies should SACU prioritise?	All were mentioned.	Industrial, agriculture.	Agriculture, competition, industrial.
In recent years, South Africa's industrial policy has undergone somewhat of a shift in focus, from market-led integration towards production-led integration. Is there an understanding of the implications of this shift in your country?	There was limited understanding of this shift across all three countries. Where independent analysts perhaps had knowledge of this shift, they pointed out that the rest of the country did not. South African business was more aware and supportive.		

3 Economic Partnership Agreements

As discussed above, the EPAs were the catalyst to start addressing problems that have dogged SACU for many years. The questionnaire sought to determine whether the EPA negotiations have caused irreparable damage to political relations in Southern Africa, and whether the outcome of the negotiations would be incompatible with a future customs union in Southern Africa.

Questions	South Africa	Botswana	Namibia
What lessons can SACU learn from the challenges posed by the EPA negotiations?	Lack of capacity and lack of engagement with each other and stakeholders. SACU has little common vision or ambitions.	Structures and policies for common negotiating positions still lacking. Lack of equitable industrial development still a problem. Lingering anger regarding the TDCA. Negotiators not adequately capacitated to understand full implications.	Unified approach necessary in all negotiations. States were pulling in different directions given lack of common positions.
To what extent do you consider consensus decision-making in the SACU institutions desirable/feasible?	In principle this is how SACU should operate but then in conjunction with enforcement measures. In current environment SA should benefit from weighted voting, as smaller countries should not be able to hold sway over SA.	Highly desirable. Very important for the functioning of the CU. Recognition that SA does what it wants/needs to do. Difficult due to structural mismatch; number of member states and philosophical mismatch.	Not always doable but desirable. Consensus not always feasible as differences too wide among member states. Lack of common vision at the core of decision-making difficulties.

Interestingly, most of the respondents had a less negative view of the EPAs than the South African government, based on newspaper reports and the interviews.

4 Angola and Mozambique

Angola and Mozambique are the two additional member states of the SADC–EPA group that are not SACU members. They are both SADC members and support the organisation’s ambition to achieve a customs union in the near future. The questionnaire aimed to probe sentiments on how to reconcile the SACU CU with the SADC CU. One option, which has been mooted before, is to slowly expand SACU to include first Mozambique, then Angola and then the next phase of enlargement until eventually all SADC members form part of the SACU CU.

Questions	South Africa	Botswana	Namibia
In your view should SACU be integrated into a proposed SADC Customs Union?	SACU must be the bedrock of the SADC process.	Absorption approach preferred. Gradual approach.	Gradual expansion of SACU to finally encompass SADC.
For SADC and the African Union (AU), what would be the consequences of a SACU disbandment?	SADC process will not be accelerated by SACU's collapse.	The long term view is that the SADC integration agenda will surpass that of SACU resulting in a defunct organisation. This would be in line with the AU's vision of integration. If SACU collapses without any deeper integration in SADC, this would be very negative.	Not very concerned about AU – political organisation. SADC FTA would need to be renegotiated and efforts made to accelerate the SADC CU.

Observations: The general consensus is that regional integration is desirable and that the SACU states will form an integral part of the future SADC CU.

5 Benefits and cost analysis

The questionnaire tried to establish the respondents' views on the benefits and costs of belonging to SACU. In particular, is it possible to proceed with some beneficial aspects of SACU and to discontinue costly areas? Or would the analysis suggest a downgrading or disbanding of SACU?

Question: Rank the following potential benefits of belonging to SACU (1 = most important, 5 = least important)			
	South Africa	Botswana	Namibia
Tariff revenue	5	1-2	3-4
Trade potential	4	1-2	2
Investment potential	4	2	1
Political stability	1-2	4	2
Economic stability	2	3-4	2
Common vision and addressing developmental challenges together	3	3	2

Observations: The split in responses between South Africa on the one hand and Botswana and Namibia on the other is not surprising. Tariff revenue is of key importance to the BLNS but not to South Africa, whereas South Africans consider the cost of the revenue-sharing arrangement to be insurance against political instability in the region, which is less the case for the BLNS.

The results are unsurprising and highlight South Africa's different objectives within SACU. It is noteworthy that respondents in Botswana do not see political and economic stability as the greatest benefits of SACU membership. South Africa and Namibia appear to be more closely aligned, whereas Botswana is seen as being distant from South Africa, which underscores the problematic relationship between Pretoria and Gaborone.

Question: Rank the following potential costs of belonging to SACU			
	South Africa	Botswana	Namibia
Investment polarisation		✓✓	✓
Dominance of South Africa and lack of bargaining power of smaller states	✓	✓✓	✓
Lack of common vision	✓✓		✓✓

The lack of a common vision was identified as a cost for South Africa; some respondents noted that the vagueness of the SACU text opens its implementation up for abuse. Again it is interesting to note that perceptions in Botswana differ from those in Namibia, which is much more closely aligned to South Africa.

In addition to ranking the benefits and costs, participants were also asked whether they think their country's relationship with SACU is negative or positive. The options given ranged from wholly negative to wholly positive. Botswana and Namibia showed no unified trend, as some respondents chose the wholly negative and others the wholly positive option. For South African respondents, the trend was more consistently negative.

6 Revenue-sharing formula

For all SACU members, the key concern most often cited is the revenue-sharing formula. South Africa would like to see the formula changed, to allow a fairer distribution of revenue and perhaps even allow funds to be used directly for development projects. The BLNS, however, have become increasingly dependent on the transfers from the fund. How would a change in formula be perceived?

Questions	South Africa	Botswana	Namibia
Do you think the 2002 formula for distributing the common revenue fund is appropriate?	Yes, it suits the needs of most SACU countries. No, should be linked to the amount of trade generated by each individual member state.	Yes, addresses all issues of industrial polarisation and price rising effects. No, a development fund could better distinguish between needs of the BLNS. Should be linked to the amount of trade generated by each individual member state.	No, pool is a stumbling block for BLNS – it is so attractive that it obscures everything else. A more equitable solution is necessary for SA.

Observations: In Botswana and South Africa, respondents were divided on their view of the revenue-sharing formula, whereas Namibians replied more consistently. The agreement at the recent HoS meeting to develop the TOR shows that consensus has been reached on the need for a review of the revenue-sharing formula. Discussions about the global economic crisis as well as the basic principle of a development fund have also been included in the scope of the TOR.

7 The way forward

The lack of a common vision for SACU was raised frequently during the interviews and perhaps what lies at the core of SACU's recent malaise. Therefore, it is encouraging that the HoS have developed a common vision, which was confirmed at the July 2010 meeting. The communiqué opens with the statement that the heads of state and government recall the new vision for SACU to be 'an economic community with equitable and sustainable development, dedicated to the welfare of its people for a common future.'

When probed about their vision for the future of SACU, respondents agreed that the 2002 SACU Agreement is still relevant. However, some South Africans contradicted this view by pointing out that downgrading SACU to an FTA was a viable option.

Questions	South Africa	Botswana	Namibia
Do you think the 2002 SACU Agreement is still relevant?	Yes	Yes	Yes
Can it be implemented in its current form?	All countries recognised that some adjustments need to be made during implementation.		
Is downgrading SACU to an FTA a viable option?	Yes	No	No

Questions	South Africa	Botswana	Namibia
If SACU were to be downgraded what are the implications for your country?	Political fall out could be potentially disastrous. Economically, the impact would not be significant.	Would increase political tension. Economical impact would be significant due to revenue loss. Botswana would have to look for different markets.	Namibia would go into debt to pay for fiscal short-fall. Trade would continue as SA is still our biggest market.
How big is the risk for intra-SACU protectionism should the customs union collapse?	Big risk – agriculture could be hard hit. Reasonably low as SADC FTA would mitigate against this to a certain extent.	High.	Agriculture would be at risk.

As pointed out above, the vastly different views of respondents on the likely future of SACU were the most surprising. Botswana and Namibia aspire to deeper integration, whereas South African respondents have a wide range of views about SACU, from keeping the status quo, to downgrading to an FTA or deepening to a common market.

Question: Should SACU be...			
	South Africa	Botswana	Namibia
Abolished?			
Kept as is?	✓		
Downgraded to a FTA or Preferential Trade Agreement?	✓		
Deepened into a common market?	✓	✓✓	✓✓

INTERPRETING THE FINDINGS

The questionnaires, and the general analysis, show that all member states feel SACU must change, but the direction of this change is contested.

In the first instance the future of the revenue pool is contested. South Africa would like to have greater discretionary power over revenues collected and where they are spent, whereas the BLNS seem wary of South Africa assuming a donor role. The HoS have committed themselves to a review of the current arrangements. It is hoped that the review will shed some light on SACU's available options for revenue sharing and maintaining the

general budgets of the BLNS, which are currently heavily dependent on funds received from the SACU pool.

Secondly, the future and depth of regional integration is contested. Some see a deeper integration, where SACU becomes a common market; others – especially in South Africa – have proposed that SACU be downgraded into an FTA. The HoS have stated that they are exploring deeper integration, but the outcome of the EPA negotiations could still scupper the SACU integration agenda, although this scenario seems increasingly unlikely.

The EPAs may have been a crisis catalyst in Southern Africa, but they have also highlighted problems inherent in the way in which SACU approaches negotiations with third countries. A weak secretariat makes co-ordination and strategy formulation near impossible tasks, and is amplified by the lack of common policies in SACU. The HoS have highlighted this aspect as an area that needs to be addressed in the immediate future. However, the direction of these policies could become problematic, as South Africa has very specific ambitions that are not well understood elsewhere in the region.

Closer and deeper co-operation with Angola remains on the South African agenda, although little evidence was seen in Luanda itself or in the actions of the South African government. A strong ANSA axis to promote deeper regional integration therefore also remains elusive.

The interviews took place before the first HoS summit and most respondents lamented the lack of a SACU vision. Respondents' concerns about the future of the organisation mirror the importance awarded by the HoS to addressing SACU's current problems. The April HoS meeting developed a vision for SACU that was confirmed and strengthened at the July HoS meeting. All member states seem to be making a concerted effort to resolve the SACU crisis. While some progress has been made, it will take time to conclude whether SACU is firmly on the road to deeper integration or whether the organisation might still be downgraded.

CONCLUSION

The research suggests an organisation in crisis. There remains a real possibility of SACU moving down the ladder of integration and becoming an FTA. Consolidating SACU into a common market seems less likely given the lack of progress elsewhere in Southern Africa on deeper integration. And yet, this is on the action plan of the heads of state.

The HoS have built up good momentum and it will be interesting to watch the upcoming meetings to gauge how fast they will move to resolve SACU's current problems. For South Africa to remain on board there will have to be movement on the change in revenue pool, a satisfactory mechanism to approach negotiations with third countries or organisations and progress on common policies to underpin the SACU vision. The BLNS will need some assurance that their economies won't be toppled into crisis by a change or even discontinuation of revenue contributions.

All the member states have key interests in a future for SACU that does not involve a retreat on regional integration. Economically, the BLNS cannot survive without South Africa's support and, politically South Africa cannot afford any more failed states on its doorstep. The broader regional integration agenda will also be affected by the outcome of SACU's current dilemma – if regional integration is seen to result in tangible benefits for

participants, a strengthening of SACU could hold positive spin-off effects for SADC and the tripartite process.

ENDNOTES

- 1 Bechuanaland is now Botswana and Basutoland is now Lesotho.
- 2 'Democracy in international organisations is a sui generis concept. It cannot be equated with democracy within nation states, bolstered by the legitimating effect of regular, free and fair elections. Democracy in international organisations where governments represent nation states mainly refers to decision-making processes and procedures. It has to do with the equal influence of the member states on policymaking and protection against domination by the stronger states', in Erasmus G, 'New SACU Institutions: Prospect for Regional Integration', *Monitoring Regional Integration in Southern Africa Yearbook*, 4. Windhoek: Namibian Economic Policy Research Unit (NEPRU), 2004.
- 3 Development Network Africa (DNA), 'Evaluation of an Appropriate Model for a SADC Customs Union', report commissioned by the SADC Secretariat, unpublished.
- 4 Interview with Mike Humphrey, SADC-EPA Unit.
- 5 Kirk R & M Stern, 'The new Southern African customs union agreement', Africa Region Working Paper Series, 57. Washington, DC: World Bank, 2003.
- 6 Flatters F, Kirk R & K Trask, *Should Mozambique join SACU? A Review of Key Policy Issues*, The Services Group, 2004. http://www.tipmoz.com/library/resources/tipmoz_media/cat3_link_1115658703.pdf.
- 7 SACU Heads of State Communiqué, 16 July 2010, <http://www.sacu.int/list.php?type=Press%20Statements&year=2010>.
- 8 Draper P, *What future for SACU under President Zuma?* Unpublished, internal background paper, 2010.
- 9 SACU has hitherto not had any heads of state meetings. As Erasmus points out, 'Strong institutions, inspirational leadership and an effective decision making mechanism are required to deal with [recent] challenges. SACU lacks strong institutions. Its most important institutions are the Council of Ministers and the Customs Union Commission; which have been inherited from the previous regime. [...] A regular meeting of heads of state and government may fill this institutional void and could provide much needed leadership with new policy outcomes for SACU', in Erasmus G, 'Will SACU have a permanent summit?', Trade Law Centre for Southern Africa (Tralac) online publication, 11 May 2010, http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=86783&cat_id=1058
- 10 Van den Bosch S, 'Unexpected low custom revenue in SACU causes budget shortfall', Interpress Service, Windhoek, 18 March 2010.
- 11 Draper P, *What future for SACU under President Zuma?* Unpublished, internal background paper, 2010.
- 12 McCarthy C, 'Perspectives on the Southern African Customs Union', Tralac online publication, 29 July 2009, http://www.givengain.com/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=70726&cat_id=1059.
- 13 Several research organisations give regular updates and analytical pieces on the EPAs, including Tralac (www.tralac.org), the ECDPM (www.ecdpm.org), ICTSD (www.ictsd.org), the ACP-EU trade website (www.acp-eu-trade.org) and many others.

- 14 Bursvik E, 'South Africa and the "More Favourable Nation" clause in the SADC–EU Economic Partnership Agreement (EPA) Negotiations', in *Supporting Regional Integration in East and Southern Africa: Review of Select Issues*. Stellenbosch: Tralac, 2010. http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=86141&cat_id=1033
- 15 Van den Bosch S, 'EPA signing threatens Southern African Customs Union', 9 June 2009, <http://ipsnews.net/news.asp?idnews=47146> .
- 16 Informal discussions with DTI and the EU delegation, South Africa, May 2010.
- 17 For a detailed discussion of the Swakopmund agreement or lack thereof and its implications see Kruger P, 'An update on the SADC–EPA', Tralac online publication, 24 March 2010, http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=84422&cat_id=1052.
- 18 After interviewing the relevant parties and examining the text related to the outstanding issues these emerge as the areas that need urgent resolution in the upcoming negotiations.
- 19 Namibia's main trade partner by volumes traded currently remains the EU although most of this trade routes through South Africa, making it of critical importance.
- 20 Interview with Neil Cole, South African Department of National Treasury, March 2010.
- 21 Address by HE JG Zuma on the Occasion of the Commemoration of the Centenary of SACU, 22 April 2010, <http://www.info.gov.za/speeches/2010/10042215451001.htm>.
- 22 SACU/HOSG/1, 'Final Communique', 22 April 2010, <http://www.sacu.int/list.php?type=Press%20Statements&year=2010>.
- 23 SACU/HOSGM, 'Communique', 16 July 2010, <http://www.sacu.int/list.php?type=Press%20Statements&year=2010>.
- 24 Also see article by Niemack A & X Ngwenya, 'Angola's star could use a little shine from SA', *City Press*, 25 April 2010, <http://www.citypress.co.za/Columnists/GuestColumnist/Angolas-star-could-use-a-little-shine-from-SA-20100424>.

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