The role played by Southern African Customs Union (SACU) in promoting development within its member states. 1994-2013

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Submitted in Fulfilment of the Degree of a Masters of Arts in African Studies Degree (MAAS)

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Declaration

I DOMINIC KGAUGELO MOKOENA hereby declare that this work is originally mine. It has not previously been submitted to this or any other university, and all sources and views of other scholars have been acknowledged.

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Dedication

This work is dedicated to my wife, Mulamuleli Mutshatshi, son, Kgaugelo Bohlale Mokoena and my late son, Dominic Khathutshelo Mokoena. I also remember my late father, Richard Bhutini Mokoena, and my mother, Zola Sambo, sisters, Bathabile, Lesedi and Mmathabo Mokoena, and my brothers, Tshepo and Success Mokoena, for all the support they rendered me during my studies.

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Acknowledgements

My greatest thanks go to Prof. R.R. Molapo and Ms. N. Sibawu for their untiring supervision in this research work. I also want to thank all lecturers in the Department of Development Studies, and, more specifically, Mr. Mahosi and Mr. Patrick Dzimiri, for their valuable contributions to this work. Lastly, I would like to thank Ms. Esther Munano for encouraging me to further my studies. Today, I am proud for completing this Masters Research study.

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Abstract

Regional integration in Southern Africa dates back to the formation of the Southern African Customs Union (SACU) on the 29th of June 1910. The Union is regarded as the oldest organisation in Africa. It was formed, in order to bring meaningful development to its member states. Over the years, until 2004, the organisation was based on an unequal relationship in which South Africa's hegemonic power in the group benefitted it at the expense of other Southern Africa nation states. This unequal relationship created varied developmental disparities among the members of SACU. Most Southern African Development Community (SADC) states are largely underdeveloped and poverty still persists in many of these states. This research looked at some factors which are responsible for development in the SADC states. The dawn of a new political dispensation in South Africa signalled the beginning of discussions on the democratisation of SACU as an organisation in the 20th and 21st century. Thus, over the years, since 1994, SACU has witnessed a lot of structural and hierarchical changes which have positioned it as a leader of economic integration and prosperity in Southern Africa. The study focused on the need to examine the role of SACU in promoting development among its member states. The study used qualitative methodology approaches to collect data. To operationalise the data collection exercise, the research utilised purposive sampling to select participants with knowledge to the topic under review. The data was analysed using the thematic method of data analysis.

Key words: Development, Economic Integration, Poverty, SACU, SADC

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Table of Contents

Declaration ii

Dedication iii

Acknowledgements iv

Abstract v

List of abbreviations ix

Chapter 1 1

Introduction and Background 1

1.1 Introduction 1

1.2 Background to the Study 2

1.3 Statement of the Problem 4

1.4 Aim of the Study 5

1.5 Study Objectives 5

1.6 Research Questions 5

1.7 Significance of the Study 5

1.8 Delimitation of the Study 6

1.9 Limitations of the Study 6

1.10 Definition of Operational Terms 6

1.10.1 Regionalism 6

1.10.2 Regional Integration 6

1.10.3 Economic Integration 7

1.10.4 Political Integration 7

1.11 Outline of the Study 7

1.12 Conclusion 8

Chapter 2 9

Literature Review 9

2.1 Introduction 9

2.2 Tracing the origins of the Southern Africa Customs Union 9

2.3 The 1910 Customs Agreement 10

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2.4 The Southern African Customs Union Operations between the 1920s and 1940s 12

2.5 The Southern African Customs Union Agreement from the 1940s to 1969 12

2.6 The Southern African Customs Union Agreement, 1969–2002 13

2.7 The SACU 2002 Agreement 17

Table 2.1: The major polic aspects of the 1969 and 2002 Agreements 21

2.8 Conclusion 23

Chapter 3 26

Research Design and Methodology 26

3.1 Introduction 26

3.2 Research Design 26

3.3 Research Methodology 26

3.4 Study Population and Location 27

3.5 Sampling Methods and Size 27

3.6 Data Collection Methods and Instruments 28

3.7 Data Collection Procedure 28

3.8 Data analysis 29

3.9 Ethical Considerations 29

3.9.1 Voluntary Participation 29

3.9.2 Informed Consent 30

3.9.3 Deception 30

3.9.4 Debriefing subjects 30

3.9.5 Confidentiality and anonymity 31

3.10 Conclusion 31

Presentation and Analysis of Research Findings 32

4.1 Introduction 32

4.2 Discussion of the Findings on the Challenges Confronting SACU 32

4.2.1 Complications Associated with Industrial Harmonisation 45

4.3 Operational weaknesses of SACU 51

4.4 Benefits of SACU to its Community 54

4.5 Non-benefits of SACU to its Member States 57

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4.6 Discussion on the failures of SACU 63

4.7 Discussion on the prospects of SACU 66

4.8 Summary of the Research Findings 70

Chapter 5 73

Recommendations and Conclusion 73

5.1 Introduction 73

5.2 Recommendations 73

5.2 Conclusion 75

References 77

Appendix 86

1 Interview Guide 86

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List of abbreviations

ANC	African National Congress
AEC	African Economic Community
BLS	Botswana, Lesotho and Swaziland
BLNS	Botswana, Lesotho, Namibia and Swaziland
COMESA	Common Market for Eastern and Southern Africa
CRP	Common Revenue Pool
CFTA	Continental Free Trade Area
EAC	East African Community
EPA	Economic Partnership Agreement
EFTA	European Free Trade Association
EU	European Union
FTA	Free Trade Agreement
FTAA	Free Trade Agreement of the Americas
GDP	Gross Domestic Product
HCT	High Commission Territory
ISI	Import-substituting Industrialisation
ITS	Information Technology Systems
LDC	Least Developed Country

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MERCOSUR	Southern Common Market Agreement
PTA	Preferential Trade Area
RIA	Regional Integration Arrangement
RIDP	Regional Industrial Development Policy
RSF	Revenue Sharing Formula
REC	Regional Economic Communities
SABTT	South African Board of Tariffs and Trade
SACU	Southern African Customs Union
SACUA	Southern African Customs Union Agreement
SADC	Southern African Development Community
SSA	Sub-Saharan Africa
TFTA	Tripartite Free Trade Agreement
TIDCA	Trade, Investment and Cooperation Agreement
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

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Chapter 1

Introduction and Background

1.1 Introduction

The study focused on the effectiveness of the Southern African Customs Union (SACU) as a regional economic integration mechanism. South Africa, Botswana, Swaziland, Lesotho and Namibia agreed to be members of the organisation. SACU was formed in order to bring meaningful development to its member states. However, over the years, until 2004, the organisation was characterised by unequal relations which saw South Africa's hegemonic power benefitting it at the expense of the other member states. This unequal relationship created various developmental disparities among members of SACU.

The dawn of a new political dispensation in South Africa signalled the beginning of discussions on the democratisation of SACU as a 20th and 21st century organisation. To date, SACU has witnessed a lot of structural and hierarchical changes which have positioned it as a harbinger of economic integration and prosperity in Southern Africa. According to Vickers (2008), SACU is an enigma. It is the world's oldest Custom Union, on a continent known for its many failures of regional integration arrangements. What makes the survival of SACU even more surprising is that, for nearly three decades, it represented apartheid South Africa, a political pariah, and three, (later four) independent African states.

Furthermore, the extreme heterogeneity of SACU, characterised by large differences in economic size and level of development between South Africa, on the one hand, and the Botswana Lesotho Namibia and Swaziland (BLNS) countries, on the other, added to the enigmatic nature of the CU. Since its inception, the organisation's vision, objectives and outlook have transformed considerably over the years, with the most significant changes made in 2002, following the democratisation drive that intensified in the post-Cold War era. South Africa, as the most powerful economy on the continent and within SACU, had to take the challenge on its

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shoulder to address the benefits of democratisation beyond its borders. It is important to recognise that the impetus for transforming the SACU arrangement did not emanate exclusively from the BLNS states.

The study used qualitative methodology approaches to collect data. The broader aim and objective of the study was to examine the benefits of SACU for its member states. The researcher designed a qualitative data collection instrument, namely an interview guide to direct the interviews.

1.2 Background to the Study

The origins of SACU date back to the 1889 Customs Union Convention between the British Colony of the Cape of Good Hope and the Orange Free State Boer Republic. SACU is the world's oldest customs union that has survived for almost one hundred and four years since its birth. The SACU CU agreement was signed in 1910 by its member states, a few months after that declaration of the Union of South Africa in Potchefstroom, South Africa.

The SACU agreement was renegotiated in 1969 following the independence of Swaziland, Lesotho and Botswana. After World War I, South West Africa (today's Namibia) also became part of the customs-territory. At its independence, in 1990, Namibia decided to remain within SACU. The independence of these territories and the consequent formation of independent states heralded a change in SACU, which was re-launched in 1969 with the Republic of South Africa(RSA), Botswana, Lesotho and Swaziland as member states. In 1990, following its independence from South Africa (SA) Namibia officially became the fifth member of SACU.

SA was also keen to introduce changes to the existing agreement. The incoming African National Congress (ANC) government was determined to underline its credentials in the region by supporting SACU's democratisation, and by dispensing with the colonial image associated with erstwhile SACU agreements (Lee, 2003). Responding to concerns raised by the Botswana Confederation of Commerce that the SACU agreement favoured South Africa over the smaller economies of the BLNS states, Nelson Mandela acknowledged that the agreement was 'a

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reflection of the colonial oppressor's mentality', and denounced the previous apartheid regime for having used its 'economic muscle to bully and intimidate small neighbours' (Hansard 1996:1781). This explains why the ANC identified the renegotiation of the SACU arrangement as one of its foremost priorities of the post-1994 regional trade agenda (Mandela, 1993).

Thus, on 21 October 2002 the heads of state of (BLNS) and SA signed a new Southern African Customs Union Agreement (SACUA) in Gaborone, Botswana. This represented a very important development in the history of the oldest operating customs union in the world, a development that gave recognition and content to having a democratic South Africa, the most powerful economy on the continent, in a regional integration arrangement with four much smaller economies. The 2002 SACU Agreement provides for: democratic institutions; a dispute settlement mechanism; the requirement to have common policies on industrial development, agriculture, competition and unfair trade practices; and, more importantly, a new system to manage the common revenue pool and its sharing formula (Gibb, 1997).

Sub-Saharan Africa (SSA) is a marginalised region of the global economy. This is reflected in the region's declining share in world production and trade. SSA as a whole has a sizeable population of 628 million, but this population lives in countries that form the dominant cluster in United Nations Conference on Trade and Development (UNCTAD) defined group of least developed countries. These small and underdeveloped economies have serious problems to cross the threshold to sustainable, diversified development through strategies that focus on domestic or foreign markets.

It is within this background that SACU and its new agreement have special significance. SACU is officially recognised as a building block in the development of a customs union for the Southern African Development Community (SADC). SADC, in turn, is expected, after its consolidation with other continental integration arrangements, notably the Common Market for Eastern and Southern Africa (COMESA), to play an important role in the development of the recently formed African Union (Ngwenya, 2002:26). SACU, it has been argued, is likely to form the core of a variable-geometry regional trading arrangement covering the whole of Southern Africa (Gibb, 1997).

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1.3 Statement of the Problem

The perennial problem in SACU is the dominance of SA. This promotes inequality in the level of development amongst member states. While the 2002 SACU agreement attempts to bring democracy and fairness to the body, the dominance of South Africa still persists because other members continue to depend on SA's industrialised economy. This results in multiplier effects on SACU's industrial harmonisation policy. It is estimated that South Africa accounts for more than 85 per cent of the manufacturing output and this, on its own, hinders the democratisation of the organisation.

Linked to the above, the other problem is that SA gets a lion's share on the annual revenue profit shares. The problem is that, the Revenue Sharing Formula (RSF) put in place since 1969 tends to benefit South Africa at the expense of the small economies of other members in the organisation.

This study also focused on the problem of lack of a clear policy on the issue of the competition law and unfair trade practices clause. The overlap in these two clauses causes problems to the effective trading patterns in the organisation.

With regards to regional integration, it appears SACU finds itself competing, rather than complementing other regional bodies such as SADC, COMESA and the Economic Common Area (ECA). These bodies pursue economic integration outside SACU, and since member states of SACU enter into bilateral trade agreements as individual states, this tends to dilute efforts to strengthen SACU as a unified trading block because national interests override SACU commitments.

The resulting problems of multiple and overlapping memberships hinder regional integration by creating a complex entanglement of political commitments and institutional requirements, adding significantly to the costs of conducting intra-regional business.

It is because of the above problems that the study seeks to examine the role played by the SACU in promoting development and economic integration among its member states.

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1.4 Aim of the Study

The main aim of this study is to examine the role of the SACU in promoting development amongst its member states.

1.5 Study Objectives

- To trace the origins of SACU;
- To examine the benefits that SACU brings to its member's states; and
- To make recommendations on how SACU can help develop the economies of its member states.

1.6 Research Questions

This research study seeks to find answers to the following questions:

- What are the origins of SACU?
- What benefits has the organisation brought to its member countries?
- What recommendations can the study make to increase the benefits of its member states?

1.7 Significance of the Study

The study is significant in the sense that it aims to examine the role the sub-regional grouping has played in the development of its members. This will lead one to understand the benefits that the members have accrued from the organisation. Moreover, the study will also come up with recommendations to help the organisation to be more helpful to its member states. What makes SACU an important case in the African experience with regional integration arrangements (RIAs) is that it is not only the oldest and deepest regional trade integration arrangement in Africa, but also that it has survived its colonial origin and South Africa's history of apartheid.

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On a continent noted for its many failed integration arrangements, the role of SACU in promoting development in Southern Africa is exceptional and worthy of closer consideration because a number of lessons can be drawn from the experiences of SACU since 1910 . By and large, this study is important because it contributes to the body of knowledge on the challenges and prospects for regional economic integration and development.

1.8 Delimitation of the Study

The study examined the role of the SACU in promoting development amongst its member states. This was done through conducting interviews with officials that carry out administrative work for the union. The study focuses on the period between 1994 and 2013.

1.9 Limitations of the Study

The research study depended on information from embassies of the SACU member states based in Pretoria. The study is, therefore, limited in that it confines itself to embassies in South Africa. This is so because funding to travel to all the member states of SACU was limited. In this case embassies were used as points of reference. Thus, the study was limited by the following factors, namely funding, stationery, printing, editing, binding, and transport. Due to limited financial resources, the researcher conducted few interviews.

1.10 Definition of Operational Terms

1.10.1 Regionalism

This is a state-led project designed to reorganise a particular regional space along defined economic and political lines (Payne and Gamble, 1996, pg-401).

1.10.2 Regional Integration

It is defined as a process through which a group of nation states voluntarily, in various degrees, have access to each other's markets, and establish mechanisms and techniques that minimise

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conflicts and maximise internal and external economic, political, social and cultural benefits of their interaction.

1.10.3 Economic Integration

This is a process by which states come up with measures to abolish discrimination between economic units belonging to different nation states. When economies are integrated, they tend to follow similar economic policies and they also support one another in all matters relating to business and trade.

1.10.4 Political Integration

This is the formation of transnational political system, where countries with the same political beliefs and values work together in the development of their countries. Governments of politically integrated countries meet frequently to discuss political issues affecting their countries. They also form organisations and forums which they use as platforms for their cordial relationships.

1.11 Outline of the Study

Chapter 1: Introduction and background of the study

This chapter comprises the introduction and background, statement of the problem, aims and objectives, significance of the study, definition of major concepts and research methodology.

Chapter 2: Literature review

Chapter 2 reviews previous research findings on the Southern African Customs Union. The chapter traces the origins and development of the customs union from its birth in 1910 up to the present day. However, the study focused on the period from 1994-2014.

Chapter 3: Research Methodology

Chapter three focuses on research methodology. The research design, population, sample, and data collection methods as well as thethe limitation of the study are discussed in this chapter.

Chapter 4: Presentation of data, Analysis and Interpretation

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This chapter focuses on the presentation of data obtained from the broader consultation of the sources. The findings are organised into the following sub-sections: the challenges that the organisation faces; the benefits the organisation is accruing to member-states; and possible mechanisms that can make the organisation relevant to the needs of its community.

Chapter 5: Research Findings, Conclusions and Recommendations

Chapter five of the study discusses and interprets the findings. The findings are interpreted based on the literature review. Furthermore, the researcher makes recommendations and draws conclusions based on the findings of the study.

1.12 Conclusion

This chapter introduced the topic and provided the historical background of SACU as an economic organisation dating as far back as 1910. The problem statement, aim, objectives and research questions to be addressed were also discussed. The significance of the study, its limitations and delimitations were also examined. Finally, the chapter defined operational terms and concepts which are used in the research.

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Chapter 2

Literature Review

2.1 Introduction

Chapter 2 reviews literature related to the subject under discussion. The major aim is to find out the views of other scholars who have carried out research on SACU and then try to fill in the gaps in this work. The chapter is divided into sub-sections so that the views by other scholars are easy to follow. The following sub-section reviews literature on the origins of SACU and the agreements which were entered by member-states between 1909 and 2002.

2.2 Tracing the origins of the Southern Africa Customs Union

This section discusses the historical background and traces the origins of SACU as an intergovernmental organisation that has survived for over a century. The origins of the SACU date back to the 1889 Customs Union Convention between the British Colony of the Cape of Good Hope and the Orange Free State Boer Republic (Lee, 2003). Later, in 1893, Bechuanaland and Basutoland Protectorates were added under the revised customs union (Mwase and Maasdorp, 2004, pg-69).

However, neither country had the power to amend customs duties, alter the terms of the agreement or vote on new accessions. The rationale behind this was presumably that blacks would not understand such matters; only whites were deemed fit to make decisions for them (Ettinger, 1974). Britain, the colonial master, had overall say upon the protectorates. Thus, the white-ruled parts of southern Africa made all the decisions concerning the customs union. The Anglo-Boer war resulted in British colonial rule throughout present-day South Africa, Bechuanaland, Basutoland, Rhodesia (Zambia and Zimbabwe) and Swaziland.

Britain's hegemonic rule made negotiating a new customs union less onerous and, in 1903, a customs union convention was signed between the Cape, Natal, Orange River Colony, Transvaal and southern Rhodesia (present day Zimbabwe) (Maasdorp, 1982). In the agreement,

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Bechuanaland, Basutoland and Swaziland were admitted as members under a separate protocol. They were regarded as second class members with diminished rights (Massdorp, 1982).

The idea of incorporation had support at the very highest levels in both London and Pretoria. Many of the key issues surrounding this decision were disputed at the time, even amongst British ministers and diplomats, and, to date, remain a source of heated academic debate (Thompson, 1960). Two issues became apparent, Britain's responsibility for the political rights of Africans living in the High Commission Territory (HCT) and, more importantly, Britain's imperial desire to retain some influence over the newly established Union.

First, it is important to note that the 1889, 1898 and 1903 custom union conventions, together with the 1909 Union of South Africa Act, peripheralised the HCTs and placed them in a marginal position, subordinate to the principal signatories. Second, SACU has its origins in a colonial strategy that considered the independence of the HCTs as non-viable, both economically and politically, and aimed to transfer the 'burden' of administering the Territories to South Africa (Torrance, 1988).

2.3 The 1910 Customs Agreement

On 29 June 1910, a customs agreement between South Africa, Basutoland, Bechuanaland and Swaziland (BLS) was signed in Potchefstroom, South Africa (Union Gazette, 1910). The agreement consisted of six articles that collectively added up to less than 900 words. This lack of attention to detail reflects a widespread acceptance of the HCTs being incorporated into South Africa. The Agreement was signed in four separate places by Lord Gladstone who was once Governor-General of the Union, as well as the British High Commissioner of the HCTs. The agreement reflected Britain's hegemonic status (Union Gazette, 1910).

The 1910 Agreement was characterised by the absence of an 'independent' institutional structure designed to govern the Customs Union. The Agreement set up policies pertaining to tariffs and the allocation of revenue, as well as procedures for operating the Customs Union. It also bestowed the duty of managing these policies on South Africa. South Africa's own institutions, for example, the Treasury and the Board of Trade and Industry, assumed responsibility for

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running the Customs Union. There was no provision for joint decision-making and, neither was provision made for changing the terms of the Agreement.

The structural asymmetries built into the Agreement were clearly identified in the Preamble that stated that 'the Territories shall maintain a tariff similar to that which exists in the Union of South Africa (Union of South Africa Act, 1910, article IV). Thus, Article IV of the 1910 Agreement reinforced South Africa's right to determine unilaterally all issues relating to the Custom Union's common external tariff. In its provisions, the Agreement stated that the territories shall, as far as possible, conform to the laws and regulations within the Union in respect to refunds, rebates, abatements, suspensions, methylation, prohibitions, removals in bond or otherwise, and interpretations of the Tariff (Customs Union Agreement, 1910, article IV).

This clause effectively removed the High Commission Territories' power to independently increase their public revenue. The Preamble also stated that 'there should be a free interchange of South African products and manufactures between the Union and the Territories'. This statement reflected a clear perception amongst the authors of the Agreement concerning the status and development prospects of the HCTs. The Preamble made no mention of the free interchange of products originating from the HCTs. Overall, the 1910 Agreement made no provision for the HCTs to manage their own economies, as economic development beyond resource extraction was never envisaged as a serious option (Walters, 1990).

The 1910 agreement remained in force until the independence of the HCTs brought about a need for a re-assessment of the SACU agreement, the outcome of which was the 1969 SACU agreement. This was concluded on 11 December 1969, and came into operation on 1 March 1970. In the negotiations that led to the 1969 agreement, independent Botswana, Lesotho, and Swaziland (BLS) were particularly concerned that they were not getting a fair share of the CU revenue (Landell-Mills 1971). They argued that the growth of their economies, and, consequently, their imports, was not reflected in the fixed percentage shares in revenue under the 1910 agreement, and, furthermore,did not compensate them for the effects of trade diversion that arose from the protective tariff designed to serve South African industrial development.

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2.4 The Southern African Customs Union Operations between the 1920s and 1940s

The depth of the unequal relationship established by SACU was clearly illustrated by two events that took place between the 1920s and 1940s. First, South Africa's decision in 1925 to promote an industrial growth strategy based on import substitution policies had a profound impact on the BLS. Similar to the industrial countries of Europe and North America, in the run-up to the 1930s Great Depression, South Africa adopted a policy of protecting the domestic market by imposing high tariff barriers (Gibb, 1997:67). Together with a policy of import-substitution (an industrial development strategy adopted by many developing economies during this period), this approach resulted in extremely high domestic tariff barriers (Gibb, 1997:67).

In the period from 1910 to 1960, SA's industrial policy was enacted, principally, by means of tariff manipulation. For the HCTs this had several negative impacts. Most importantly, consumers in the HCTs were forced to purchase South Africa's internationally uncompetitive manufactured products instead of sourcing them more cheaply on the world market. The result was a classic case of trade diversion and, for the HCTs, a net loss in welfare. This episode served to highlight the absence of an independent institutional structure designed to govern the 1910 Agreement, with the territories obliged to adopt SA's policy of import-substitution. It also illustrated clearly that the territories had little fiscal discretion and almost no influence over the direction of SACU's industrial and fiscal policies.

2.5 The Southern African Customs Union Agreement from the 1940s to 1969

Britain's resistance was further strengthened in 1948 with the election of the National Party (NP). The prospect of transfer was, to all intents and purposes, ended with South Africa's withdrawal from the Commonwealth in 1961. During this period, the HCTs were characterised by economic vulnerability and political uncertainty. They remained almost wholly dependent on the Union for revenue and markets, and their destiny was being determined by events over which they had little or no influence. Both SA and Britain pursued a deliberate policy of active underdevelopment, albeit for slightly different political reasons.

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Britain had the option to bolster the HCTs, in order to quell the Afrikaner threat. However, to have done so may have made it harder for it to retain the Territories. Britain was, therefore, content to keep the HCTs weak. At the same time, South Africa wanted them to be weak so that it could dominate them economically and, in due course, swallow them up politically. Newman (1965:119) observed then that Bechuanaland might become a South African Bantustan. It could have become independent by relying on British subsidies; or a link could have been forged with the then Southern Rhodesia, only after its future had been settled.

To buttress the argument by Newman (1965) Hyam and Henshaw (1988), it is important to note that Britain was afraid that any development of the colonies' resources would only make them more attractive to the Union, so they were largely left alone as backwaters almost to the end of colonial rule. This was also echoed by Ettinger (1965:80) who argued that the economic development of the territories was accorded minimal priority. He further commented on Pretoria's willingness to hurt the HCT economies for 'economic and political ends'.

2.6 The Southern African Customs Union Agreement, 1969–2002

In its preamble, the 1969 Agreement highlighted, as an objective, the maintenance of free trade behind a Continental Trade Area (CTA). However, it was envisaged that free trade within the common customs area would be managed in a way that would:

> Ensure the continued economic development of the customs area as a whole, and to ensure in particular that these arrangements encourage the development of the less advanced members of the CU and the diversification of their economies, and afford to all parties equitable benefits arising from trade among themselves and with other countries.

Asymmetry in development was anticipated, with industrial development concentrating in the high-growth metropolitan areas of SA because of the forces associated with the economies of agglomeration. The important point to grasp is that, the 1969 agreement explicitly provided for

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the development of the lesser-developed CU members, and, thus, displayed an effort at developmental regional integration.

By the early 1960s, it became apparent to all parties that the share of the revenue pool allocated to BLS (collectively adding up to just 1.3 percent) underestimated, significantly, their contribution to the union (Gibb, 1998:120). The growing inequity of the 1910 customs revenue formula was a direct consequence of South Africa's import-substitution policies. The result was a growing gap between the amount the tariffs were costing BLS consumers and the amount of revenue the HCTs received under the Customs Agreement (Ettinger, 1965).

Thus, the need for a revised tariff system or a new agreement on tariffs became clear and inevitable. However, negotiations for the new customs union agreement, although started in 1963, were delayed as a result of the independence of the three HCTs, namely Botswana and Lesotho in 1966, and Swaziland in 1968 (Gibb, 1998).

Both Britain and South Africa delayed renegotiating the 1910 Customs Union until the HCTs gained independence, in order for the BLS governments to negotiate their own agreements. Following the independence of BLS, negotiations began in earnest and, on 11 December 1969, a new agreement was signed, establishing the Southern African Customs Union. The independence of the HCTs necessitated the negotiation of a new customs union agreement. The subsequent SACU of 1969 maintained some basic elements of its predecessor but also introduced fundamental changes. In contrast to the 1910 Agreement, the 1969 document was detailed and comprehensive.

The governments of the Republic of South Africa, the Republic of Botswana and the Kingdoms of Lesotho and Swaziland committed themselves to maintaining a free interchange of goods between their countries and to applying the same tariffs and trade regulations to goods imported from outside the common customs area (Preamble of the Customs Union Agreement, 1969). Although the 1969 Agreement established, for the first time, SACU institutions designed to help manage the Customs Union, SA's complete and absolute dominancy of the CU remained unchallenged. Furthermore, the institutional structure introduced by the 1969 Agreement was kept to an absolute minimum.

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The Customs Union led to the establishment of the Customs Union Commission, which comprised representatives from all five member states. It stood as the supreme body tasked with the mandate to discuss any matters arising out of the agreement (Customs Union Agreement, 1969, article 20). The Commission was made up of three Liaison Committees on Transport, Trade and Industry, and Customs. Meeting at least once per annum, the Commission had no permanent secretariat and was chaired on a rotational basis.

The responsibility for the administration of the common revenue pool also remained in South Africa's hands. However, the way in which revenue was distributed changed fundamentally, especially with respect to shares in trade and consumption of dutiable goods, which became the basis for the determination of enhanced revenue allocation for the BLS countries, with South Africa keeping the residual of revenue.

With the passage of time, all members of SACU came to consider the Agreement seriously flawed (Mayer and Zirenda, 1994). Although several discussions on the 1969 Agreement prior to 1994 went through, these lacked serious commitment from South Africa and were largely aimed at resolving technical aspects of the 1969 Agreement. The renegotiation of the agreement in its entirety only began in November 1994 and was eventually concluded eight years later, demonstrating the lack of political will, especially on the part of South Africa.

The main weakness of the 1969 SACU Agreement was the absence of joint decision-making (Kirk and Stern, 2030. The 1969 SACU Agreement provided for South Africa alone to determine the external tariff policy of the customs union. All changes to customs tariffs, rebates, anti-dumping and countervailing duties were effected by the South African Minister of Trade on the recommendation of the South African Board of Tariffs and Trade. Excise policy was determined by the South African Minister of Finance.

The other problem with the 1969 Agreement was that SACU itself was administered on a part-time basis by annual meetings of the Customs Union Commission, and there were no effective procedures to ensure compliance or to resolve disputes. Given the asymmetry in decision-making, the Common External Tariff and related trade policies were set up to protect or promote

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South African producers with no consideration of the developmental interests of the BLNS. Attempts to develop new industries in the BLNS that competed with established South African interests were constrained by a host of non-tariff barriers and the BLNS were unable to address issues of predatory pricing and unfair competition by conglomerates located in South Africa[1]. Moreover, preferential trade agreements entered into by South Africa with Third Parties compromised the integrity of the customs union (Kirk and Stern, 2003).

The aspect of the 1969 Agreement that has received most attention is the Revenue Sharing Formula (RSF) designed to distribute the Common Revenue Pool (CRP) between the Members of SACU. The SACU RSF is unique in a number of ways, most notably because it applies to just four of the five member countries. SA receives the net amount of customs and excise duties collected after payment has been made to the BLNS. The 1969 RSF was amended in 1976 with the inclusion of a 'stabilization factor' that requires that the BLNS receive at least 17 per cent and at most 23 per cent of the value of their imports (from all sources) plus excisable production inclusive of excise duties.

By so doing, SACU effectively adopted a "target-rate" of 17% (Walters 1989) and this imperfection has applied since 1980. The RSF, with the stabilization factor, provided an arrangement for allocating tariff revenue to the BLNS that was unrelated to trade policy. Consequently, it could not be expected to reflect the welfare and distributional costs (the so-called price-raising effect), which would change over time with tariff adjustments, and the changing commodity composition of trade.

During the 1980s and early 1990s, the target-rate almost certainly underestimated the price raising effect (Guma, 1990; Stamp, 1994). However, with the removal of import surcharges, the reduction of tariffs and the abolishment of quantitative restrictions, the stabilisation factor of 17 per cent began to exceed the price raising effect. In the latter half of the 1990s, payments to the BLNS accelerated to around 50% of the total pool. Guma (1990) and Stamp (1994) estimates indicate that the payment to the BLNS would have reached around 80% of the total pool by

[1] For example, in the late 1970s and early 1980s a firm assembling televisions in Lesotho and a fertilizer plant in Swaziland found it impossible to meet South African Standards and eventually closed down.

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2011. This heightened concerns regarding the long-term sustainability of the formula. As a result, the SACU member states had to renegotiate a new Agreement which came to be known as the 2002 Agreement. The terms and logistics of the 2002 Agreement are discussed below.

2.7 The SACU 2002 Agreement

The new SACU agreement, concluded in October 2002 and operational since July 2004, gave a new impetus to the debate on the development of SACU, and its future as a regional integration arrangement (RIA) that aims to facilitate economic development. The new agreement represents a radical transformation in the management of SACU operations, and has distinct provisions for the economic development of SACU and its member states. Development and the intention to address inequality between member states also appears in the preamble to the 2002 agreement, in which the contracting governments declare themselves 'mindful of the different levels of economic development of the Member States', while acknowledging that global economic integration, with its emphasis on multilateral trade liberalisation, should place the economic development of members within the context of 'the need for their integration into the global economy' (SACU, 2002). Global integration, thus, became a SACU goal, which was not the case in the 1969 agreement. This reflects a shift in South Africa's trade policy towards one of liberalisation and the enhancement of international competitiveness of industry.

These provisions were formulated to take cognisance of the unequal nature of the economic size and level of industrial development between South Africa, which generates more than 90 per cent of the SACU gross domestic product (GDP) and the much smaller Botswana, Lesotho, Namibia, and Swaziland (BLNS). Dealing with inequalities in a regional integration arrangement is always difficult, hence the importance attached to economic homogeneity and political commitment in achieving success in regional integration (Langhammer, 1992). In the case of SACU, the difference in economic size is enormous by any standard. This and the peculiar political history of SACU add to the complexity of having to manage regional integration effectively.

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The 2002 Agreement clearly addresses the main criticisms of the 1969 Agreement by promoting shared decision-making and allowing for a new revenue sharing arrangement that seeks to support fiscal stability. The Agreement placed at its center the following most pressing issues, namely governance and administration; economic policy and regulatory issues; and revenue sharing. Its stated objectives include:

- To promote the integration of the Members into the global economy;
- The facilitation of cross-border movement of goods between the Members;
- The establishment of effective, transparent and democratic institutions which will ensure equitable trade benefits to the Members;
- To facilitate the equitable sharing of revenue from customs, excise and additional duties;
- To promote fair competition, substantially increase investment and facilitate economic development; and
- To facilitate the development of common policies and strategies.

The new Agreement provides for the establishment of an independent, full-time but administrative secretariat to manage the affairs of SACU, to be located in Namibia. The South African Board of Tariffs and Trade (BTT) was replaced by a SACU Tariff Board, which consists of a panel of professionals appointed (each Member State nominates a candidate) to consider all changes to the common external tariff. All recommendations emanating from the Tariff Board are ratified by the SACU Council of Ministers, which consists of one Minister from each member state. The Council is supported and advised by a Customs Union Commission, made-up of senior SACU civil servants, and an independent but ad-hoc Tribunal to arbitrate on any disputes. Decisions of the Council and all other SACU institutions are made on the basis of consensus.

All technical work is subject to 'national bodies' to be established by each member state. Thus, the South African BTT remained (albeit under a new name) and has a national rather than a SACU mandate. The BLNS developed national level bodies or departments (or may just appoint officials) to conduct tariff and trade remedy investigations and make recommendations to the

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SACU Tariff Board. This has proved a major challenge for the BLNS, none of which have experience or expertise in this area of managing SACU affairs.

On economic policies, the 2002 Agreement made radical changes, but it failed to do away with the issue of the dominance of South Africa. The new Agreement permits national protection for infant industries in the BLNS but not in South Africa. Under this Article, the BLNS can impose duties on imports from South Africa provided the same duties are also imposed on imports from the rest of the world. An infant industry is defined as an activity that has not been located in the BLNS for more than 8 years, and this protection is also limited to a period of 8 to 17 years.

The Council of Ministers may impose additional conditions, which are not specified. This Article replicates a similar loophole that was contained in the 1969 Agreement. During the period between 1969 and 2000, Swaziland and Botswana used this loophole on occasion and, recently, Namibia granted additional protection to a pasta manufacturer. The use of the infant industry clause imposes costs on domestic consumers, reduces the SACU revenue due to government, and provides for substantial levels of effective protection to the infant industries.

The 2002 Agreement provided for common policies in industry, agriculture, competition, and unfair trade practices. These all remain mandatory with no attached annexes (Kirk and Stern, 2003). In each case, it is understood that the existing policies remained in place pending development and agreement on new common policies and strategies. The development of common policies remained the responsibility of Member States rather than the new Secretariat. The divergent levels of capacity between Member States have adverse implications for SACU policy developments and the Secretariat may be drawn into policy analysis work, rather than real formulation of policies.

Finally, the 2002 Agreement dealt with the pertinent issue of revenue sharing. The new formula applied to all members and was limited by the size of the customs and excise duty pools. The formula was developed with the aim of providing a degree of revenue security to the BLNS. It was recognised that real tariff revenue is likely to decline over time. By including excise duties,

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it became possible to ensure greater revenue stability and arrange for revenue transfers to the lesser-developed members.

The new SACU Revenue Sharing Formula deals with customs and excise revenues separately and explicitly through two distinct components (refer to Annex A for an analytic exposition of the new formula). Total customs revenues collected are to be distributed according to each country's share of total intra-SACU imports. Countries that import most of its goods from within the union will receive the largest share of the customs pool, thereby providing implicit compensation for the "cost-raising" and "polarization" effects of the customs union. In theory, this may also encourage trade diversion within the customs union. By focusing on intra-SACU trade, no consideration is given to the price-raising effects arising from extra-SACU imports.

The new formula also provides for the creation of a development component, to be set as a fixed percentage of the excise pool (initially 15%). This arrangement differs markedly from the development fund proposed by McCarthy in 1985 (and described in Walters 1989). Payments into and out of the development component are determined by a formula and not allocated or tied to specific projects. The development component is, therefore, an additional compensation mechanism and is not designed to achieve specific development objectives. All five SACU countries will receive near equal shares of the development component.

Thus, those countries that receive the largest share of excise duties contribute most towards and benefit least from the development component. In effect, South Africa funds 93% of the development component and is the only net contributor. In addition, the shares accruing to each member state are adjusted marginally in favour of the lesser-developed countries in SACU.

There is a need to sum up the major differences between the 1969 and 2002 SACU Agreements. Table 2.1 below highlights these differences.

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Table 2.1: The major polic aspects of the 1969 and 2002 Agreements

Policy Issue	1969 SACU Agreement	2002 SACU Agreement
Common external tariff and Common excise duties	Determined by South Africa	Determined by consensus
Revenue sharing Formula	Applied to national customs and excise pool	Formula applied to actual customs and excise collections
Transit Trade	Transport rate discrimination not permitted	Transport rate discrimination not permitted
Competition Policy and Unfair trade practices	Excluded	Each Member State to develop its own competition policy and cooperate. Agreement to develop policies and specific instruments aimed at addressing unspecified unfair trade practices

As shown in Table 2.1, a key weakness of the 1969 agreement was that South Africa assumed sole responsibility for the administration of tariffs and revenue payments within SACU. Consequently, the greatest accomplishment of the 2002 agreement is that it introduced joint decision-making into all aspects of the customs union and allowed for the creation of a number of new and genuinely independent institutions. The structure of these institutions is perhaps a little complex, their terms of reference vague, but it was hoped that the new policy would offer a significant improvement on the previous regime.

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The most important thing is that, under the 2002 agreement, revenue sharing differs fundamentally from the 1969 Agreement. Under the latter dispensation, the size of the revenue pool was of little concern to BLNS. Under the new agreement, the stabilisation factor and the guaranteed minimum revenue rate falls away, and South Africa will receive its share of revenue not as a residual, but on the same basis as BLNS. Excise, contrary to initial expectations, was kept in the revenue pool, but the new distribution mechanism will deal separately with its allocation. Keeping excise in the revenue pool is contrary to normal practices in CUs, and during the early phases of the negotiations a change was anticipated. Apparently, the difficulty of administering separate excise regimes in a region with porous borders has led to the decision to keep excise in the revenue pool.

The policy environment that the new institutions have to manage also differs dramatically from the 1969 regime. The 1969 Agreement recognised and provided remedies and compensation for the differences between South Africa, on the one hand, and BLNS, on the other. But the 2002 agreement is not only 'mindful of the different levels of economic development of the Member States', but it goes further to recognize 'the importance of balanced industrial development of the Common Customs Area', and the objective 'to facilitate the development of common policies and strategies', while being 'aware that the implementation of the 1969 Agreement is hampered by a lack of common policies and common institutions'.

Hence, a formal commitment of the 2002 agreement is 'to develop common policies and strategies with respect to industrial development' (SACU, 2002). In the context of these goals and ideas, the preamble to the agreement recognises 'the importance of tariffs as instruments for the implementation of industrial development policy'. True to the essential characteristics of a CU, the revenue function of the tariff is not mentioned, apart from the general objective 'to facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by Member States' (SACU, 2002: 2).

However, the 2002 Agreement has been criticised for its lack of coherence and clear policies on most crucial matters. According to Makoa (2008), the 2002 SACU agreement is, on its part,

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unprepared for the tasks that it has set itself. One indication of this is that it does not yet have an institutional base or really new strategies. Its current bodies are representatives of their own governments as per the provisions of the agreement. Moreover, the management of the union rests solely with the Republic of South Africa, despite the fact that this is implicitly a collective responsibility of its members (Erasmus, 2005). The 2002 SACU agreement has yet, as provided for in article 14.3, to assist member states with the establishment of common procedures, bodies, institutions, and technical capacity to ensure effective, efficient, and transparent functioning of national bodies (Erasmus, 2005). But it should be noted that it is yet unclear what these bodies will be, and whether they are to be replicated in each of the member states, or organised in a single structure. In fact, this boils down to the issue of the lack of precise definitions, procedures, and standards in the agreement.

Therefore, the need to harmonise the industrial policies, strategies, and the procedures for implementing them, and the opportunities offered by them, are not clearly discernible, and are, perhaps, inadequately articulated in the agreement. Indications are that there is no progress in this respect in Lesotho; nothing seems to be moving in the direction of tampering with its present industrial policy. There is no indication either of any processes that might be seen as constituting the drive towards the harmonisation that is desired, according to the 2002 SACU Agreement.

It is also argued (Makoa, 2008) that the SACU Agreement of 2002 will not, in itself, lead to harmony in industrial policies of member states. A range of actions is needed to achieve this. This includes transforming SACU from being a solely tariffs- and duty-levying machine, albeit composed of economically unequal but competing states, into a common market and/or an economic bloc, while retaining its revenue and duty-levying functions. Its present character, and the fact that there is a lack of movement towards setting up bodies that would initiate and guide the process of harmonising the SACU industrial policies, tempts one to conclude that such harmonisation and its presumed benefits are, for now, a distant dream.

2.8 Conclusion

The chapter noted that a key argument in favour of economic integration amongst developing countries is that it contributes towards gradual structural change and economic development.

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Larger regional markets bring with them economies of scale that should enable member countries to specialise and develop sufficient productive capacity to compete globally. Although this was certainly the intention of the 1969 agreement, it relied heavily on fiscal compensation and failed to address the causes of unequal development within SACU (McCarthy 1994). As a result, there has been little industrialisation within the BLNS and South Africa continues to record large trade surpluses (Kirk and Stern, 2003).

The chapter also noted that, although the new agreement does provide for democratic decision-making in all SACU structures and requires the development of common industrial and agricultural policies, the approach remains fundamentally unchanged. Lesotho, Namibia and Swaziland will continue to receive more than a third of their total budget revenue through the revenue sharing formula. This will do little to stimulate economic development and grow the tax base in these countries. Instead, such dependence increases the risk that the smaller members of SACU will measure the success of the Agreement in revenue terms rather than in its impact on trade or investment.

The major differences between the BLNS and South Africa on industrial policy, in general, and agricultural policy, in particular, continue. While South Africa has liberalised its agricultural sector by abolishing single channel marketing, some of the other countries continue to allow national monopolies. Differences also remain on import policies in selected sectors, such as wheat flour, milk and milk powder. Failure to reach agreement has resulted in *de facto* free trade being suspended while member states protect narrow industrial or other interests in their own countries.

An outstanding feature of the 2002 agreement is the underlying theme that SACU must be developed as a single economic entity that recognises inequalities and sets out to tackle development through common trade and industrial policies and the overall co-ordination of economic policies. Part 8 of the agreement on common policies, in many respects, represents the heart and soul of the new agreement, and is complemented by the establishment of SACU bodies that will take consensual decisions that are crucial for the economic development of the region.

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The other observation made in this chapter is that the SACU Agreement only provides for trade in goods; there is no provision to liberalise trade in services or allow freer movement of people. Given the importance of trade in services to the SACU economies and the ongoing negotiations within the World Trade Organization, this remains a major gap. Future trade negotiations between SACU and member countries will almost certainly include services, and, to a lesser extent, the movement of natural persons.

SACU has evolved from a neutral mechanism under the 1910 agreement that was designed to deal with the free flow of goods and the distribution of revenue in a colonial-style, integrated region, to the recognition in the 1969 agreement of economic development as an objective, and inequality in the level of development of member states. The economic development of the smaller member states and the compensatory distribution of customs and excise revenue became part of the SACU agreement. Throughout the history of SACU, the behaviour of member states was driven by and divided on perceptions of priorities. South Africa managed the tariff as an instrument of industrial policy to serve the industrial development needs of its much larger economy, while the smaller member states focused on the revenue that SACU trade provided.

The 2002 agreement, which became operational in July 2004 is fundamentally different from the 1969 version. It provides for a radically different way of distributing revenue and for consensual decisions by SACU bodies that will be required to derive their policy guidelines from common industrial policies, which member states have committed themselves to develop. It is also important that SACU is now cast as a single legal entity. This will enable it to negotiate international trade agreements as a group, with the persona of a single, unified market that seeks integration into the global economy.

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Chapter 3

Research Design and Methodology

3.1 Introduction

This chapter discusses how the research process was conducted. It describes the research methodology that was employed. The researcher used a qualitative approach. The chapter also describes how the data was collected and analysed. The population of the study and the sampling methods are also discussed in this chapter. The chapter also discusses the ethics which were considered.

3.2 Research Design

According to Leedy (1993), deciding which methodology to use depends on the nature of the data and the problem of the research. This research made use of a non-experimental research design. The aim of a research design is to provide a planned and structured way of achieving the research goal and to enhance validity and reliability (Mouton and Marais, 1990). The aim of the research design is to make sure that the resulting validity of the research findings is increased.

The research design is a blueprint of the research project that is being pursued. It is a programme meant to guide the researcher when collecting, analysing, and interpreting observed facts. The research design tests specific hypothesis under given conditions (Bless and Higson-Smith, 1995). In this study, a qualitative research design was used. An interview guide was used as an instrument to collect data.

3.3 Research Methodology

Methodology refers to an organised way which comprises sequences, procedures and systems to manage and run a research process (Burns, 2000). Research methodology is a method used by a

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researcher to acquire and collect data either within a quantitative or qualitative method. It refers to the techniques used for collecting.

In this study, a qualitative approach was used. This approach is defined by Van den Aardweg and Van den Aardweg (1988) as an assessment of a situation expressed in words. In other words, it involves understanding and describing a given social phenomenon from the participants' point of view (Lemmer, 2002). This study aimed to investigate the role played by SACU in promoting development in Southern Africa. This research approach was selected because it would provide an in-depth understanding of the phenomena understudy. Furthermore, this approach was adopted for its flexibility and its multiple approaches to data collection (Schulze, 2002).

3.4 Study Population and Location

The target population comprises all elements (individuals, objects, or substances) that meet certain criteria for inclusion in a given universe (Burns and Grove, 2001). This is supported by Polit and Hungler (1995) who state that the target population includes all the members who conform to a designated set of specifications. In this study, the target population refers to workers and scholars working for SACU.

3.5 Sampling Methods and Size

Sampling is a process of selecting a portion of the designated population to represent the entire population (Polit and Beck 2008). Similarly, a sample is a set of elements that make up the population. An element is the most basic unit about which information is collected (Haber & Lobiondo-Wood 2006). Uys and Basson (1991) define the sample as the number of units of the population under study and that it should represent the characteristics of the population being studied. Polit and Hungler (1995) argue that sampling is the process of selecting a portion of the population to represent the entire population. Non-probability sampling refers to the selection of subjects from a population using non-random procedures.

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3.6 Data Collection Methods and Instruments

Qualitative research takes place in natural settings and employs a combination of observations, interviews, and document reviews. Qualitative research is regarded as subjective and biased. However, it often provides an in-depth understanding of the research problem. A structured interview guide was used to solicit information from the participants. Qualitative interviews may be used either as the primary strategy for data collection or in conjunction with observation (Bogdan and Biklen, 1982).

An interview guide or schedule with a list of questions or general topics that the researcher wants to explore during the interview would ensure good use of limited interview time. The questions or topics will keep interactions during interviews more focused. In keeping with the flexible nature of qualitative research designs, interview guides can be modified over time to focus attention on areas of particular importance, or to exclude questions the researcher has found to be unproductive in relation to the objectives of the research (Lofland and Lofland, 1984).

An interview guide was employed to help the researcher elicit verbal responses from the respondents. Use of interviews helped the researcher to probe the respondents and to get more in-depth information. Interview guides are open and this characteristic was pertinent to this study because unwilling respondents could more easily and flexibly be convinced to answer all the questions.

3.7 Data Collection Procedure

In order to collect data in this study, the researcher had to seek approval from the supervisor. The researcher required a permission to carry out the study from identified scholars, experts and workers at the SACU headquarters in South Africa. Getting permission to carry out the study is vital because it creates a warm environment in which the researcher and the research assistants can collect data. The researcher also prepared consent forms for different participants to fill in before participating in the study. The interviews were carried out face-to face, in order to get individual points of view on the phenomenon being studied.

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3.8 Data analysis

Data collected was analysed through use of coding which allowed the researcher to summarise, categorise, and identify patterns or themes that emerged from the data (Collis & Hussey, 2003). The aim of the data analysis was to put some order on a large body of information so that some general conclusions could be reached and communicated in a research report (Polit and Hungler, 1995). The results of the research were analysed using thematic analysis. Important concepts and recurring themes and ideas were derived from the content and coded into categories of those aspects carrying the same meaning.

Careful reading was also done to identify underlying concepts and clusters of concepts (Polit and Hungler, 1995). This involved identifying relationships within data such as similarities and variations between different informants. Where necessary, descriptive statistics comprising of tables, pie charts, histograms and graphs were used to represent and interpret data. Numerical data were analysed using the Statistical Package for the Social Sciences (SPSS).

3.9 Ethical Considerations

In order to carry out the data collection exercise, written permission to conduct research was obtained from the SACU's headquarters. In the preparation of the research protocol, consent forms and data gathering strategies, and the University of Venda Research policy on research ethics were taken into consideration. All these documents were presented to the supervisors for scrutiny and approval before they were used. Ethical principles that underpinned this study included voluntary participation, no harm to participants, informed consent, anonymity and confidentiality, as well as not deceiving subjects.

3.9.1 Voluntary Participation

Participants were made aware of the pros and cons of taking part in the study. They were given the right to decline participation in the study at the onset or at any point in the study if they felt uncomfortable. They were also told that they were free to decline to respond to any question or item if they so wished.

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3.9.2 Informed Consent

An informed consent form was designed and given to the respondents to sign after reading it and prior to completing the questionnaire. The informed consent form summarised the study's goals and procedures. It is an ethical requirement in research to obtain consent from participants. Consent includes the supposition that participants not only know what the research entails, but that they also understand what it entails (Gilham, 2005).

Before the research commences, interviewees have a right to know why they are being interviewed and what the research is for. They also need to know to whom the information would be released. If they know this they will be able to give informed consent about whether they want to participate in the study (Cohen and Swerdlik, 2005).

Gregory (2000) discusses three aspects of informed consent, namely disclosure, competency, and voluntariness. This allows the participants to make an informed decision about participating. Competency refers to the mental capacity of the examinee to provide consent. The standard of voluntariness implies that the choice to participate in the research is given freely and not based on subtle coercion.

In this study, each research participant was well-informed of the intentions of the researcher. Participants were also made aware of the results of the study as these were compiled into a dissertation. Since the information contained was confidential, participants' identities were not disclosed to the school.

3.9.3 Deception

During the study intentional deception of research participants was avoided at all costs (Breakwell *et al.*, 1997). Deception is the tendency of researchers to misinform the research participants about the nature of the study, believing that if told the truth they would not participate.

3.9.4 Debriefing subjects

Debriefing involves the researcher telling the informants the nature of the study they are about to participate in. This involves the researcher explaining all the possible outcomes of the study on

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the subjects. Any unintended and unanticipated outcomes of the research on the participants were avoided through discussions with them (Breakwell *et al.,* 1997).

3.9.5 Confidentiality and anonymity

It is an ethical obligation in research that information given by the client must be kept confidential (Cohen and Swerdlik, 2005). Participants of this study were informed that their information would be kept safely and confidentially. It is important for this to be highlighted so that they can participate freely. In order to keep their names confidentially, a coding system was used in place of their names.

3.10 Conclusion

This chapter presented the research methodology used in the study. It described the approach used in the study, the qualitative approach. The chapter also described how data were collected and analysed. The population and sampling methods were also discussed in this chapter. The chapter also discussed the ethics which were considered in the study. Finally, the chapter gave a breakdown of all the chapters.

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Chapter 4

Presentation and Analysis of Research Findings

4.1 Introduction

This chapter presents and discusses the research findings. Challenges confronting SACU, the economic dominance of South Africa, the existence of several economic bodies in the region with the same objectives as SACU and the complications associated with SACU's industrial harmonisation policy and revenue sharing formulas are discussed. The chapter also discusses SACU's operational weaknesses, benefits and non-benefits, failures and prospects.

4.2 Discussion of the Findings on the Challenges Confronting SACU

The study found out that one of the major problems confronting SACU rests in its inability to craft policies and Customs Union Agreements which are crucial in addressing the changing global market and economics. The SACU Agreement concluded on 11 December 1969 no longer adequately catered for the needs of a Customs Union in the 21st century and, therefore, calls were made for its alignment with current developments in international trade (SACU Customs Policy, 2002).

One of the greatest challenges that SACU continues to grapple with is the overdependence on South Africa. Although all the member states of SACU can be regarded as developing countries, as revealed by their per capita income, the outstanding feature of the Customs Union is the economic dominance of South Africa. The South African economy is by far the largest, contributing about 93 per cent of the customs union GDP, and the most industrialised economy in the group (McCarthy, 2003). There is also a significant gap between the per capita GNP of South Africa and Botswana, on the one hand, and that of the other three SACU members, on the other.

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Furthermore, note has to be taken of the integration of SACU and dependence on South Africa's well-developed infrastructure. Botswana, Lesotho and Swaziland are landlocked economies. Lesotho, in particular, is unique because it is totally landlocked within South Africa. This means that these economies largely depend on the South African infrastructure for sea-borne transport links with the rest of the world. It can be noted that Namibia differs from the other smaller member states in that it has a more developed infrastructure, which it inherited from having been governed as the "fifth province" of South Africa until 1990. When asked about the main challenges facing SACU, one informant said:

> SACU's major challenge is the uneven development between its members. The widening gap between the rich and the poor within the populace of the SACU member states and SADC as a whole affects the operations of the organisation in that some of the members who feel that they are at a disadvantage are no-longer committed to the organisation.

The difference in size of the economies and development explains the intra-regional trade surplus that is heavily in South Africa's favour. This makes South Africa the principal supplier of manufactured goods to BLNS. In the case of Botswana, about 14 per cent of its exports in 1997 were destined for the SACU market, whereas 72 per cent of its imports were sourced in South Africa. For Lesotho (in 1995) the figures were 52 and 91 per cent respectively, for Namibia (in 1996) 23 and 84 per cent and for Swaziland (in 1996) 67 and 90 per cent.[2] A feature of the Lesotho economy that distinguishes it from the other smaller states is the extent to which it exports labour to South Africa. For many years now, Basotho migrant workers have earned more on the mines in South Africa, remitting the largest part of their incomes to their families in Lesotho, than the incomes earned by workers in Lesotho (McCarthy, 2003).

[2]These shares were calculated on the basis of trade data published in SADC (2000). It should be noted that the figures for Botswana, Lesotho and Swaziland refer to trade with the rest of SACU. However, because of the negligible trade among these economies they effectively refer to trade with South Africa. In the case of Namibia the trade figures are those with South Africa.

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The defining characteristic of the SACU is the economic dominance of South Africa in contrast to the size of the other four member states. The BLNS (Botswana, Lesotho, Namibia and Swaziland) depend heavily on South Africa for a significant proportion of their trade, investment and, in some cases, (migrant) employment. South African companies dominate the business landscape in the BLNS. The BLNS also source most of their imports from South Africa, although their exports are more geographically diverse. Moreover, the commodity pattern of South Africa's exports to the BLNS differs significantly from its exports to the rest of the world. Whereas South Africa continues to export predominantly resource-based goods, the BLNS represent a significant market for South African consumer goods and services (Kirk and Stern, 2003).

SACU is administered by South Africa and tariffs levels are decided by the South African Board for Tariffs and Trade, in which the BLNS have no representation. Import tariffs and excise duties have been set at levels that primarily address South Africa's industrial policy and revenue needs. This reveals a lack of democracy in the SACU management.

However, it cannot be denied that BLNS would not, for political reasons, have wished closer links with South Africa in managing the affairs of SACU. For BLNS, the major concern was to improve revenue payments from the revenue pool, in the belief that they were not adequately compensated for being in a customs union with the economically larger and more advanced South Africa which regarded the tariff mainly as an instrument of industrial policy. BLNS, in varying degrees, preferred an 'at arms-length' relationship with South Africa (McCarthy, 2003).

The other problem is the need to differentiate imports from other SACU members from imports from the rest of the world, in a common customs area where the networks of trade and commerce are dominated by South African firms, who are registered as the importers of goods destined for BLNS. Existing data does not permit quantification in support of this point, but a priori reasons exist why major parts of BLNS imports from the rest of the world are re-exports by South African firms. For example, shoes imported from China but sold by Edgars stores in BLNS, are likely to be recorded as imports from South Africa, from where the shoes are distributed

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(Vickers, 2008). Because re-exports are recorded as imports from South Africa, BLNS imports from South Africa are artificially high.

Another point of concern is the difference between BLNS and South Africa in their interpretation of the role of the import tariff. BLNS view the tariff and customs as a source of revenue, while South Africa sees the tariff as a negligible source of a potential for conflict arises. A possibility also exists of a hiatus in the development of new SACU organisations and institutions if BLNS are not sufficiently concerned to participate actively in the transformation of SACU to establish a new regime in its management according to common policy guidelines. Another informant said:

> SACU has a disjointed foreign policy and trade policies by its member states and this affects the smooth implementation of policies to all members. Some members end up seeing SACU as a South African affair.

An emphasis on revenue by BLNS is the outcome of the origin and development of SACU, characterised by the principal function of distributing customs and excise revenue, and of using the revenue-distribution mechanism to address inequality within SACU. To make the new agreement work requires a major change in the mindset of currently focusing on revenue distribution

Given the dominance of South Africa in SACU's agricultural production and, furthermore, the regime of regulated marketing as a cornerstone of South African agricultural policy, the application of these marketing arrangements to goods imported from BLNS could be a constraint to the development of BLNS production for trade with the largest part of the common market. It was noted earlier that decisions on the customs tariff were dictated by South African industrial policy.

It is not often recognised that a more or less similar situation applies with respect to agricultural policy. Since the protection of South African agricultural production against import competition and the encouragement of self-sufficiency and food security relied on quantitative import

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control, and not on customs duties, there was, overall, no need for a customs tariff policy in respect of agricultural products (McCarthy, 2003). Since the early 1990s, this situation has changed dramatically. A new approach to agricultural policy and the Uruguay Round of multilateral negotiations resulted in the replacement of quantitative control over agricultural imports with customs tariffs.

The tariffication of import control was started in 1994 and, for the majority of products, completed early in 1996. During this period, time constraints that prevented in-depth investigations and the absence of development strategies for key agricultural sectors forced the Board on Tariffs and Trade to recommend tariff levels on the basis of the guidelines which stipulated that tariffs should result in domestic production and consumption that were about the same as those under import control (Board on Tariffs and Trade, undated). This meant that the tariff equivalents of import control were sought and the outcomes were average tariff levels that far exceeded the relatively modest rates that apply to manufactured goods.[3]

The existence of several other economic bodies with the same objectives as SACU in the region also presents a problem. The study found out that, in the Southern African region, there are many regional economic communities which have fairly similar objectives to those defined in the SACU programmes and projects. These are being pursued to deepen regional integration and to improve trade between their Member States. In southern Africa, a region with the greatest number of RECs, only the Southern African Development Community (SADC) was recognised, despite the presence within it of the longest-established REC in the Southern African Customs Union (SACU). One informant said:

> The over-lap in terms of membership, for example, SACU members are also members of SADC, while South Africa is a member of BRICS. This means that there is competition in terms of interests, goals and strategic significance of each

[3] This method resembles the one adopted when the South African government was compelled by GATT obligations to replace import control with tariff protection.

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organisation to SACU's member states. This conflict of interests compromises the energy that is needed to transform SACU into an economically viable organisation.

This arrangement has generated substantial existential concerns within SACU, a pathology that is compounded by the ongoing SADC process to establish a customs union. It also raises interesting questions about AU processes, specifically, why, if SACU is the oldest REC in Africa, is not officially recognised as a building block of the AEC, whilst the newest one, the East African Community (EAC), is recognised.

In light of this confusing situation and the implications it may hold for SACU, this study examined the regional integration initiatives underpinning the various southern African RECs, and SACU's relationship to the rationalisation of RECs in southern Africa to see if these can contribute to economic development among SACU member states. An analysis of the institutional frameworks associated with SACU's targets on each member state, maps the broad contours of their trade integration objectives in light of their desire to establish customs unions. The challenge, therefore, is that, there is an overlap in membership, which translates into challenges in resource utilisation in different countries.

There is also a problem which manifests itself in the lack of cooperation between South Africa and the BLS (Botswana, Lesotho and Swaziland) states. These members signed the interim EPA agreements with the EU, much to the dissatisfaction of South Africa and Namibia. This has led South Africa to go its own way when it comes to trade, for example, her more successful engagement in BRICS. These differences, as noted by Benjamin (2013), may lead to the ultimate dissolution of SACU. This commitment to different trading blocs by SACU members poses a serious problem.

All SACU members are members of SADC, while Swaziland is a member of both SADC and the Common Market for East and Southern Africa (COMESA) (subject to an annual derogation from the four other SACU members). Four of the five countries are also members of the Common Monetary Area (CMA), with Botswana being the exception. Given these dynamics, it is not clear

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whether SACU has sufficient 'gravitational attraction' to expand and subsume SADC. Since all SACU members are members of SADC, and since one cannot be a member of two CUs, it is obvious that should SADC succeed, then SACU would fall away in favour of the SADC customs union.

Thus, the form that the SADC customs union is likely to take is critical to SACU members. Some critical questions arise in this respect, for example, Will a SADC customs union see higher or lower external tariffs for the five current SACU members? What relationship would a SADC CET bear to South Africa's emerging industrial strategy framework? How would tariff revenues be distributed and would South Africa continue to underwrite the costs? Of lesser importance is Swaziland's membership of COMESA, which planed a customs union by 2008. If achieved on by now, Swaziland will have to choose which customs union it wishes to be party of.

Furthermore, many SADC protocols and other legal instruments have pushed the region to deeper economic integration indirectly, in ways that SACU and the other RECs do not mirror. A key question, therefore, is how those protocols could be integrated into either an expanded SACU or shrinking SADC, bearing in mind that under Article 22 of the SADC treaty, accession to those protocols is voluntary (and the protocols have been unevenly implemented). A case in point is the trade in services where the region is substantially integrated even though a formal 'services liberalisation' process has yet to take place. . SADC also has a security agenda that has little to do with trade and economic integration. It is, therefore, clear that the SADC secretariat, and the member states that back it, has a number of cards in its hand.

South Africa, the dominant regional power, views regional integration via SACU as a priority. Therefore, South Africa may strongly influence SACU's integration agenda, while leaving non-economic issues still with SADC. It is not clear though whether the BLNS countries support this objective. First, in the case of Namibia, Lesotho, and Swaziland, this may result in a dilution of their revenue shares particularly if it involves a renegotiation of the revenue-sharing formula in a context of reluctance on the South African Treasury's part to sustain currently large transfers to them. This necessitates a renegotiation of the revenue-sharing formula prior to embarking on

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expansion, a process that is likely to be highly contested. Second, Botswana at least, is reportedly tiring of South African dominance and regards SADC as an important forum for diluting its southern neighbours' hegemony in the customs union. This raises the probability of SADC retaining a broader security and political role, whilst ceding ground on the trade agenda.

The role of South Africa in SADC and BRICS presents a challenge to SACU. There is concern on whether South Africa still needs SACU in the advancement of its long-term strategic interests in Southern Africa and Africa. South Africa has vast interests in Southern Africa and Africa, and her status as a permanent member of the UN creates a conducive regional, continental and global environment for effective advancement of its interests at a global level. As argued by Makgetlaneng (2013), South Africa needs SADC, but not SACU, in the advancement of its interests regionally and continentally.

According to Makgetlaneng (2013), it has become a reality that Southern African countries contribute towards the achievement of regional integration through SADC not SACU because every member of SACU is also a member of SADC. As such, it can be noted that SACU plays second fiddle to SADC. This, therefore, militates against the prospects of SACU as an economic body to spearhead economic integration. This led one informant to argue that:

> The truth is that SACU has become irrelevant in terms of regional integration because SADC is the official regional block recognised by the African Union. After all, South Africa targets to exert her hegemonic powers in SADC and Africa, not in the SACU arrangement.

This means that South Africa's advancement of her long-term strategic interests in Southern Africa and Africa, takes into account the fact that its foreign policy approach is not only about the pursuit of domestic interests, but also about repositioning itself in the continent. South Africa is in a better position than any other African country to contribute towards the structural transformation of Africa. So far, the country has helped to strengthen democracy on the continent, for example, its intervention in the Zimbabwean crisis and the aborted engagement in the Central African Republic crisis.

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This shows that South Africa's commitment to SACU is being overshadowed by her regional and continental interests. This has led Makgetlaneng (2013) to conclude that, it is SADC and not SACU which is of strategic importance to South Africa's advancement of its strategic interests in the region and the continent. South Africa is more committed to the transformation of SADC in working together with other regional bodies. Therefore, for SACU, the issue is a need for its integration into SADC. This poses a challenge to the operations of SACU.

Linked to the above, new negotiations between SACU and a number of external trading countries and groups of countries have begun and will have major implications for the future of SACU and its role in the region. SACU has commenced negotiations with the USA towards an extensive free trade agreement, which was scheduled be to conclude by 2005. EPA negotiations with the EU have not begun in earnest, but it is expected that the BLNS will offer to remove tariffs in accordance with the schedule agreed by South Africa under the TDCA (Kirk and Stern, 2003).

With challenges of the dwindling world economy, many countries can hardly cope with many requirements. At the same time, there is also the challenge of 'conflict of interest' among member-states concerning which body they should give more priority than the other. The net effect has been a delay in the economic integration of the region at large and SACU in particular. These policy challenges require that the SACU Customs Development Programme be built on the successes of the other regional initiatives rather than to set up new projects from scratch. This is possible with a more collaborative effort between these various entities.

Furthermore, the global economic crisis has highlighted the flaws in the revenue-sharing mechanism. In South Africa, on one hand, public opinion suggests that the country cannot continue to carry the fiscal burden imposed on it by the RSF. South Africa contributes 98% of the total revenue of SACU, and distributes 55 per cent its members. This, as most informants argue, is a burden to South Africa. On the other hand, BLNS states feel that South Africa is enjoying the lion's share of the revenue SACU generates. Thus, it can be argued that the signing of the EPAs was an attempt by the BLNS to assert their sovereignty. This partly reflects their resentment of South Africa's dominance in the SACU region.

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The issue of RSF has triggered many in South African circles to suggest that the 55% revenue South Africa distributes to other members be treated as aid transfers (Benjamin, 2013). Too much aid to countries like Lesotho and Swaziland creates a dependency syndrome, for these countries have become heavily dependent on the income they receive from the revenue sharing arrangement. In the case of Swaziland, it is estimated that 60% of the country's budget is derived from SACU contributions (Nkambule, 2013). For Botswana, SACU earnings comprise roughly 40% of total revenues (Gryberg, 2013). Thus, while BLNS view the RSF as favouring South Africa, South Africans are of the view that it is burdensome to their economy, and are, therefore, calling for a change of the RSF.

While the above paints a picture of SACU benefiting South Africa, on one hand, and overburdening her, on the other, the reality is that BLNS states have shown frustration, and have complained of South Africa's exploitation of the SACU market to the detriment of their own economic growth. Nyaungwa (2013) notes that Namibia complains of South Africa's alleged tendency of suffocating its fledgling industries, which are said to be 'at the mercy of the big South African Multi-national Companies', as a result of SACU agreement.

Sources close to the Namibian Chamber of Commerce and Industry (NCCI) argue that the current SACU arrangement is benefiting South Africa more than any other country in the five-member trading bloc (Nyaungwa, 2013). The NCCI identifies the problem as being South Africa's view of the other member states as merely consumers, rather than producers in their own right. Mguni (2013) also notes that the impression is that South Africa's industrial policy is only interested in protecting its own dominance and exploiting the markets of other member states.

However, it is difficult to imagine the survival of BLS states without South Africa, especially, Lesotho and Swaziland, which depend on South Africa, even on sovereign issues like monetary policy. It is difficult to speak of sovereignty when South Africa contributes over 90% of the SACU region's gross domestic product (Benjamin, 2013). As a result, the BLS states need South

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Africa more than it needs them, and this overdependence on South Africa has far-reaching consequences for SACU's small members. The paradox is that, if South Africa withdraws, the BLS economies will automatically collapse. This creates an unequal relationship and lack of mutual trust among the SACU members. The situation has become more critical as the world economic recession continues to mount pressure on South Africa's budget.

However, doing so might impede efforts to integrate the members of SACU with other regional trade arrangements. South Africa, Botswana and Lesotho are members of the SADC, while Namibia and Swaziland are members of both SADC and the COMESA. SADC and COMESA have already launched regional free trade agreements and COMESA was committed to implementing a CU from 2004. SADC is likely to follow. It will not be possible for SACU members, who are also members of SADC or COMESA, to participate in a parallel customs union. Moreover, it is likely that SACU, SADC and COMESA will pursue separate trade agreements with the EU and other external partners.

Whilst the EU and COMESA appear to favour negotiating an EPA for all the economies in Eastern and Southern Africa excluding South Africa, the reticence of SACU and SADC to agree to such a geographical configuration raises the possibility that the obligations of the Cotonou could act as a catalyst for reconfiguring the membership of existing regional groupings. SACU revenues and trade are of such importance to the BLNS that they are unlikely to choose SADC or COMESA membership over that of SACU. South Africa already has a reciprocal trade agreement with the EU and has now renewed its commitment to SACU. As the economic power of Southern Africa, South Africa's participation is critical in any new regional integration initiative. This raises the possibility that SACU could form the core of a new regional customs union that could gradually expand to include other members of SADC and possibly COMESA.

The study found out that the disparities in growth within the SACU member-states presents a challenge. The dynamics of regional integration introduces the problem of polarised growth. All participating countries experience the welfare cost of trade diversion but the larger and more developed economies within a RIA are more successful in reaping the growth benefits of

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agglomeration (McCarthy, 2003). These economies are also those that are likely to have a positive trade balance with the other partners in the RIA. The smaller and less developed partners, therefore, suffer a double blow of negative static and dynamic outcomes in the allocation of gains from regional integration. Since integration is only politically sustainable if all participants gain, it is crucial to design a RIA with mechanisms that will facilitate an equitable distribution of net benefits.

In southern Africa, the dominant position of South Africa causes asymmetry in the outcome of integration with South Africa's dynamic benefits possibly exceeding the static welfare cost. This kind of inequity can destabilise RIAs and, thus, necessitates special mechanisms. SACU, as will be noted below, has been able to survive because of the special compensatory fiscal transfers built into the SACU. However, even these have, at times, not appeared to be sufficient to sustain the customs union.

A number of challenges remain within SACU to this day. Member countries are unable to reach a decision on how the common revenue pool and payments out of this pool should be managed. The agreement provides for a two-year period during which South Africa will continue to administer the pool, after which this responsibility must be allocated to the Secretariat or another member state. Although South Africa accounts for most of the revenue collected within SACU and although the smaller SACU members reap significant benefits from the interim arrangement, the decision runs counter to the democratic spirit of the agreement (Kirk and Stern, 2003).

It is doubtful whether any other member state or the Secretariat can manage a pool of this size as efficiently as South Africa, or whether South Africa would be prepared to handover this responsibility to any other party. Unless some middle ground can be found that satisfies both the BLNS and South Africa, this issue could have raised serious problems for SACU by then.

Again, the new tariff setting process appears unwieldy and unlikely to deliver serious tariff reform (Kirk and Stern, 2003). A simple change in tariff will now have to be considered by multiple layers of institutions before it can be implemented (indeed a number of South African

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Members of Parliament have expressed their concern over this issue). Moreover, Ministers of Trade of all five countries will need to consent to such decisions – with a dispute mechanism established to address deadlocks. In order to minimise disagreements over tariff policy, it is necessary for SACU Ministers of Trade to meet and identify their interests on a regular basis. Without regular dialogue, it is unlikely that South Africa's trade agenda will automatically dovetail with that of the BLNS, and this may create serious difficulties in future unilateral, bilateral and multilateral trade liberalisation initiatives.

The smallness of the market within the SACU member states is also a problem. The typical African economy, especially in Sub-Saharan Africa (SSA), has little option in its pursuit of diversified growth through industrialisation but to create some capacity to produce tradable goods before it can turn to the global market as outlet. This capacity is unlikely to be created by unilateral trade liberalization. As such, investment in human capital and infrastructure with production for the domestic market remains the only option. However, to counter the impact of the smallness of the market, and in many cases a landlocked location, the regional option is an imperative. But this has failed in the past because of errors in design and implementation.

The other challenge relates to the loose border controls between member-states. Porous borders make it difficult for the members to share their proceeds of customs revenue evenly. Smuggling and other illicit deals also derail the development of a transparent customs policy as in some cases, members tend to be reluctant to enforce laws to curb smuggling. The research found out that the border bordering Botswana and South Africa is vulnerable to smuggling as it presents a gateway to other countries outside SACU.

One of the more difficult aspects of every SACU negotiation is how to reach consensus on the costs and benefits of the customs union to its respective members, as well as the level and type of compensation that should be paid as a result. Any form of explicit compensation, such as the establishment of a development fund, was rejected by the smaller member states. Instead, negotiators attempted to build in sufficient implicit compensation into the new formula to deal with polarisation and cost-raising effects.

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4.2.1 Complications Associated with Industrial Harmonisation

Economic integration involves liberalisation, or the reduction of economic discrimination among economic units. It can be achieved in the following manner: by the progressive elimination of trade and tariff discrimination between national borders (Adetula, 2004); by co-ordination of macroeconomic instruments, which is referred to as macroeconomic convergence; or by efforts to achieve balanced development, which is referred to as long-run convergence.

The overall aim of industrial harmonisation as a policy instrument is to achieve development. One of the objectives of this study is, therefore, to present the experience of SACU's attempt to achieve development integration, which is captured in the concept of long-run convergence through industrial policy harmonisation. Industrial policy refers to policies affecting the industrial sector. In the widest sense, every government has an industrial policy, since it intervenes to shape its economy's productive structure by default or design (Shapiro and Taylor, 1990). In a narrower sense, industrial policy is defined as directed public interventions at the sectorial or firm level, aimed at stimulating lines of economic endeavour by restructuring or promoting the activities of particular firms or sectors (Dietrich, 1992).

Industrial policy in Namibia has seen both positive and negative aspects that are relevant to the SACU industrial policy of harmonisation. Namibia is characterised by a small, open economy; dry, desert climate; a thinly dispersed population; and a highly unequal income distribution, all of which result in a small domestic market; abundant natural resources; good infrastructure; and a relatively young state bureaucracy (Adongo, 2008). In 1992, Namibia's Ministry of Trade and Industry (MTI) adopted a white paper on industrial development (MTI 1992). This outlined a pattern of industrialisation that can be compared to that pursued by Taiwan in the 1960s, where export-processing zones (EPZs) and support of small and medium enterprises (SMEs) were advocated for in a small, open economy.

The government of Namibia, specifically, expects its industrial development to result in increased value added in manufacturing and service industries; forward and backward linkages in the industrial sectors; share of manufactured products in total exports; product and export-market

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diversification; and competitiveness through increased productivity and quality. Adongo (2008) notes that, despite SACU's long existence, industrial harmonisation and integration of Namibia and her SACU members is yet to be achieved. For industrial policy to work in a regional context, attention needs to be given to supply-side policies aimed at improving the initial endowment levels of each country. This will result in increasing their steady-state levels. This requires laying down stable and long-term conditions for an efficiently functioning market economy, the maintenance of a competitive economic environment, as well as a high level of educational attainment and social cohesion (McCarthy and Hansohm, 2005).

Success in industrial policy will ensure that the BLNS countries do not suffer from the effects of trade liberalisation on the Common Revenue Pool (CRP), and dominance by South Africa in setting a common industrial policy for the SACU region. In general, while it is easy to make a case for industrial policy, this case only holds under strong specific conditions. While the case for industrial policies in a wide sense, including reference to a stable macro-economy, education and training, is generally accepted, the case for specific interventions directed at specific industries is subject to more conditions.

An important general principle is that interventions should attack the problem of market failure closest to its source. According to the World Bank, 'the real question is not how fast an economy can industrialise, but how to structure the industrial sector so that it supports economic growth'. The development of industry should not be seen as an end in itself, but as a means to achieve other goals, such as economic growth, employment, or income distribution. Furthermore, it should not be seen in isolation from other sectors of the economy (World Bank, 1993).

According to Kapunda and Akinkugbe (2008), economic theory seems to suggest that co-operation on domestic policies can substantially increase the gains – static and dynamic – from forming a customs union (or trade bloc). It can lift barriers that insulate national markets, and deliver economic benefits many times more than those available from preferential trade agreements. Intergovernmental co-operation in designing and applying domestic policies such as taxes, health and safety regulations, environmental standards, and so on, what is generally called

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policy integration or harmonisation, can increase competition in domestic markets by reducing transaction costs and allowing new suppliers to enter markets.

Co-operation on domestic policies can also help in overcoming market failures and ensuring that trade restrictions are not re-imposed through the back door. All of these may have informed the new SACU agreements that mandate its member states to develop common policies and strategies with respect to industrial development. Moreover, more often than not, most of the existing regional integration arrangements (RIAs) aim only at reducing market segmentation by constraining the use of national policies rather than by actively harmonising them. The main exceptions are the EU and the Closer Economic Relations (CER) agreement between Australia and New Zealand. A number of other RIAs, such as SACU and SADC, are beginning to design a framework for industrial policy harmonisation, but without specific timetables for action and further negotiations, progress may not be achieved.

Beyond national treatment, industrial policy harmonisation could take the form of coordination of domestic policies; harmonisation of national standards and regulations; and recognition of foreign regulatory regimes and conformity assessment procedures. In the case of SACU, it is difficult to harmonise its industrial policy with those of SADC. According to Makoa (2008), even more daunting is aligning such an industrial policy which have been failing to quick-start the industries of small member- states within the region.

Domestic policies are usually limited to efforts by the respective governments or regulatory bodies to cooperate in developing or implementing a norm or rule, and they involves 'voluntary and largely unenforceable alignments of national policies and measures in particular fields or sectors' (Robson 1998). This co-ordination may be based on formal agreements on, for example, the use of the principle of positive comity in the application of competition law, or it may even be ad hoc, as in co-operation on infrastructure projects. Other agreements may be on co-ordination and harmonisation of tax policies and anti-dumping policies.

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There will also be a need to harmonise national standards and regulations. Harmonisation may involve the unilateral adoption by one country in SACU of another's set of rules, or the negotiation of a common set of disciplines. In many instances, these are driven by market-size disparities, such as those that exist between South Africa and Botswana. A typical example of this is Switzerland's adoption of the EU regime on technical regulations and industrial standards, so that Swiss goods can enter and circulate in the EU on the same basis as EU-produced goods (Messerlin, 1998). Similarly, Korea imported many German and United States product standards in the 1950s as part of a strategy to upgrade the quality of its industrial production.

For a country that sets certain norms for goods and services within its borders under domestic industrial policy, the natural first thought is to test imported goods on entry. This is, however, potentially very costly to devise and enforce, thus, the necessity to co-operate with trading partners or fellow members of the RIA. In this regard, unilateral recognition of foreign regulatory regimes appears to be the simplest route. A country such as Botswana just adopts international norms or the standards of a trading partner such as South Africa. Thus, as a simple example, the government of Botswana may decide that the professional qualifications of doctors or managers, trained and certified in South Africa or Namibia, are sufficient to allow them to practice in the country.

The key to this unilateral recognition, moreover, lies in familiarity with, and trust in, partner standards and certification systems. In the case where familiarity or trust is weak, or where, for nationalistic reasons, partners are not willing simply to adopt each other's standards, mutual recognition agreements (MRAs) become a possibility. These entail each member recognising its partners' standards as acceptable within its own boundaries, but without applying them to its domestic producers and suppliers. MRAs can cover either the standards themselves, or the conformity-assessment systems used to establish compliance with standards.

In the SACU context, there is an opportunity to use 'mixing regulations' to promote regional industrial development. One way of doing this is to compel any importer in the region to purchase some percentage of its imports from producers in the region. This means that any good

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that is produced in the region would enjoy some degree of preference over similar goods from outside the region. The advantage of this approach is that, while there may be no ceiling on the quantity of imports into the region (which could contravene WTO regulations), it guarantees SACU producers a portion of the regional market.

SACU's aim of capturing a larger share of the regional market will, therefore, have to ensure that its products are competitive with products from outside the region. A further advantage is that 'mixing regulations' are much easier to administer than either the imposition of a tariff or payment of subsidies. Experience has shown that tariffs are too costly to administer and there are bound to be complaints that goods are being smuggled into the country (or region).

The payment of subsidies to producers places a burden on the fiscal position of the country, as well as poses a difficulty in ensuring that only the intended producers benefit from the subsidies. 'Mixing regulations' simply requires monitoring to ensure that the stipulated quantity of imports is purchased from producers within the region. This is can be easily done by placing the onus on regional producers to monitor the situation, and raise complaints when importers do not comply with the stipulated regulations.

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A further complicating factor in the envisaged industrial policy harmonisation is, as McCarthy (2004:157) puts it, 'that SACU member states do not have a collective policy in general and how much a policy should support development strategies at a balanced regional development'. The disparity in both wealth, and industrial and technological development among the SACU countries is another hurdle that might slow down or impede progress towards the development of common industrial policies and strategies, and the procedures for implementing them. One informant argued that:

> For SACU members to achieve industrial development on equal terms, there is a need for the members to work towards full economic integration espoused through a common currency, and a common foreign and trade policy. This will be the foundation for harmonised industrial development.

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South Africa accounts contribute over 90 per cent of SACU's total industrial production. This implies that the industrial policy harmonisation that is envisaged by the agreement might be essentially no more than aligning the policies of other members with those of the South Africa. Yet, viewed from a different angle, this is sensible. It offers an opportunity for the less developed SACU member states to access or attract South African capital and technology regardless of whether they are aware of it. But this assumes that South Africa would be willing to facilitate such access.

SACU revenue now has a development component, even though this is small. It also has an additional element that 'Lesotho, Namibia and Swaziland, the member states most dependent on SACU revenue', enjoy some 'protection against the decline in real value of the revenue pool' resulting from bilateral and multilateral trade, and increased tariffs and duties (McCarthy 2004: 169). SACU's RSF also affects the industrial development of small members. In line with this observation, an informant had this to say:

> There is no doubt that most of SACU's economic dividends largely benefit bigger economies, such as South Africa. Meanwhile, the smaller economies such as Lesotho who mainly depend on SACU for survival are pushed further to the periphery of the international economic system. This promotes underdevelopment within the already struggling economies.

However, SACU does not seem to have a means of ensuring that member countries use the revenue allocated strictly for development. The 2002 SACU agreement also provides 'for the protection of BNLS's (Botswana, Lesotho Namibia and Swaziland) infant industries, defined or identified as those not older than eight years. The nationality of the industries does not appear to be the issue, and if this is the case, foreign firms will also enjoy protection. But this raises an important question, namely whether foreign industrial enterprises will be protected against their branches or sister firms operating elsewhere. It is also not clear whether such infant industries will be protected from external competitors only.

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There is little or no doubt, for example, in the case of Lesotho that with virtually no local industrialists, protection of infant industries means protecting foreign firms which may have invested their money in the country only while awaiting opportunities to emerge elsewhere. Indeed, the experience in Lesotho has been that some foreign firms have left the country after the expiry of their tax-holiday period of four years. In some cases, ownership of the firms' operation in Lesotho changes hands in the middle of the eight-year period that defines the infant status. It is clear that this would need to be addressed by the union.

Another important issue is how the foreign-owned firms that dominate what is today dubbed Lesotho's industry view the SACU scheme of industrial-policy harmonisation, in terms of how it fits in with their interests or jeopardises them. Thus, for Lesotho, success in harmonising or aligning industrial policy with that of SACU seems to rest, not on government action alone, but also on implications for its predominantly foreign industrialists' interests. Worth noting, though, is that the predominantly textile-producing foreign manufacturing industries that have been assigned the task of industrialising Lesotho have had profound consequences for the structure of the country's industry.

4.3 Operational weaknesses of SACU

Like other regional bodies, SACU has its own operational weaknesses inherent in the structure of the agreement. The major operational weakness is the lack of a binding competition law. The 2002 SACU agreement does not provide for a common SACU competition law. The emphasis on the provisions is upon the member states policies and cooperation between the member states for effective application of national laws. Although Article 40 of the agreement says something about 'competition policies' and 'unfair trade practices', it is not explicit as to whether members are obligated to adopt competition 'laws'. Both positive commitment and notification cooperation require laws to make competition enforcement effective. There is a problem of what can be treated as 'unfair trade policies' and who should determine it.

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In this case, the policies do not refer to common policies, but rather to national policies. While these may be subject to a form of convergence through the process of cooperation between member states, they are not designated by the Agreement as being legal Acts established by the SACU Ministers or SACU institutions. Since the SACU treaty does not contain a section describing common principles relating to a competition policy, it also does not relate the objectives of the competition policy to the trade objectives of the agreement. One informant said that SACU's major problem was the lack of the implementation of the SACU Agreement;

> SACU through its 2002 Agreement (which you can access via the SACU website) has articulated a number of objectives. It is questionable whether these objectives have been met within the framework as provided for in the Agreement. One of the core challenges is that no provision is made for a financing mechanism that could address regional developmental and industrial/infrastructure objectives.

The objective of free trade and competition law are often, but not always complementary. This relationship suggests that if a practice affects trade but does not lessen competition in the market, it does not fall under the competition policy clause. Again, if a provision substantially lessens competition but does not affect trade, it does not fall under the 'unfair trade' clause. The intersection between 'affecting trade' and 'affecting competition' restrains trade and investment that hamper the ability of firms to gain access to or compete in foreign markets (Mathis, 2005).

However, it can be noted that, although Article 40 (Unfair Trade) and Article 41 (Competition Law) tend to overlap, these Articles have a cumulative application in the circumstances where the conditions are met for both. Each Article has its own respective sphere of influence, but some commonalities and overlap should not necessarily be discouraged as long as the residual scope for each Article is clear (Mathis, 2005).

An important characteristic which is also a challenge that distinguishes SACU from most RIAs is that it did not come about through a pro-active and deliberate effort to integrate regional economies. It is the outcome of a historical process, and a colonial regime that created an institutional apparatus that sought to deal with the economic integration of separate political dependencies (Vickers, 2008). This means that there is an important discrepancy between SACU

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and, say Mercado Commundel Sur (MERCOSUR), where four member states set out to create a CU. This distinction can, as will later be argued, explain the particular difficulties that SACU faces in adapting to the radically new management style required by the new SACU agreement.

This situation was at the heart of the argument that SACU was undemocratic. As Schiff and Winters (2003:85) put it: 'In the most hegemonic of CUs, SACU, South Africa simply decided trade policy and compensated the smaller countries for the costs it imposed on them'. The compensation will be discussed below. At this point it needs to be noted that, since a CU is expected to have a CET, it follows that it must also have 'a trade policy that is common in all respects' (Schiff and Winters, 2003: 82). One informant said that the accusations by BLNS states that SACU is tilted in favour of South Africa hold water. He said:

> There is an element of truth in that SACU is tilted in favour of South Africa, especially because of the nature and extent of the distribution of the economic dividends of SACU which seems to be controlled by South Africa. As such, countries like Lesotho and Swaziland whose economic life line is in SACU find it difficult or impossible to develop an independent foreign policy from South Africa which wields power that determines the content, size and direction of its GDP.

Another informant had this to say on fairness and democracy within SACU:

> The issue of democracy cannot be brought into question as this is an international agreement negotiated between the five parties. Fairness is however a subjective concept and indeed a number of scholars, researchers and even politicians have expressed their views on perceived unfairness of certain aspects of the Agreement.

This allowed South Africa, although a member of a CU, the freedom to adopt SACU tariff policies that were in line with its own particular development objectives. However, a trade-off

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could exist between using the tariff as an instrument of trade and industrial policy, and the role that the tariff has as a source of revenue, which in developing countries is more highly regarded than in developed economies.

The third problem concerned the compensation and mechanisms that existed to address the drawback of BLNS being part of a common customs area with a much larger and more developed economy, and for the policy sovereignty which they sacrificed. For BLNS, the essential problem of trade diversion and economic polarisation is that they perceived little proportionality between the distribution of costs and benefits between South Africa and themselves. As the much larger and more industrialised economy, South Africa benefited from the growth that accrued to its producers, while BLNS only experienced the welfare losses experienced by their consumers. Of course, South African consumers also suffered welfare losses from having to pay higher prices for protected domestic goods, but as a society it at least had the benefit of the output and employment growth of the protected industries. The disadvantages of trade diversion, economic polarisation and the loss of policy sovereignty were to be addressed in two ways.

4.4 Benefits of SACU to its Community

Regional integration remains an economic construct from which member states will expect an economic return. In most developing economies, regional integration is seen as the panacea for economic growth, expansion of trade, and reduction of poverty. Benefits will be considered in net terms, since participation in a RIA has the downside of costs for member states. If the net economic return is not perceived as positive, it is hardly likely that a country will conclude a RIA or, if such a country is a member of an existing RIA, it will seek to change the rules and operations of the arrangement, or withdraw unilaterally.

The history of regional integration, however, reveals that, often, net returns are viewed in a relative context, that is, with member states comparing their benefits to those derived by other participants in the arrangement. The collapse of the first East African Community in 1977, for

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example, can partly be ascribed to the Tanzanian view that Kenya was deriving the lion's share of benefits from the RIA (Vickers, 2008).

The *static effects* describe the once-off change in the economic welfare of society associated with the distinction between *trade creation* and *trade diversion* as possible outcomes of CU formation. This is called trade creation, and represents gains from regional integration. But the opposite can also occur, with the CU causing lower-cost goods, imported from outside the CU, to be displaced by higher-cost goods, produced by a member state. This is called trade diversion. Comparing the two possible outcomes in aggregate will show whether there is a net welfare gain or loss to society.

Another dynamic benefit is the possible encouragement of investment to take advantage of the enlarged market created by SACU. This need not be restricted to investment by firms located in the SACU, but could also encompass foreign direct investment, in which case, the enlarged protected market would encourage 'tariff jumping'. This means the act of subsidiaries of foreign firms locating themselves in the common customs area, in order to have access to the larger market. When considering the rationale for a CU, with its CET, an issue that is highly relevant in the SACU context is the fact that CU are not created to earn revenue for participating member states. The economic reasons for the existence of a Custom Union are sought in static welfare effects, and, as far as developing countries in particular are concerned, in the dynamic benefits of growth and development.

Throughout its history SACU has been characterised by severe divergences in policies, levels of development, political systems, and administrative capacity. Notwithstanding these disparities, it managed, through extremely fraught political circumstances, to maintain virtually free internal trade behind a high common external tariff, while allowing for large revenue payments to the smaller members.

The other benefit SACU has accrued to its member states is that some forms of industrial development have taken place, especially in Botswana and Namibia. Where little

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industrialisation has taken place, for example, in Lesotho and Swaziland, citizens of those countries benefit from SACU arrangements, especially with regards to employment opportunities in the regional industrial power, South Africa. Migrant workers from mainly Lesotho contribute to their own national economies and families by sending remittances. Such remittances, when they are in form of money, improve the foreign currency revenue of their countries. This is one of the salient and underestimated benefit of the free movement clause as stipulated in the SACU agreements. Free movement of people within member states has also facilitated the growth of informal trade through cross-border trade, and this contributes to the customs duties of both SACU and individual members.

Although smuggling has been singled out as one of the major challenges, the net benefit is that most of the goods are not smuggled. Cross-border trade activities have also helped to create self-employment for citizens of member states who are threatened by unemployment due to low industrial development. An informant argued that, although SACU is viewed by many as beneficial only to South Africa, other member states have also accrued benefits. Vickers (2008) said:

> Of all the benefits that SACU had rendered to its member states, especially the small states within its membership, there is official development assistance in countries like Lesotho and Swaziland, with resources being pooled from SACU's economically powerful states. There is also a sound and stable regional monetary policy framework.

The above sentiments show that SACU has done something to benefit all the member states within the organization. What matters, however, is the significance and extent of the development aid being given to the small economies within the organization?

It is also important for any discussion of the successes of SACU to capture the economic performance of member states. A report of SACU's economic performance for 2010 shows that, in real terms, SACU economies grew by 4.8% in 2010 from a contraction of 0.6 % in 2009. This

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is reflective of an economic rebound among SACU member states following the economic recession of 2008 and 2009 (SACU Economic Report, 2010). SACU economic recovery is mainly driven by the export-driven industries in mining (diamond, gold and platinum) and manufacturing of agricultural products. According to Vikers (2008):

> A Customs Union arrangement allows for convergence on a number of critical fronts. Most significantly it provides for a regulatory framework that facilitates cross border trade, significant potential for the exploration of value chains and for the alignment of critical aspects of economic policy. As stated above, as a trade arrangement, SACU has performed extremely well. In this, the Union has created significant trade and welfare advantages to all of its members. That the BLNS derive between 33 and 65% of the government revenue from the Union cannot be ignored.

A glance at the economic performance of SACU members shows that, overall, member states performed satisfactorily from 2010. Botswana's economy was boosted from a contraction of 4.9% recorded in 2009, to 7.2% in 2010 (SACU Economic Report, 2010). This growth was mainly as a result of the boom in the mining sector. Lesotho's economy grew by 5.6% from 3.1% recorded in 2009. Namibia, Swaziland and South Africa also scored sound results during the same period.

4.5 Non-benefits of SACU to its Member States

One of the drawbacks was that the small countries received revenue based on their consumption of relevant commodities, regardless of the size of the total revenue pool. Furthermore, the adopted two-year lag payment from the revenue was unfair because the enhancement factor was significantly depreciated by high inflation, loss of interest on revenue accrued but not yet paid, and depreciation of the exchange rate (ADB, 1993; Guma, 1990; Sentsho and Tsheko, 2005). Asked about the fairness of the RSF, an informant said:

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> Again fairness is subjective. That said, the impact of the revenue sharing arrangement in terms of providing a mechanism through which SACU can realise its objectives remains questionable as alluded to above. That the formula has imbedded dependency on a highly volatile and unpredictable source of revenue is well documented and frequently highlighted in the budget statements as well as IMF Article IV consultations within the BLNS. An interesting research paper by the IMF done some two years ago point to a highly redistributive arrangement favouring the BLNS. You may wish to search for that paper on the internet.

Furthermore, the new revenue-sharing formula is expected to apply to Botswana as it does to all other SACU members, and will be limited by the size of the customs and excise duty pools. The total customs revenue is expected to be distributed proportionately to each country's share of total intra-SACU trade (imports). Excise revenue is also expected to be distributed according to each country's share of total SACU GDP, a proxy for value of excisable goods consumed. The development component is expected to be a more or less fixed percentage of the excise pool to each SACU member. However, the shares accruing to each member state are expected to be marginally in favour of the lesser-developed countries in SACU (Sentsho and Tsheko 2005). Another informant, however argued, that SACU does not favour any country.

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> Again, this matter is highly subjective. As pointed out above, the formula is redistributive in nature. That said, a Customs Union in its very nature will not favour everybody equally. In fact, in the same IMF paper alluded to they point out that SACU as a trade arrangement has outperformed any other trade arrangement on the continent by a factor of something like 75 with significant welfare and trade creation effects for the BLNS. The existing evidence would seem to suggest that that accusation is not based on fact.

The proximity to South Africa constitutes both an opportunity and a threat to Botswana. Potential investors in productive enterprises in the Southern African region tend to favour South Africa, rather than Botswana, as their destination for a number of reasons. These include

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proximity to seaports, a large domestic market, low-cost utilities, the affordability and availability of investible funds, better infrastructure, and higher technological skills and facilities.

In the interim period, the challenges that Botswana and the economies of the region face are: to align their economic policies, as well as the role of the state in the economy, to emerging global trends; to intensify their work towards a gradual removal of tariffs and non-tariff barriers; and to intensify their work in the creation of firms that can penetrate and effectively compete in global markets. However, as Sentsho and Tsheko (2005) conclude, these measures are not adequate in meeting the economic development needs of the small members within SACU.

In the case of Botswana, Kapunda and Akinkugbe (2008) argue that the country has developed its export-oriented industrialisation strategy under the shelter of the high SACU external trade barriers that have, for a long time, protected South African industries. In fact, Botswana's exports to and imports from South Africa continue to dominate its trade structure. The process of economic integration in the region, and the globalisation it entails, will definitely remove trade barriers and expose the country's firms to fierce competition with more efficient firms from the EU, the United States (US), and other countries and regions of the world.

The above situation means that, while the private sector in Botswana has over the years enjoyed government economic incentives and a friendly macroeconomic environment, these benefits are similarly going to attract external rivals. Consequently, Botswana firms would need to position themselves strategically in the next four to ten years if they are to survive the imminent economic competition. Furthermore, the government will need to expedite the preparation and implementation of its competition policy if Botswana's industrial development and economic diversification objectives are to be realised. A research participant said:

> Unhealthy competition between companies of the bigger economies, for example, South Africa's multinational corporations and those of the smaller economies, such as Lesotho's infant companies, becomes a disadvantage to the developing economies within the organisation.

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Lesotho, being the least developed member of the SACU constituent, has mixed fortunes from the organisation and, to a larger extent, the non-benefits outweigh the benefits. The SACU revenue sharing formula and competition clauses have increased the country's vulnerability to the vicissitudes of external markets, which are often volatile and unreliable. In fact, closely related to this problem, as far as Lesotho is concerned, is the dependence on imported inputs of its textiles-based industry. None of the basic materials required for the production of the garments comes from Lesotho, the SACU region, or Africa.

As a common market, SACU should cushion Lesotho against this problem. However, the union lacks such a tradition. Its members forge trading relations with the outside world and sever the existing ones whenever they see this as necessary. SACU has functioned more as a market for goods produced by the dominant and economically more developed South Africa, whose concern has been self-protection from external competition rather than facilitating the transformation of the union into a common market. Lesotho recognised soon after attaining its independence that SACU ought to be more than just a common-tariffs and revenue-maximising regime.

The kingdom's development planners have been, indeed, sceptical about the contribution of the revenues accruing from SACU to the country's development in the long term. The planners have argued that SACU revenues exacerbated Lesotho's vulnerability to political and institutional changes in the region. Lesotho's Third Five Year Development Plan for the period 1980–1985 observed that much of the customs revenues, for instance, 'the actual accruals are not subject to discretionary actions on Lesotho's part, having not resulted from any major broadening of the tax base' (Kingdom of Lesotho 1980: 61–82). In the past decade, the average share of customs receipts in the total state revenue was about 54 per cent, financing '78 per cent of recurrent expenditure' (FAO 2006: 3).

Tati (2008) argues that Swaziland can benefit from the SACU industrial harmonisation policy since her industry has been completely dependent on South Africa. On the industrial policy front, Swaziland has made a considerable shift dictated by the reconfiguration of regional politics. From its independence in 1968 to the present, Swaziland has been dominated by its relations

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with South Africa, the dominant regional power. South African capital and imports, SACU, the South African labour market, and the CMA (the successor to the Rand Monetary Area) have shaped the economy and restricted the scope for independent economic policy. From the 1990s to the present, Swaziland's economic structure has undergone a fundamental transformation, moving away from the domination of the agri-business sector to the textile-led export industry.

This industrial transformation has been accompanied by an increased incorporation of female labour into the garment-manufacturing and trade systems. Up to the 1990s, production for exports tended to concentrate on agri-business within the Southern African boundaries. Swaziland's international trade consisted, to a large degree, of the export of agricultural processed products, especially to South Africa and European markets. As with most of the countries surrounding South Africa, the structure of agriculture in Swaziland is directly related to the historic hegemonic influence of that regional power (McFadden, 1987). Strengthening the issue of the promotion of unequal economic development as a non-benefit, one informant said:

> Within an arrangement where the parties are at varied stages of economic development, alignment of policy, objectives and critical interventions inevitably become rather challenging. In the context of a shared policy space (such as on the setting of the CET) the policy prerogatives might thus not be aligned. As already alluded to, the distribution formula in this specific case does not provide for adequate realisation of the objectives of the union.

The predominance of South Africa in the Swaziland trade regime is reflected in the sheer quantity of imports and exports from and to that country. A rise in exports to South Africa is always a reason for political celebration, and a decrease in exports has always been a matter of political concern. It is no exaggeration to say that the economic wealth of Swaziland is inextricably linked to its exports to South Africa. The 2003 Annual Report of the Central Bank of Swaziland indicated that the country's exports to South Africa increased by 21 per cent to R1,3 million, as compared to 12 per cent growth recorded in 2001 (*Times of Swaziland*, 19 September 2003).

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The collection of customs revenue for the SACU pool is critical for Swaziland, as it constitutes over half of the total revenue available to that country. As a result of this arrangement, the position of this country, as is the case for the other countries, excluding South Africa, is of a very complex nature. As pointed out by Sandrey *et al.* (2006), it is true that the SACU revenue distribution could be regarded as an income transfer from South Africa to SACU, as the BLNS countries receive tariff revenues that are around four or five times what they would if the goods came directly into these countries.

However, that under the SACU arrangement, South African industrial policies are, in effect, denying the BLNS access to lower-price imports, and forcing them to consume South African goods. Consequently, consumers in BLNS make transfers to South Africa's industrial sector (Sandrey, 2006). Swaziland's industry has long been constrained by the structure of the external tariff, which has often reflected South Africa's policy priorities and industrial structure. The revised 2002 SACU agreement provides an opportunity to work with a joint SACU tariff board that could determine duty rates, including anti-dumping and countervailing duties. In response to this constraint, Swaziland's government has often announced that it wanted to diversify its revenue base through increased trade with partners outside SACU.

There is little doubt, if any, that the country has, by rolling back the state, in fact, lost or diminished its capacity to determine and direct the course of its industrialisation process – instead, increasing the bargaining power and influence of foreign private firms, which have now seemingly been anointed as the motor and purveyors of industrial development. Thus, efforts by the Swaziland government to harmonise its industrial policies with those of SACU are likely to be a matter for hard bargaining with the existing industries, as noted in the following section.

However, it is clear that, for Swaziland, major challenges will come from its present *laissez faire* industrial development policy, which has edged the state out of the production process, limiting its role and authority, despite its being the embodiment of the people. Left to the highly mobile foreign private firms, as is the case now, the policy will clearly have no role in a scheme that may be introduced, in order to eliminate, in accordance with SACU's 2002 objectives, the socio-

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economic development imbalances among SACU member countries. McCarthy (2004) notes that, this is the practice among states that are regionally organised, but are unequal in terms of their levels of economic development.

Laissez fair recognises 'the importance of a balanced industrial development of the Common Customs Area as an important objective of economic development' (McCarthy 2004:167–8). But the members' commitment to free-market economies suggests that such a distribution may be difficult to achieve, since governments can only encourage, and not move investors to, or assign them, specific geographic areas in which to do business. Moreover, competing for private capital investment, under pressure to create jobs for their peoples, the SACU member states may be forced to adopt policies that negate or militate against the envisaged harmonisation of industrial policies.

One of the disadvantages of SACU's uneven industrial development which promotes the migrant labour system is that it affects agricultural production in countries like Lesotho. Given that most of the economically active people are free to seek employment in South Africa, there remains, in the countryside, a pool of old people and children who cannot productively work the land. The net effect is the fall of agricultural production, which, if promoted, can lead to the development of agricultural-based industries in Lesotho. Socially, the migrant labour system leads to the destruction of the fabric of family and marriages. Migrant labourers also end up having wives across borders, promoting the spread of sexually transmitted diseases and HIV/AIDS.

4.6 Discussion on the failures of SACU

It is difficult to determine whether SACU has achieved its goals since there are other facts which counter its achievements are to be considered. It is even more difficult to establish where the balance of benefits and costs falls. The questions which arise are: Is South Africa benefiting at the cost of BLNS, as the latter argue or does the opposite apply as many observers in South Africa would claim? Is it possible to claim that SACU creates a win-win situation for all member states? The clearest indication is that it has been successful in channeling revenue to the BLNS

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countries, but then BLNS have argued that the compensatory revenue transfer has not been adequate.

What further complicates judgment on the adequacy of the revenue transfer is that the lowering of tariff levels contains trade diversion. Whether SACU has been successful in aiding economic growth and development in BLNS is difficult to argue although the economic growth rates noted earlier, which are better than those of most SSA economies, suggest that BLNS have benefited from their customs union membership.

From 1910 until 1994, SACU had to deal pragmatically with small national entities, initially, British dependencies, but later politically independent African states, that were locked into an integrated economy with the much larger South Africa. It could be argued that SACU's survival as a RIA under difficult circumstances can be ascribed to the fact that the implicit and explicit understanding under the 1969 agreement was that the BLNS would sacrifice important elements of their control over fiscal and trade policy to South Africa, which in practice managed these affairs as if BLNS were part of the South African economy. In exchange for this, and as compensation for the polarisation effect inherent in being part of a customs territory dominated by a much larger member, BLNS received the beneficial payments built into the revenue-distribution formula.

The issue of whether the compensation was adequate or not does not detract from the fact that leaving the affairs of SACU to South Africa to manage served as a substitute for designated SACU bodies that would have been required to act, on behalf of the member states, in the common interest of the CU. A central theme is that this system of customs-union management had evolved historically, and was deeply embedded in the colonial experience of the region, and in the economically subservient position of BLNS. It could also be speculated that, after independence, this system was a pragmatic and at-arms-length way for BLNS to contend with the politically embarrassing situation of being in a CU with apartheid South Africa.

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For South Africa, the main benefit is to be found in the market for manufactured exports provided by BLNS, while on balance the revenue distribution mechanism represents a costly drain on the Treasury. On *a priori* grounds, it is possible to argue that the customs union has played an important role in facilitating the growth of South African exports to BLNS. However, in the absence of a customs union, the trade flow would have been substantial. Therefore, it is not possible to be accurate about the customs union's contribution in this regard.

Nevertheless, the argument has frequently been made in BLNS circles that the growth in income generated by these exports adequately compensates South Africa for the revenue transferred to the BLNS. Again, it might be noted that during recent years, the relative importance of BLNS as a market for South African exports has been eclipsed by the growth in manufactured exports to the rest of Africa and the rest of the world.

From the beginning of the post-colonial period, it was recognised that regional integration will have to form an integral part of Africa's economic development strategy. The outcome has been a rapid growth in RIA that strongly supplemented the institutions that were carried over from the colonial period. The continent not only developed a reputation for its large number of RIAs, but it also became well-known for its large number of failures (De la Torre and Kelly, 1992). The reasons for these failures are many and varied and have been recorded in literature (McCarthy, 1996).

In most cases, the RIAs also have little impact on the economies of the participating countries themselves. However, in this respect, there are important exceptions to the general case (McCarthy, 2003). The dependent relationship that exists between South Africa and its smaller partners in SACU is a notable example of such an exception. But the overriding history of failure of integration arrangements in Africa compared to arrangements elsewhere in the world has led to questions being asked about the appropriateness of regional integration as an instrument of economic development.

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The question which remains unanswered is whether regional integration is, in fact, the right route for the typically small African economies to take to development. Harvey (1999) expresses serious doubts about the conventional view on the role of regional integration in African development. He refers to the African desire to overcome the problem of small economies through integration as "largely an illusion". Clearly, Harvey regards the conventional arguments that are offered in defense of regional integration in Africa as fundamentally flawed.

4.7 Discussion on the prospects of SACU

An outcome of the general lack of progress made with regional integration in Africa is an increase in skepticism and even cynicism on the prospects for successful integration in Africa. The poor track record of regional integration in Africa and the fact that putting very small markets together still leaves a small economy have also prompted some observers to be quite despondent about prospects for regional integration in SSA.

Thus, although difficult to quantify, the new revenue payment formula appears to provide more than sufficient compensation to the BLNS to address the economic costs of the union. It is also very responsive to changes in trade policy. If external tariffs decline, the trade preferences enjoyed by South Africa are eroded and the amount of compensation from South Africa to the BLNS falls in line with the relative size of the customs pool. This might create serious revenue problems for the smaller member states. For this reason, it was decided to establish an alternative method of compensation that is independent of customs revenues.

SACU must be commended for putting in place the SACU tariff board that is competently managing trade distortions between member states. This noble objective has the prospect of transforming SACU from being a reactive trade institution into a proactive one which influences trade and industrial policy at a regional level. However, in order to do this, SACU needs to be viably transformed to develop common policies on agriculture, industry and competition policies, in line with the full implementation of the 2002 SACU Agreement.

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Although currently small compared to the customs component, the size of the development component is likely to become increasingly important over the next decade. Any amendment to the size of this component (that is, changing the share of total excise revenue allocated to 'development') requires the consent of all the Members (Kirk and Stern, 2003). As South Africa is the only net contributor to the development component, it is unclear how amenable it will be to raising their contribution to compensate for reduced tariff revenue. If the development component remains unchanged, the BLNS will need to diversify their revenue base and review government expenditure policies.

Successfully resolving some of these challenges would increase the authority of the newly established Secretariat and augment the international standing of the new Agreement. Looking forward, it is possible but unlikely that SACU will re-open discussions on these issues soon. Instead, it would seem that the future of SACU may be determined by external factors rather than from within. The new agreement has opened up possibilities for a range of new SACU bilateral agreements, beginning with the US. SACU will also have to cooperate more closely in WTO negotiations and is likely to find itself the target of an EPA with the EU24. All of this will contribute towards and require much closer integration within SACU. The fact that the new Agreement can allow and facilitate such cooperation is probably its greatest strength.

SACU can take advantage of the new impetus towards deeper integration of African economies. In June 2011, heads of state and government of 26 countries from SADC, COMESA and EAC launched negotiations for the Tripartite Free Trade Area (TFTA) in Johannesburg, South Africa. This initiative offers a real opportunity to improve market access, deepen integration and enhance intra-Africa trade.

SACU member states are, therefore, in a strategic position to negotiate a single block with regard to trade in goods. If strategies and sound policies are put in place, this will ensure that all SACU member states benefit from this arrangement. Linked to the above, the AU 2012 Summit had as its theme the boosting of intra-African trade, and it proposed the establishment of a Continental

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Free Trade Area (CFTA) by 2017. Again, SACU can gainfully transform itself, in order to play an active role in this strategic development by trading as a block.

SACU member states can effectively develop appropriate policies and strategies and move beyond being exporters of raw materials and commodities. SACU member states are working on the development of a Regional Industrial Development Policy (RIDP). This is a critical aspect in promoting sustainable development for all its member states. This will also conform to SACU's Vision to be 'an economic community with equitable and sustainable development, dedicated to the welfare of its people for a common future', adopted by heads of states and governments in April 2010 (SACU, 2012 Annual Report). Commenting on SACU's prospects and industrial development, one informant said:

> As with any arrangement that is more than 100 years old, changes have and will happen so as to bring the arrangement in line with the latest international best theory or practice. It is thus not a static arrangement but rather one that will have to be judged on its effectiveness in delivering on the ambitions of all of its members. You may wish to refer to chapter 7 in the NDP in this regard. Industrial development is a critical objective. However, unless agreement can be reached on a financing mechanism that would be able to give effect to cross border infrastructure development and investment in productive sectors, its achievement will remain protracted.

In an attempt to facilitate trade, increase transparency, maximise revenue collection, and improve the quality of trade data, SACU member states are working on the automation of and interconnectivity between their customs information technology systems to enable timely electronic exchange of data between customs administrators. The automated electronic transfer of trade information will allow risk assessment to be undertaken prior to the arrival of goods at the border, thus, reducing processing time at the border posts.

Information Technology (IT) connectivity will also contribute to generating reliable and accurate trade data, and, in turn, promotes equitable sharing of customs revenue. IT connectivity started in

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2011 with a pilot project which joined Namibia and Botswana (under the Trans-Kalahari Corridor Initiative) and South Africa and Swaziland. SACU is also working on upgrading its transport sector, especially in land-locked members, as a way of bringing efficiency in trade. By 2009, SACU had completed an assessment study of the transport sectors of all member states.

The 2002 SACU agreement stipulates that no individual member state may negotiate or enter into a new preferential agreement with third parties on its own. Article 31 on Trade Relations with third parties states that members may maintain existing agreements with third parties, but shall also establish a common negotiating mechanism and shall not enter new agreements or amend existing ones with third states without the consent of the other SACU members. This provision establishes the intent of SACU to represent itself as a single customs territory for the purpose of trade negotiations.

To give effect to the above provision, the SACU Council of Ministers decided that in future, SACU will negotiate all agreements as a block. To this effect, SACU concluded Free Trade Agreements with member states of the European Free Trade Association (EFTA), a body with four members, namely Iceland, Norway, Switzerland and Liechtenstein. SACU also completed Preferential Trade Agreements with member states of the Common Market of the South (MERCOSUR)-Argentina, Brazil, Paraguay and Uruguay. In 2008, SACU signed an agreement with USA (Trade, Investment and Cooperation Agreement (TIDCA).

The renegotiated 2002 SACU Agreement recognises the different levels of economic development of the membership. South Africa is an advanced developing country; Botswana, Namibia and Swaziland are small and vulnerable economies; and Lesotho is the least-developed country. The 2002 SACU Agreement, therefore, enjoins the collective to ensure balanced industrial development. This includes a formal commitment 'to develop common policies and strategies with respect to industrial development' (Vickers, 2008). As members of the SADC the SACU nations are also involved in negotiations around a Protocol on Industrial Policy Cooperation.

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However, some informants strongly believe that the 2002 SACU Agreement is far from being democratic or fair. They argue that the Agreement continues to serve the interests of South Africa at the expense of other members. However, one informant admitted that there is no sound basis for these arguments. He said:

> Matters to do with SACU are sometimes difficult to comment on because the public does not have a sound basis for such comments. Financial statements and trade transaction by member states are not easy to interpret, and, as such, it has just become a norm from certain sections of the SACU community to think that SACU is always controlled by South Africa.

Sentiments as given above hold water in that the SACU database is not accessible to the generality of the members' populations and, as such, some people's comments become baseless.

4.8 Summary of the Research Findings

In principle, it can be argued that the new SACU Agreement should be considered a success. It normalises trade relations between South Africa and the BLNS, provides for the creation of a number of new and democratic regional institutions, and reforms an outdated and unsustainable revenue sharing arrangement. But in practice, it is questionable whether this new agreement will contribute towards more rapid and equitable economic development within SACU (Kirk and Stern, 2003).

The actual outcome will, to an extent, depend on the ability, capacity and willingness of the BLNS to participate fully in the SACU decision-making process. From a revenue perspective, the new formula offers greater security and stability to the BLNS, in return for some moderation in their future share of the pool. This bodes well for the long-term sustainability of the new formula. However, in so doing, it also ensures the continued dependence of Lesotho, Namibia and Swaziland on SACU revenues. This need not be a curse and the challenge for the BLNS is to

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optimally use the transfers received through the revenue sharing arrangement to improve their overall level of competitiveness within the South African market.

Furthermore, for South Africa, it is difficult to gauge whether the fiscal costs of SACU continue to justify the economic benefits accruing to the country in terms of exports and, to a lesser extent, investment and cheaper imports. Prior to 1994, this cost was regarded as the political price for retaining some form of relationship with independent African states (McCarthy 1994). These benefits have dissipated with the demise of Apartheid, but the level of transfer has increased. To some extent, South Africa is now paying heavily to retain the system of dependency that has been created. But it also retains preferential access to a large market for products, largely consumer goods, in which it does not have an international comparative advantage with the rest of the world.

It is also disappointing, as noted by Kirk and Stern (2003) that, the negotiators were unable to take this Agreement a little deeper and deal with some of the more fundamental obstacles to economic integration in the region. For an agreement that is supposed to take SACU into the 21st century, it deals with very little of the current world trade agenda (Kirk and Stern, 2003). Some attempt to incorporate services or the movement of labour within SACU would have been appropriate, though understandably much more difficult. Moreover, the SACU countries face real challenges in reducing cross border transaction costs, and in developing cooperative programmes in TBT and SPS that would permit regulatory economies of scale. Separate border posts have also been retained.

It is also important for any discussion of the successes of SACU to capture the economic performance of member states. A report of SACU's economic performance for 2010 shows that, in real terms, SACU economies grew by 4.8% in 2010 from a contraction of 0.6 % in 2009.

Finally, little progress has been made on industrial policy issues and tax harmonisation. Member countries will continue to compete with each other for investment through tax incentives. Given the extent of free trade within SACU and the fact that all member countries share common

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customs and excise tax rates, further tax harmonisation is possible and necessary. There is no commitment to develop a common competition policy and countries retain the right to protect infant industries from other SACU members.

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Chapter 5

Recommendations and Conclusion

5.1 Introduction

The previous chapter presented, discussed and analysed the research findings. This chapter makes recommendations and draws conclusions based on the research findings.

5.2 Recommendations

This study makes the following recommendations on SACU and its work to develop its member states economically:

- SACU has to put its house in order by going back to basics. This includes the harmonisation of the trade facilitation measures (customs, standards, documentation) and properly establishing the institutions provided for under the 2002 Agreement. A new revenue-sharing formula that explicitly takes into account the possibility for expanding the customs union should be effectively implemented.

- In order to ensure that SACU takes into account the needs of a modern CU, it is necessary to develop a common regional view of the role of customs and the service required from Customs Administrations in the 21st Century. The SACU customs development programme, therefore, should build on the successes and achievement in other areas as part of the regional integration and resource utilisation to avoid unnecessary duplication.

- To enable the implementation of the SACU customs programme and to give effect to the requirements of the 2002 SACU Agreement, it is necessary for SACU to develop a sound

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legal framework to provide a basis for the implementation of modern customs techniques, harmonised application of national and international customs and customs-related legislation in all SACU member states.

- The establishment of SACU bodies to implement common policies will require institutional change, the cultivation of new rules and policies that will honour the commitments and objectives that feature in the agreement.

- For effective industrial policy to take form there is need for coherence in terms of the goals and objectives of the industrial policy. If industrial policy is defined in terms of desired policy goals and outcomes as aiming to favour or target certain economic sectors or activities, it is important that the selection criteria by which the economic sectors or activities are identified be consistently applied.

- Inconsistent application of criteria and selection of activities will dissipate effort, cause confusion, and clearly be sub-optimal. There is also need for coherence in terms of responsibility within government, so that industrial policy is effectively overseen and directed.

- SACU should allow diversity of common policy development in the initial stages and allow for such semblance and commonality to develop bilateral basis between and among member states. This can serve as a critical base for regional integration.

- There is need to completely transform SACU into a common market or economic bloc so that it can generate revenue for its constituent states, while providing a market for goods by firms located and producing within its individual member countries.

- This transformed SACU would ensure that member countries pool rather than compete for resources. This would also minimise competition for investment capital with the industrial power, the Republic of South Africa, thus, releasing resources needed for the industrialisation of the other SACU members.

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- A development fund should be set up to replace the volatile and contentious portion based on customs revenue and intra-SACU trade. This would facilitate the process of simplifying and liberalising the Continental Free Trade Area (CFTA), thereby making SACU more attractive to those 'swing states' with an interest in joining SACU as a prelude to the mooted SADC customs union.

- Critical to this objective on the tariff front is that the EU recognises South Africa as a full EPA negotiating partner. Therefore, SACU can begin to negotiate its trade arrangements with the EU as one united block.

5.2 Conclusion

The study focused on the effectiveness of SACU as a regional economic integration mechanism. The study found out that far from seeing economic development among member states (SACU was formed in order to bring meaningful development to its member states), there continues to be operational problems within the organisation, making it difficult to realise this goal. Over the years, the organisation has been characterised by unequal development, which has created varied developmental disparities among the members of SACU.

On the benefits of SACU to its member states, the study found out that, to a limited extent, the 2002 SACU Agreement should be considered a success. It is a success in that it normalises trade relations between South Africa and the BLNS, provides for the creation of a number of new and democratic regional institutions, which benefit the citizens of member states. Member states take advantage of the enlarged SACU market. Over and above that, citizens from the industrially less-developed nations of Lesotho and Swaziland also get employment opportunities in South Africa, and this has eased unemployment problems in these countries. The study also found out that the new revenue sharing formula offers greater security and stability to the BLNS, in return for some moderation in their future share of the pool.

Findings on the non-benefits of SACU show that the RFS continue to favour South Africa at the expense of other SACU members. In countries like Lesotho, which depend on exporting migrant

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labour to South Africa, the negative effect on agricultural production is acute. Socially, the migrant labour system has a negative impact on the fabric of the family and it also promotes the spread of sexually transmitted diseases and HIV/AIDS. The discussion on the failures of SACU show that the SACU countries failed to reduce cross border transaction costs, and to develop cooperative programmes in TBT and SPS that would permit regulatory economies of scale. Separate border posts have also been retained with separate policies that are inclined to follow national policies and not SACU policies.

The study also shows that member states have made little progress on industrial policy issues and tax harmonisation. Member countries continue to compete with each other for investment through tax incentives. Given the extent of free trade within SACU and the fact that all member countries share common customs and excise tax rates, further tax harmonisation is crucial and necessary.

The study also found out that there are inherent operational weaknesses within SACU, and the major one is the lack of a binding and common law on unfair trade and competition. The lack of a binding and common law tend to overlap, affecting the applicability of the clauses on SACU members. There is no commitment to developing a common competition policy and countries retain the right to protect infant industries from other SACU members.

Concerning the prospects of SACU, the study found out that the new SACU agreement has opened up possibilities for a range of new SACU bilateral agreements, beginning with the US, EU, WTO and other regional bodies. As discussed, all of this will contribute towards the much needed integration within SACU. The fact that the new Agreement can allow and facilitate such cooperation, is probably its greatest strength and hope.

The study also found out that SACU member states are in a strategic position to negotiate a single block with regard to trade in goods. If strategies and sound policies are put in place, this will ensure that all SACU member states benefit from this arrangement. SACU member states are working on the development of a Regional Industrial Development Policy (RIDP) so that

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they can effectively develop appropriate policies and strategies and move beyond being exporters of raw materials to developed nations.

As noted in the study, this is a critical aspect in the promotion of sustainable development for all its member states. This will also conform to SACU's vision to be 'an economic community with equitable and sustainable development, dedicated to the welfare of its people for a common future' given that the 2002 SACU Agreement recognises the different levels of economic development of the membership, the Agreement, therefore, enjoins collective responsibility to ensure balanced industrial development. In an attempt to facilitate trade, increase transparency, maximise revenue collection, and improve the quality of trade data, SACU member states are working on the automation of and interconnectivity between their customs information technology systems to enable timely electronic exchange of data between customs administrators.

By and large, it can be concluded that, although SACU has a bright future, it has so far failed, over years, in its most important goals, which are to achieve a fair Revenue Sharing Formula, promote industrial development for BLNS, and to foster regional integration. SACU should not be allowed to die, but it should be transformed. All member states should come to the realisation that the RSF needs a radical overhaul as it is neither fair, nor conducive for regional integration. Small economies of Lesotho and Swaziland are not developing at the expected pace and the developing economies of Botswana and Namibia continue to register limited growth. Even the fortunes of the regional economic giant, South Africa, remain over-constrained by the over-dependence of not only SACU members, but also all SADC members. The general negative economic growth in the region is negatively affecting South Africa and, hence, her SACU members.

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Appendix

1 Interview Guide

(a) Do you have any idea of the organisation called SACU? **(Y/N)**

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(b) What do you think are the main challenges facing SACU?

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(c) In your opinion, do you think that the 2002 SACU Agreement is fair? (**Y**/**N**)

Explain.....

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(d) What about SACU's Revenue Sharing Formula? Do you think it is fair to all member states?

Explain.....

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(e) How valid is the accusation by BLNS states that SACU is tilted in favour of South Africa?

Explain.....

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(f) What benefits have SACU members accrued so far? State them.....

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(g) Do you think there are also non-benefits to member states? State them if they are there.....

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(h) How best can SACU member states achieve industrial development? Explain your answer.....

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(i) Do you think SACU has a bright future? Why do you say so?.....

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