

## **Regional Integration Agreements in Eastern and Southern Africa – Confusion Grows**

*By Richard Hess and Simon Hess<sup>1</sup>*

### **Introduction**

There has been a worldwide resurgence of regional integration agreements (RIAs) in the last 20 years. It is estimated that between 40 and 60 percent of world trade occurs within regional trading blocs (Schiff and Winters, 1998, World Bank, 2004). Africa's appetite for RIAs outstrips that of any other continent, with more regional integration and cooperation agreements signed, than any other continent (Radelet, 1997:1). This has led to the current and perhaps unsustainable situation where African countries often belong to four or more separate RIAs. This paper will sketch out the main RIAs within eastern and southern Africa, and highlight the potential problems of overlapping membership, particularly those with commitments to forming a Customs Union with its associated common external tariff (CET), and the negotiations of Economic Partnership Agreements (EPAs) with the European Union. The paper will then outline potential scenarios that would resolve the inherent conflicts of the current agreements, and finally make some tentative conclusions.

### **The problem**

Within eastern and southern Africa there are a number of RIAs and numerous bilateral agreements, all taking place within the context of the worldwide multi-lateral trading system. These include (amongst others) the:

- Common Market for Eastern and Southern Africa (COMESA)
- East African Community (EAC)
- Economic Community of Central African States (ECCAS)
- Indian Ocean Commission (IOC)
- Intergovernmental Agency on Development (IGAD)
- Southern African Customs Union (SACU), and the
- Southern African Development Community (SADC)

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Although all these institutions are now pursuing the objective of economic and trade integration, this has not always been the case. Indeed, the establishment of each institution largely came about under different circumstances and with other initial objectives.

The earliest of the RIAs is that of the SACU, which was essentially established as a colonial structure with its roots going back to 1889. As its name suggests, trade has always been central to SACU and it is currently the only fully functioning customs union in the region. The SADC emerged out of the Southern African Development Coordination Conference (SADCC). With the new independence of Zimbabwe in 1980, the southern African states formed the SADCC to coordinate their actions, reduce reliance on apartheid South Africa and cooperate at a sectoral level. Trade integration was not an objective in these early days. As South Africa moved towards political liberalisation the purpose of the SADCC changed as it welcomed the new South Africa and the name changed to SADC. The group then began to focus increasingly on trade issues, with the SADC protocol on trade being signed in 1996 and being launched in 2000. When South Africa joined SADC, SACU became a more integrated sub-set of SADC.

As SADCC's original vision was not particularly focused on trade liberalisation the majority of SADC states were also members of the Preferential Trade Area for Eastern and Southern African States (PTA) established in 1983. The PTA subsequently evolved further into the Common Market for Eastern and Southern Africa (COMESA) with an effective free trade area being launched in 2000 amongst a number of its members. The organisation plans to establish a customs union in the next few years. Thus the situation exists where many countries are dual members of SADC and COMESA, having joined the two organisations for different reasons. It is only fairly recently that the overall objectives of SADC and COMESA have become increasingly similar, as SADC has moved increasingly towards trade liberalisation following the enticing carrot of the South African market. SADC now aims to form a customs union by 2010.

Although there are only three member states, the East African Community (EAC) contains members of both SADC and COMESA. In its first incarnation in 1967 the EAC operated a fully fledged customs union that arose in response to solidarity in the newly independent former East African Territory states of Kenya, Tanzania and Uganda. However, this first agreement soon fell apart and was re-launched in 1999, with a customs union being launched in 2005. The new EAC was established in order to fast-track liberalisation amongst the three neighbouring states and was originally viewed as progressive liberalisation of a group of COMESA countries. However, Tanzania's political ties to SADC and the lure of the South African market saw it pull out of COMESA and remain within the SADC grouping.

The Economic Community of Central African States (ECCAS) has stated that they aim to form a Common Market, but in terms of trade and economic integration they are still a long way behind the above groups. Although the group was initially established in the early 1980s, it has struggled to make any significant progress. The Indian Ocean Commission is an initiative to focus on the Indian Ocean political economy as a sub-region, but does not attempt to duplicate the objectives of the above groups, to which most of its members are a member of at least one. The Intergovernmental Agency on Development (IGAD) evolved out of a specific focus on drought related issues, but has since expanded its mandate to focus on conflict prevention, infrastructural development and food security – somewhat similar to the initial SADCC objectives. There is also an objective to promote trade, but the organisation not duplicate ultimate objectives of the other trade focused groups and so far does not aim to form a Customs Union.

The remainder of the paper will focus on the four major RIAs which are focussing on trade integration and where the majority of membership and objectives overlap takes place, namely COMESA, EAC, SACU and SADC.

While the existence of numerous RIAs within the region in itself is not a problem, although it does mitigate the benefits to be obtained from integration, overlapping membership between the groupings has the potential to cause conflict and certainly imposes greater transaction costs on the business communities and governments. Exporters for example may be unsure of which agreement will apply to the movement of their goods across countries as more than one regime may apply. Likewise, governments face increased costs, such as the time demands on key personnel as well as funding the organisation's secretariat and attendance at meetings. The issue of secretariat funding and membership fees is becoming increasingly problematic and has already led to the resignation of one country from SADC. As these RIAs move towards deeper trade and economic integration, these problems become more severe. The move towards free trade areas (FTAs) within the above groupings has so far been technically possible, but the next stage of establishing a Customs Union (CU), currently being planned by all of the above RIAs, except the IOC and IGAD, is not.

Other than the stated objective of the African Union to achieve a common market amongst its members, there does not appear to be a coordinated plan to harmonise the RIAs. Indeed, were such a plan evident, the pursuit of further integration by sub-groups ultimately all absorbed into a larger group would be an ideal situation. However, the intricacies of the current situation would make such a scenario difficult unless there was a major rationalisation of the existing agreements. Scenario Two below shows how such a progressive union may work amongst two of the groups. Additionally, as mentioned earlier the new EAC was initially viewed as a 'fast-track' within COMESA. However, Tanzania's subsequent withdrawal from COMESA and continued membership of SADC meant that the EAC's Customs Union objectives could no longer be developed in line with COMESA's objectives and procedures. Having said this, there are merits to each group targeting deeper trade integration in that internal procedures become less isolated and more trade friendly. However, such benefits could just as effectively be obtained through membership of just one organisation moving towards liberalised trade.

Within an FTA each country has autonomous control of their external trade agreements, although they cannot give more preferential treatment to any third party than they give to the current members of the FTA. However, within a customs union this autonomy is lost and each member of the CU has to adopt a common external trade policy including a Common External Tariff (CET), and apply this rate to all third parties. One country cannot realistically apply two different CETs. This poses a major problem for those RIAs mentioned above, which have already implemented, or are in the process of implementing a customs union (CU). None of these groups are exclusive, with at least one member state belonging to another RIA. In the case of SADC, only Mozambique does not belong to another grouping – although right now there are discussions going on which may lead to Mozambique's membership of SACU. The overlapping multiple agreements would not be such a problem if there was an overall plan to synchronize the CET of each group, so in the end they would all form one large trading bloc. However, such a long term regional plan does not appear to be in place, other than the stated ultimate goal of establishing the African Economic Community by 2025.

This problem of overlapping membership is highlighted in Table 1, where all the regional integration groups listed (with the exception of the IOC and IGAD) are already in a customs union, or have undertaken to form a customs union. The SACU was established in 1910, although it had forerunners that started in the nineteenth century. The EAC Customs Union was launched in January 2005, although it is not yet a fully functioning Customs Union. COMESA had previously set 2004 as the start date for launching its CU. This has since been postponed and may possibly now be launched in 2008. SADC has only recently declared its intentions to establish a

Customs Union as there was nothing in the SADC Protocol on Trade to this effect. The idea was given in the Regional Indicative Strategic Development Plan that was issued in 2003. Under this Plan, SADC declared its intentions to launch a CU in 2010. COMESA, EAC and SADC have all stated that they want to go beyond a CU in the longer term and establish common markets and then economic and monetary unions. The EAC has plans eventually for a political federation. ECCAS though is a very weak institution that has not achieved much and as such is not discussed any further in this article.

**Table 1. Multiple memberships of regional integration groupings**

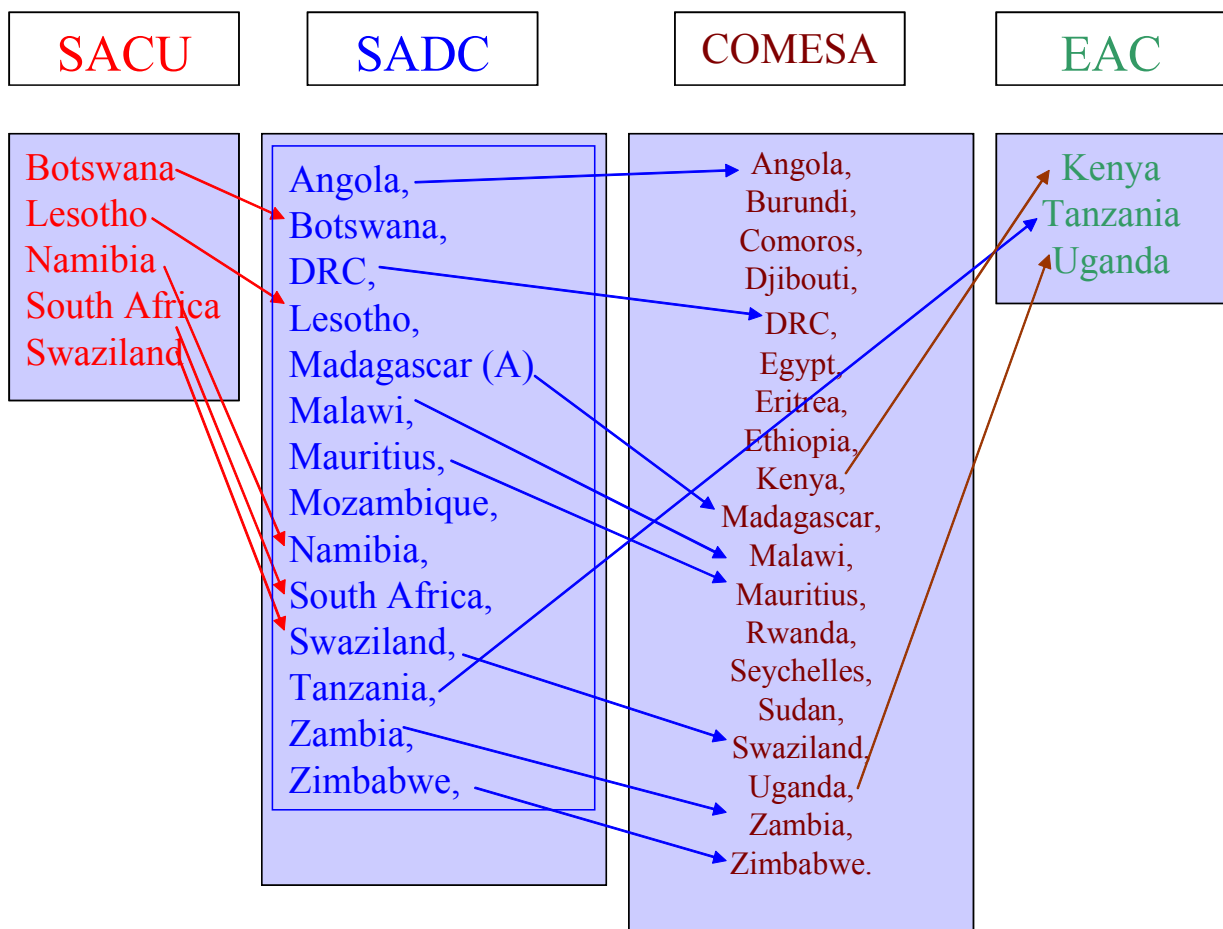
Country	COMESA	EAC	ECCAS	IOC	IGAD	SACU	SADC
Angola	W		X				X
Botswana						X	X
Burundi	X	A	X				
Comoros	X			X			
Congo (DR)	X		X				X
Djibouti	X				X		
Egypt	X						
Eritrea	X				X		
Ethiopia	X				X		
Lesotho						X	X
Kenya	X	X			X		
Malawi	X						X
Madagascar	X			X			A
Mauritius	X			X			X
Mozambique						A	X
Namibia						X	X
Rwanda	X	A	X				
Seychelles	X			X			
Sudan	X				X		
South Africa						X	X
Swaziland	X					X	X
Tanzania		X					X
Uganda	X	X			X		
Zambia	X						X
Zimbabwe	X						X

A = Applicant

W= under notice of Withdrawal

Not only will there be theoretical, political, and logistical problems with the above blocs attempting to form their own customs unions, but the current agreements as they stand will be in contradiction of one another's treaties. For example, Article XXXI paragraph 3 of the new SACU agreement prohibits members from negotiating or entering into new agreements with third parties without the consent of the remaining member states. Thus Swaziland cannot negotiate further with COMESA without the (unlikely) approval of the rest of SACU. Swaziland is currently awaiting responses from its fellow SACU members to its request to participate in the COMESA FTA. Namibia gave notice of its withdrawal from COMESA in 2004 to avoid such conflict.

# Overlapping Membership



In terms of the SADC Protocol on Trade (Article XXVIII, paragraph 2), member states cannot enter into a preferential trade agreement (PTA) with third countries that may:

*“impede or frustrate the objectives of [the] protocol and that any advantage, concession, privilege or power granted to a third country under such agreements is extended to other Member States”*

Likewise, Article 56 of the COMESA Treaty states that

*“Member States are free to enter into bilateral or multilateral agreements provided that such agreements are not, and **would not be, in conflict** and do not undermine the COMESA FTA and CU”*

And Article 37 (4a) of the EAC Protocol on the Establishment on the East African Customs Union says that

*“A Partner State may separately conclude or amend a trade agreement with a foreign country provided that the terms of such an agreement or amendments are **not in conflict** with the provisions of this Protocol”.*

Clearly a formal agreement towards the implementation of another CET is “in conflict” with the first agreement signed. There are other legal problems that may arise, both from within the protocol agreements as well as WTO commitments. These arguments are spelt out by Joubert (2004), Muti (2003) and Bohanes (2002) of the Trade Law Centre for Southern Africa (Tralac).

Another problem of overlapping membership has arisen with the current Economic Partnership Agreement (EPA) negotiations with the European Union. Ideally, each ACP region would negotiate its own agreement, but due to the membership of different blocs, countries in southern Africa have had to create new groups from which to negotiate and to decide with which group it will negotiate – thereby forcing a choice to be made. For example the BLNS countries (Botswana, Lesotho, Namibia and Swaziland), Angola, Mozambique and Tanzania are negotiating under a SADC umbrella known as the SADC minus group (as not all SADC countries are negotiating through this group). South Africa has already concluded its Trade and Development Cooperation Agreement (TDCA) with the EU, whilst the remaining SADC countries have opted to negotiate with the Eastern and Southern Africa group (ESA), which is essentially COMESA minus Angola, Swaziland and Tanzania (in the SADC group) and Egypt which is not an ACP member and has its own agreement with the EU. As the EPA negotiations require trade and tariff concessions on both sides, it is unclear how these would be maintained if, for example the SADC members currently negotiating with the ESA group were to join the SADC CU. They then would not be able to offer the same concessions as negotiated under the ESA EPA. The same would be the case with the EAC/COMESA and EAC/SADC members. It is also very unclear how Tanzania can implement its commitment to the EAC Customs Union (which came into force in January 2005) whilst negotiating an EPA as part of the SADC minus group and its two other EAC partners are negotiating with the ESA group.

Given that the EPA negotiating groups do not actually need to be finalised until the agreement is finally signed, there may yet be some shifting around within the groups. Tanzania for example may ultimately follow economic and logistical logic and negotiate with the ESA group. With the launch of the EAC CU, and the COMESA membership of Kenya and Uganda, it is going to become increasingly problematic for Tanzania to negotiate a third party agreement outside of these frameworks. Additionally, if the negotiations appear to be heading towards an agreement which the LDC countries perceive as creating more risk than the Everything But Arms initiative, the LDC nations may well pull out of whichever negotiating group they were previously part of. In such an event, the SADC minus group could disintegrate, leaving the BLNS countries to negotiate their positions under a revised TDCA. A mid-term review of the SA-EU TDCA is currently underway so there is a possibility that the BLNS countries, which are already de facto parties to the TDCA, may attempt to join this agreement instead of negotiating an EPA.

### **Possible scenarios**

Whilst the EPA negotiation groups have been established for the time being, the issue of multiple commitments to different CETs has not. If the current blocs of SACU, SADC, COMESA and the EAC all maintain their aim to form their own customs union it is clear that the current form of the RIAs will not be sustainable. The IOC and IGAD have both stated they do not intend to establish CUs but rather to work within the COMESA CU framework.

There are several scenarios that could emerge further down the line. These are based on certain perceptions:

- SACU, which has been functioning in one form or another for over a hundred years is not going to disappear in the near future.
- The EAC has a very strong political and economic rationale.
- SADC has strong political commitment whilst COMESA has a stronger economic basis.
- An ECCAS CU does not pose an immediate threat to any of the above groups and hence will not be included in the scenarios.

**Table 2. Summary of Scenario Options**

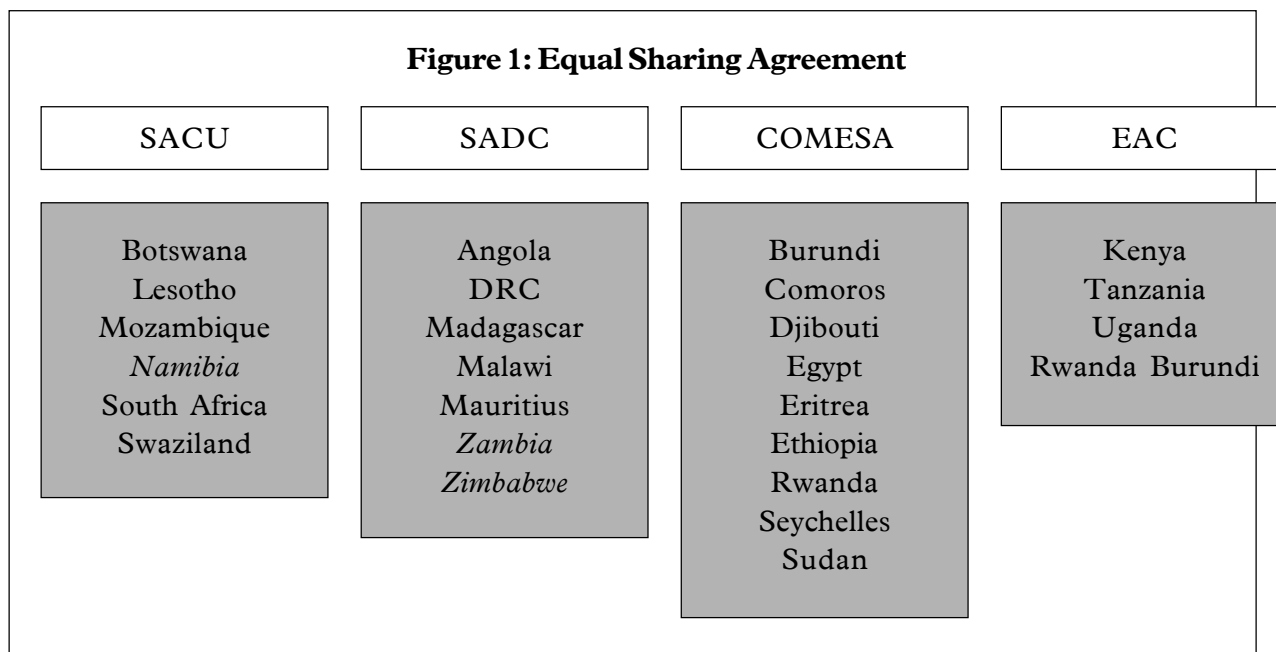
<b>Scenario 1: Equal Sharing</b>	<b>Scenario 2: SACU/SADC</b>	<b>Scenario 3: Strong COMESA</b>	<b>Scenario 4: One Happy Family</b>
<p><b>SACU</b> Botswana Lesotho Mozambique Namibia South Africa Swaziland</p> <p><b>SADC</b> Angola DRC Madagascar Malawi Mauritius Zambia Zimbabwe</p> <p><b>COMESA</b> Burundi Comoros Djibouti Egypt Eritrea Ethiopia Rwanda Seychelles Sudan</p> <p><b>EAC</b> Kenya Tanzania Uganda Rwanda Burundi</p>	<p><b>SACU/SADC</b> Angola Botswana DRC Lesotho Madagascar Malawi Mauritius Mozambique Namibia South Africa Swaziland Zambia Zimbabwe</p> <p><b>COMESA</b> Burundi Comoros Djibouti Egypt Eritrea Ethiopia Rwanda Seychelles Sudan</p> <p><b>EAC</b> Kenya Tanzania Uganda</p>	<p><b>SACU</b> Botswana Lesotho Mozambique Namibia South Africa Swaziland</p> <p><b>COMESA</b> Angola, Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya Madagascar, Mauritius, Malawi, Rwanda, Seychelles, Sudan, Swaziland, Tanzania Uganda Zambia, Zimbabwe.</p>	<p>Angola, Botswana Burundi Comoros, Djibouti, DRC, Egypt, Eritrea, Ethiopia, Kenya, Lesotho Madagascar, Malawi, Mauritius Mozambique Namibia Rwanda, Seychelles, South Africa Sudan, Swaziland, Tanzania Uganda, Zambia, Zimbabwe</p>

The following scenarios, summarised in Table 2 are explained in more detail in the following sections.

*Scenario 1: Equal sharing*

If, due to political reasons all four groupings have to remain, the distribution shown in Figure 1 would be the most likely and ‘fair’ scenario, where members are reasonably equally shared across the groups. As Mozambique has indicated a preference to join SACU they have been placed in the SACU group, but if this does not materialise they would be in the SADC group. Likewise,

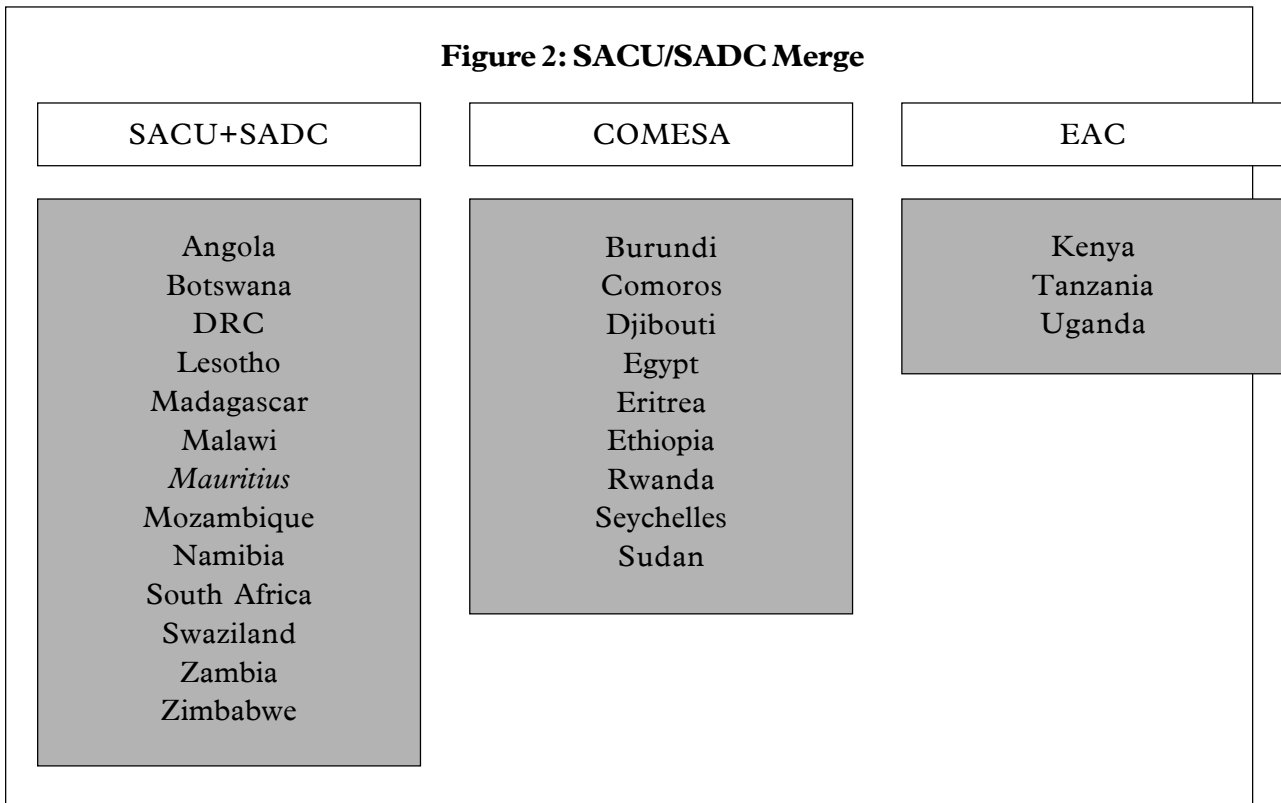
Madagascar has indicated a preference to join SADC (hence questioning their commitment to COMESA) so they have been placed in the SADC group. The SACU countries would pull out of SADC, the joint SADC/ COMESA countries leave COMESA and the EAC countries pull out of their other groups. Burundi and Rwanda may stay in COMESA, but due to their increasingly likely inclusion into the EAC they have been placed under the latter group. This scenario does however maintain a very fragmented approach to integration with many of the gains already achieved being lost.



*Note: Italics indicate where it is unsure which group a country may opt to join.*

*Scenario2: SADC merges with SACU*

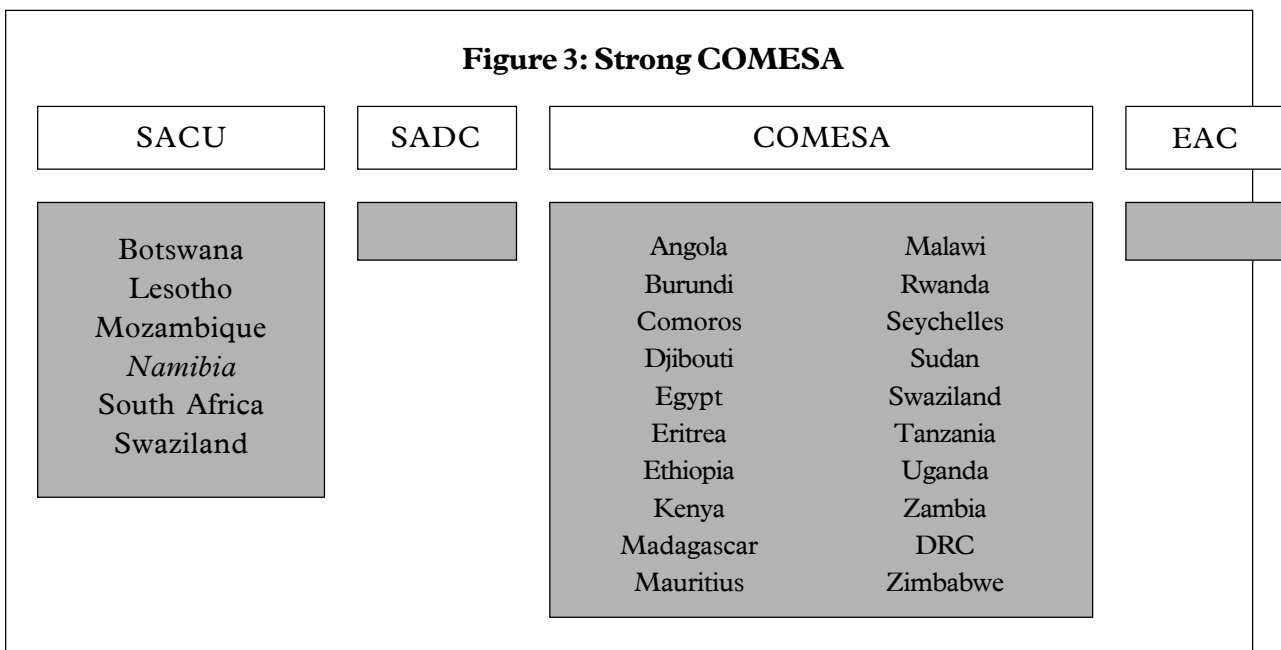
Figure 2 depicts a merger between SACU and SADC or rather the gradual expansion of SACU to incorporate the rest of SADC, with Tanzania withdrawing from SADC and the COMESA SADC countries withdrawing from COMESA. As SACU is a fully functioning Customs Union, and contains the regional powerhouse South Africa, it is likely that the remaining members of SADC would seek to build on what already exists in SACU rather than attempt to force SACU to enter into an entirely new SADC Customs Union. Whilst this is theoretically possible, given the depth of integration and complexity of the SACU agreement (and the fact that it took eight years to negotiate the new agreement between five existing members) it is unlikely that such a merger could realistically take place in the near future. Nevertheless it is possible. There may however be some ‘cherry picking’ whereby certain SADC countries are invited into the expanded SACU (as is possibly the case currently with Mozambique) and others are left to stay in COMESA. In this scenario we also see the EAC maintaining its identity. There is a cohesiveness within East Africa which is only otherwise seen in the SACU region. In this scenario COMESA ends up as a rather weak institution covering the Great Lakes, the Horn and north east Africa. COMESA’s position would be further weakened if the EAC gains strength as in Scenario 1 above with Burundi and Rwanda joining their ranks. However, given the understanding between the EAC and COMESA dual membership may be possible for a while (as with Kenya and Uganda). Such an event would be more likely to increase synchronisation between the EAC and COMESA with stronger likelihood of an eventual merger (at least on a trade level) between the two institutions.



Note: Italics indicate where it is unsure which group a country may opt to join.

**Scenario 3: Strong COMESA**

A third scenario is that COMESA becomes a dominant group in the region, and forms a CU in the relatively near future, maintaining all its current members except Swaziland which stays with SACU, but it gains Tanzania after an absence of a few years. Thus those joint members of SADC and the EAC are locked into COMESA. This is based on the assumption that the EAC CU merges with the COMESA CU, which is a not unreasonable assumption, given the high level of commitment by these two bodies to working together. This then just leaves Mozambique which



joins SACU, something that is already on the cards. This scenario may be somewhat more feasible than some of the others, although it also will be difficult as those SADC countries north of the Limpopo may not want to lose the South African connection. The solution to this dilemma would lie in developing an FTA between the two remaining blocks of SACU and COMESA. The current EPA negotiating groups would assist the strengthening of COMESA vs SADC. The main factors holding SADC together are its political history and access to the South African market. Thus, if this latter condition is satisfied, such as through the negotiation of an FTA between COMESA and SACU, SADC could still operate, but would hand over its responsibility for trade to COMESA.

*Scenario 4: One happy family!*

In terms of the ideals of the African Union, one happy family covering eastern and southern Africa would be the ideal. Under this scenario all current RIAs agree to a plan to harmonise their current strategies and ultimately integrate and form one large regional trading bloc. However given the problems in reaching agreement within the smaller groups, it would be very difficult to envisage establishing one bloc in the near future. Nevertheless this would be the best route to take in the longer term. In time, this bloc would be able to merge with those from Central, West and North Africa to form the African Economic Community, as per the Abuja Treaty of 1991.

<b>Figure 4: One Happy Family</b>		
South Africa	Comoros	Malawi
Botswana	Djibouti	Rwanda
Lesotho	Egypt	Seychelles
Namibia	Eritrea	Sudan
Mozambique	Ethiopia	Swaziland
Tanzania	Kenya	Uganda
Angola	Madagascar	Zambia
Burundi	Mauritius	DRC
		Zimbabwe

**Conclusion**

Apart from the above four scenarios, there are of course further variations along similar lines. The above scenarios however depict the kind of options that may be followed. It must be remembered that Europe went through a process of varying memberships, rationalisation and groupings until the current situation was reached earlier this year with a 25 member European Union and a four member European Free Trade Area (EFTA), both of which are linked together by a free trade agreement in the Agreement on the European Economic Area.

Whichever final bloc or blocs emerge in eastern and southern Africa is to some extent less important than the process and the timing by which the rationalisation process takes place. Otherwise resources (both human and financial) which are already scarce enough in this part of the world will continue to be stretched even thinner. Some rationalisation has already started. Over the last five years, we have witnessed the withdrawal from COMESA of Lesotho, Mozambique, Tanzania and most recently Namibia. We have also witnessed the withdrawal of Seychelles from

SADC. These are choices made for political and to some extent economic reasons. Alongside this however is the continuing growth of the problem with Madagascar joining SADC in the near future. Furthermore Burundi and Rwanda whilst being members of COMESA (as well as ECCAS) have recently applied for membership of the EAC. If all goes to plan, they will become members before the end of 2005. Does this indicate a collapse of COMESA? Probably not, because at the same time COMESA is clearly achieving progress through its FTA with 11 members already trading without any tariff barriers (and hopefully shortly with significantly reduced non-tariff barriers). Furthermore COMESA has made good progress in preparations for the EPA negotiations and is giving strong support in this regard to its member States. Hence the decision by Malawi, Mauritius, Zambia and Zimbabwe to negotiate their EPA under the ESA grouping, rather than under SADC.

One fact is fairly certain. SACU will continue to exist, albeit in a possibly expanded format in years to come. It has been around for a hundred years and will not disappear overnight. The old arrangement worked for the benefit of its members. The new arrangement is also bringing about benefits for its members. Another important fact is that South Africa is a major player in the region, from both a trade and investment perspective, and is central to future relations between SADC and COMESA.

This region may well be going through a similar process now as to what happened in Europe and we may well end up in a few years' time with an Eastern and Southern African Economic Area, covering a free trade agreement between an expanded SACU (possibly merged with SADC or parts thereof) Customs Union and the COMESA (probably merged with EAC) Customs Union. Whichever way the groupings go, it is time for our political leaders now to start making some hard choices, based on an economic as well as political rationale, to make progress with rationalisation.

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