THE CHALLENGE OF RECONCILING REVENUE DISTRIBUTION AND INDUSTRIAL DEVELOPMENT IN THE SOUTHERN AFRICAN CUSTOMS UNION

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1. Introduction

The author was briefed to prepare a paper that provides context to a discussion of the harmonisation of industrial policies within the Southern African Customs Union (SACU) to ensure developmental integration.[1] Specific issues to be addressed are:

- The institutional arrangement of the customs union and its revenue distribution formula;
- Its development strategy, including the key elements of the SACU agenda; and
- Considerations of SACU expansion and possible future scenarios.

The new SACU Agreement, concluded in October 2002 and operational since July 2004, has given 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. These provisions have been formulated to take cognizance of the unequal nature in economic size and level of industrial development between South Africa, which generates more than 90 per cent of the SACU 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. [2] In the case of SACU the difference in economic size is enormous by any standard. This and the peculiar political history of the SACU add to the complexity of having to manage regional integration effectively.

In considering likely future developments and challenges the premise of the paper is that an understanding of the past, that is, the history of SACU, is necessary to contemplate the nature of SACU and what the future under the 2002 Agreement might hold. Hence, the paper will briefly touch on the origins and development of SACU. But to provide perspective on the SACU Agreement as an instrument of development, it will be helpful to first contemplate the rationale of a customs union as an integration arrangement. Against this background it will be possible to review the conflicting goals of revenue earnings and economic development, and consider the possibility of SACU expansion.

2. Nature and Rationale of a Customs Union

SACU is a customs union (CU), which is a distinctive RIA. The essential characteristics of a CU are the following:

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[1] The paper draws and builds on earlier work by the author, notably "The Southern African Customs Union in Transition", *African Affairs*, No. 102, 2003; *Managing the Southern African Customs Union – A Focus on the Secretariat*, Unpublished paper prepared for the SACU Secretariat, 2006; and *The Southern African Customs – A Review of Critical Elements in the Development of the World's Oldest Customs Union*, Paper prepared for the Trade Law Centre for Southern Africa, 2005.

[2] R.J.Langhammer, "Promotion of Integration 'through the market'. The Experience of Trade-Offs between Political and Economic markets in Sub-Sahara Africa", *Report of the Workshop on the Promotion of Regional Cooperation and Integration in Sub-Saharan Africa*, European University Institute, Florence, 1992.

- There are no tariffs on imports from other CU member states, and
- The member states share a common external tariff (CET).

In the linear model of regional integration the first condition applies to free trade areas as well, but the latter does not have a CET. Each member state has its own external tariff with respect to imports from non-members. This means that the *CET is the defining feature of a CU*.

The existence of the CET as the defining feature has implications for the management of a CU.

- Customs revenue must be collected and divided between the member states according to an agreed formula.
- An organisation must exist at the regional level to manage the CET, that is, decide on tariff amendments, including changes to the ordinary tariff, trade remedies and duty rebates and drawbacks.
- The CET requires a CU to negotiate trade agreements as a single, legal entity.
- The import tariff is an important instrument of trade and industrial policy and the existence of the CET means a loss of policy sovereignty in this regards, which requires a significant degree of industrial policy harmonisation and common trade policies.[3]

The CU must at the regional level administer the collection and distribution of customs revenue and provide support for the policy apparatus that decides on import tariffs.

Turning to the rationale of a CU, two questions need to be addressed. The first asks why any developing country would wish to join or remain part of a RIA, and having answered this, why a CU would be the preferred model of regional integration.

The obvious and simple answer to the first question is that any prospective participant in a RIA seeks to accelerate its economic growth and development through participation. However, history and experience has shown that RIAs often have a political origin. The Southern African Development Coordination Conference (SADCC), the predecessor of the Southern African Development Community (SADC), was largely initiated by a desire to be less dependent on apartheid South Africa. Even SACU had an underlying, albeit implicit, political motive in its early years.[4] There is even a view that the recent surge in regionalism has a non-economic and political explanation: "Political ambition of creating territorial identity, political convergence, collective security and regional coherence now seem to be the primary, neo-mercantilist goals of the new regionalism".[5] A final

[3] Given the broad distinction and choice between inward-looking, protectionist policies on the one hand and outward-looking, export-led policies on the other, it follows as a matter of course that it is impossible for some member states of a CU to opt for a protectionist policy position while others prefer the outward-looking approach. It is possible to accommodate differences in industrial policy but as will become clear below, even in this regard the room for deviations is limited.

[4] The expectation was that Bechuanaland, Basutoland and Swaziland would eventually be incorporated in the Union of South Africa and in this sense the SACU Agreement could have been regarded as an interim measure to manage the economic integration of the separate political entities.

[5] P. Mistry, "Open Regionalism: Stepping Stone or Milestone toward an improved Multilateral System", in J. J. Teunissen (ed.), *Regionalism and the Global Economy – The Case of Latin America and the Caribbean* (The Hague: Forum on Debt and Development, 1995), p. 13.

observation in this regard is that political and strategic cooperation in a region could even precede economic integration, as occurred in the case of the Association of Southeast Asian Nations (ASEAN). This regional bloc was established in 1967 for political and strategic reasons and only in 1977 followed this with a Preferential Trading Arrangement and in 1992 the gradual establishment of the ASEAN Free Trade Area (AFTA).[6]

But even if political considerations drive RIAs, regional integration remains an economic construct from which member states will expect an economic return. 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. 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. These observations are based on perceptions of absolute returns; 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 example, can partly be ascribed to the Tanzanian view that Kenya was deriving the lion's share of benefits from the RIA.

The question remains of why regional integration and specifically a CU will provide economic benefits? In theory the possible economic outcome is explained in terms of static and dynamic consequences of CU formation.

The *static effects* describe the once-off change in the economic welfare of society associated with the well-known Vinerian distinction between *trade creation* and *trade diversion* as possible outcomes of customs union formation. Should CU formation cause the displacement of sales by a higher cost domestic producer with the output of a cheaper producer in a partner country, production will be shifted to more efficient producers. This is called trade creation and represents gains from regional integration.[7] But the opposite can also occur with the customs union causing lower-cost goods imported from outside the customs union to be displaced by higher-cost goods produced in 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.

It is widely agreed that the integration of developing countries is unlikely to produce net static benefits. For them the benefits are rather sought in the *dynamic effects* that result from the larger market for free trade created by the CU. An emphasis on dynamic benefits shifts the focus to the RIA as an instrument of economic growth and development.

Domestic producers that are complacent in their protected domestic economy must become more efficient to meet the *competition* of other producers within the union. Increased competition is also likely to encourage the development and utilisation of new technology. The end result will be lower production costs for the benefit of consumers. The lower production costs will be further enhanced by the second dynamic benefit,

[6] Peter Robson, *The Economics of International Integration*, Fourth Edition (London and New York: Routledge, 1998), p. 294.

[7] The net welfare gain to society will in theory be represented by an increase in consumer surplus arising from a lower purchasing price that is only in part offset by the loss of government revenue when the tariff is eliminated and the reduction in rent because of the fall in domestic production. This is summarised by the "two triangles" of conventional partial equilibrium tariff analysis.

namely the opportunities for *economies of scale* provided by the larger market. These dynamic benefits are of particular importance for developing countries for which the potential competitive gains may be larger than for developed economies. According to Schiff and Winters: "The small size and relatively closed structure of many developing countries mean that there is scope for more fully exploiting economies of scale and for removing local monopoly power".[8]

The popular counter argument is that small economies do not have to depend on CU formation for economies of scale. These can also be realised by production for the world market. This is true for high-income, industrialised small economies but in the case of developing countries the contention is that it is relatively easier to expand production through exports if the market destinations are partners in the common customs area. For developing country firms the larger regional market presents an "incubator" environment in which export skills can be developed. The corollary of this argument, when import-substituting industrialisation was in vogue during the 1960s and 1970s, was that the larger market protected by the CET of the CU provided more scope for import substitution than what was available in the domestic market.

A third dynamic benefit is the possible encouragement of *investment* to take advantage of the enlarged market created by the CU. This need not be restricted to investment by firms located in the customs union but could be foreign direct investment in which case the enlarged protected market encourages "tariff jumping", that is, subsidiaries of foreign firms locate in the common customs area to have access to the larger market.

In considering the rationale of a CU with its CET, an issue that is highly relevant in the SACU context is the fact that customs unions are not created to earn revenue for the participating member states. The economic reasons for the existence of a CU are sought in static welfare effects and, as far as developing countries in particular are concerned, in the dynamic benefits of growth and development.

3. Pre-2002 history of SACU

The Southern African Customs Union (SACU) is an enigma. It is the world's oldest customs 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 a customs union between a political pariah, apartheid South Africa, and three and 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 Botswana, Lesotho, Namibia and Swaziland (BLNS) on the other, adds to the enigmatic nature of the Customs Union.

An important characteristic 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. This means that there is an important discrepancy between SACU and say

[8] Maurice Schiff & L. Alan Winters, Regional Integration and Development (Washington D.C.: The World Bank, 2003), p. 52.

MERCOSUR where four member states set out to create a customs union. 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.

SACU dates back to the formation of the Union of South Africa in 1910. Following the South African War (1899-1903), the Cape Colony, Natal, the Orange River Colony (the old Republic of the Orange Free State) and the Transvaal were in 1910 joined together as the four provinces of the Union of South Africa. This Union included only four out of a larger group of British controlled territories.

Before Union, different customs arrangements existed between the various British territories, the first being the 1889 Customs Union Convention between the Colony of the Cape of Good Hope and the Orange Free State (OFS). This established a customs union that provided for free trade within the customs union area and a CET of 12 per cent against imports from neighbouring territories and the rest of the world.[9]

Following this initial step a number of other developments took place, including an expansion of membership and new customs union agreements, all aiming to establish and manage a CET. An important development that preceded Union, and the developments that this necessitated, was the adoption in 1906 of the South African Customs Union Convention.[10] This Agreement created a customs territory consisting of the Cape Colony, Orange River Colony, Transvaal, Natal, Southern Rhodesia, North-western Rhodesia, Basutoland, the Bechuanaland Protectorate and Swaziland. All these territories under the British flag, with the exception of the Cape and Natal, were landlocked and thus depended on the harbours of the latter two for trade and imported supplies. Customs arrangements, therefore, were a prerequisite for commerce in the region.

Formation of the Union required a major re-alignment of customs affairs. On 1 July 1910 two customs agreements came into operation. An agreement was concluded between the Union, Southern Rhodesia and North-western Rhodesia providing for the remittance of duties collected on goods in transit to the importing territory, subject to a 5 per cent collection charge. This, in effect, represented a free trade area with a 5 per cent revenue rate.

A second agreement established the Southern African Customs Union (SACU) - the subject of this paper - between the Union of South Africa and the High Commission Territories (HCTs) of Basutoland, Swaziland and the Bechuanaland Protectorate. The customs union provided for a duty free flow of goods between member states. The common external tariff was a basic (uniform) *ad valorem* rate of 15 per cent. The revenue generated was administered by South Africa and distributed among the members on the basis of fixed percentage shares that left South Africa with about 98.7 per cent of the revenue pool. The respective HCT shares remained unchanged until 1965 when it was adapted at the cost of Basutoland and substantially in favour of Swaziland and marginally in favour of Bechuanaland.

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[9] Gavin Maasdorp, A Century of Customs Unions in Southern Africa 1889-1989, *South African Journal of Economic History*, Vol. 5(1), 1990. The article by Maasdorp can be consulted for a clear and succinct account of the different developments from the 1889 Customs Union Convention up to and including the Southern African Customs Union Agreement of 1969.

[10] Prior to the establishment of the Union of South Africa, the term “South Africa” as used in the sense of the Customs Convention was merely a geographic indication and not the name of a country.

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. The Agreement was concluded on 11 December 1969 and came into operation on 1 March 1970.[11] 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 customs union revenue.[12] 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.

In its preamble the 1969 Agreement highlighted as objective the maintenance of free trade behind a common external tariff. However, it was envisaged that free trade within the common customs area would be managed in a way that will "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 customs union and the diversification of their economies, and afford to all parties equitable benefits arising from trade among themselves and with other countries".[13] Asymmetry in development was anticipated, with industrial development concentrating in the high-growth metropolitan areas of South Africa because of the forces associated with the economies of agglomeration. The important point to grasp is that the 1969 Agreement explicitly provided for the development of the lesser developed customs union members and thus displayed an effort at developmental regional integration.

The 1969 Agreement and the management of the customs union were characterised by operational problems inherent to the structure of the Agreement.

First, the South African tariff remained the CET, managed by South African authorities primarily in the interest of the South African economy. The same applies to excise duties. Although the Agreement specified consultations on customs union changes, the consent of other parties was not required and decisions and implementation were not withheld pending a response from BLNS. Also, consultations were not required where interim measures were to be implemented to protect an industry, pending a full investigation by the South African authorities. South Africa could in terms of the Agreement change tariff levels unilaterally.

This situation was at the heart of the argument that SACU was undemocratic. As Schiff and Winters put it: "In the most hegemonic of customs unions, SACU, South Africa simply decided trade policy and compensated the smaller countries for the costs it imposed on them".[14] The compensation will be discussed below; at this point it needs to be noted that since a customs union is defined by having a CET it follows that it must also have "a

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[11] The revenue sharing formula, which will be discussed below, was implemented retroactively from 1 April 1969.

[12] P.M.Landell-Mills, "The 1969 Southern African Customs Union Agreement", *The Journal of Modern African Studies*, Vol. 9(2), 1971.

[13] Republic of South Africa, Customs Union Agreement between the Governments of South Africa, Botswana, Lesotho and Swaziland, *Government Gazette*, No. 1212, 12 December 1969, p. 9.

[14] Maurice Schiff and L.Alan Winters, *Regional Integration and Development*, Washington, D.C.: The World Bank, 2003, p.85.

trade policy that is common in all respects".[15] This allowed South Africa, although a member of a customs union, the freedom to adopt SACU tariff policies that were in line with its own particular development objectives. However, a trade-off could exist between using the tariff as an instrument of trade and industrial policy and the role that tariff has as a source of revenue, which in developing countries is more highly regarded than in developed economies.

This potential trade-off became a contentious issue in SACU since it highlighted a *second* problem, namely the different perspectives on the role of the tariff. South Africa regards the tariff as an instrument of trade and industrial policy. Earlier, the tariff was used as instrument to protect domestic industry for the sake of import-substituting industrialisation but since 1994 the South African government has been committed to a lowering of the tariff, whether within the WTO system of multilateral trade liberalisation,[16] or in preferential trading arrangements. BLNS, however, sees the tariff primarily as a source of government revenue, a consideration that is regarded as relatively unimportant by South Africa. While the process of South African driven trade liberalisation could have been expected to raise BLNS concerns about its impact on customs revenue, this was avoided by the nature of the 1969 Agreement's revenue distribution formula, which, as will be noted below, guaranteed BLNS a minimum revenue return on imports and dutiable consumption and production.

The *third* problem concerned the compensation and the mechanisms that existed to address the drawback for BLNS of being part of a common customs area with a much larger and more developed economy, and for the policy sovereignty they sacrificed. For BLNS the essential problem of trade diversion and economic polarisation had been that they perceived little proportionality between the distribution of costs and benefits between South Africa and BLNS. 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. The first was to provide BLNS with a mechanism that would allow them to protect their industries against competition from established South African firms by inserting in the 1969 Agreement provision that allowed BLNS to protect infant industries (article 6) or industries regarded as of special interest to their economies (article 7).

The second measure was contained in the design of the revenue-sharing formula, which calculated revenue shares for the BLNS countries, while South Africa kept the residual as its share. The formula provided for a nominal 42 per cent enhancement of the smaller countries' share of customs and excise revenue, but since 1975/6 the introduction of a stabilised revenue rate (the rate of revenue earned on imports and excisable consumption) around a target level of 20 per cent, within a band of 17 per cent at the lower end and 23

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[15] Schiff and Winters, *op.cit*., p. 82.

[16] Between 1988 and 2001 the weighted mean level of the SACU tariff for all products declined from 12 % to 5.6% and for manufactured goods from 9.5% to 5.8%. The World Bank, *2005 World Development Indicators*, Washington D.C.

per cent as the maximum, the 1.42 multiplier was effectively done away with.[17] This meant that BLNS have been guaranteed a minimum revenue rate of 17 per cent on import values and excisable consumption and production. The adequacy of the compensation built into the revenue distribution formula and the effectiveness of the special provisions to encourage BLNS infant industries were questioned by BLNS.

A counter perception, held especially by the South African Treasury, was that SACU had become an overly expensive fiscal exercise. This concern was exacerbated by the inclusion of excise duties in the revenue pool and the stabilised revenue rate that produced an effective multiplier far in excess of the formula's 42 per cent. Including excise duties in the revenue pool of a customs union is exceptional and for South Africa the inclusion of this progressive source of taxation and its enhanced allocation to BLNS became a fiscal problem. It was not difficult to envisage a scenario which saw BLNS revenue allocations in excess of the revenue pool with South Africa then having to supplement revenue from other sources. There was no provision in the 1969 Agreement that the residual that remained for South Africa had to be a positive sum.

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 who 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 customs union. A central theme of the paper is that this system of customs union management had evolved historically and was deeply imbedded 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 customs union with apartheid South Africa.

Clearly, this arrangement could not endure in the long run, especially where the "long run" brought about a democratic South Africa with whom BLNS could, without hesitation and qualification, associate politically. Hence, one of the first priorities of the SACU members following the political transition to democracy in South Africa was to renegotiate the SACU Agreement. Before reviewing the outcome of these negotiations it should be noted

[17] The revenue sharing formula could be stated as follows: $R = (m + q)/(M + Q) \,.\, H \,.\, 1.42$ subject to the constraint $R = \geq 0.17\ (m + q)$ and $R = \leq (m + q)$ where R equals the revenue share of BLNS respectively, m the value of dutiable imports and q excisable consumption and production of a BLNS country, M the dutiable imports into and Q the excisable production in the common customs area, H the revenue (customs and excise) in the customs union pool. The stabilisation factor was constructed to produce a multiplier that would only come to 1.42 when the revenue rate prior to stabilization equals 20 per cent precisely. When the revenue rate fell to below 20 per cent, as it mostly did since the introduction of the stabilisation factor, the enhancement would exceed 42 per cent.

that the story told so far reveals four factors to have remained of fundamental importance for SACU:[18]

- Integration through a customs union was necessary to accommodate the flow of goods among territories that were locked into an integrated economy with separate political jurisdictions. SACU forms part of the colonial legacy of southern Africa. It started life not as the pro-active formation of a CU by a group of independent neighbouring states but as an *ad hoc* arrangement to deal with the practical problems of separate political entities more or less sharing an integrated economy.

- The South African tariff served as the tariff of the customs union. The import tariff has long been an important instrument of industrial protection, but since the mid-1990s it has been lowered to encourage outward-looking development. For BLNS, however, the tariff served as an instrument that generated revenue for a revenue pool on which they depend for sizable contributions to their treasuries.

- A CET generates revenue that, together with excise duties, has to be divided among member countries; consequently, the customs union agreement had to provide a mechanism and formula for the distribution of revenue. The distribution mechanism was managed by South Africa, and in terms of the 1969 Agreement it favoured BLNS. Payments were made to BLNS per formula within set minimum and maximum revenue rates, with South Africa's share determined as the residual. Over time SACU generated revenue has become an important and in some cases the principal source of recurrent revenue for the smaller member states.

- While the 1910 Agreement was primarily a mechanistic means of dealing with the situation of three British dependencies' economic integration into South Africa, the 1969 Agreement explicitly recognised and provided for the economically weaker position of the smaller customs union members vis-à-vis South Africa. SACU came to be recognised as an instrument of development, at least in the wording of the Agreement. For BLNS the main consideration remained revenue.

4. The 2002 SACU Agreement

The 2002 Agreement in many respects can be regarded as a framework agreement. It sketches the outline of the rules that will apply in the management of the customs union but much of the detail on how this is to take place will have to be negotiated as protocols to be incorporated in annexes to the Agreement.

The Agreement represents a radical change in the management of SACU. What is important is the transformation of a uniquely managed customs union into one that meets the requirements and characteristics noted in Section 2. The free flow of goods between member states that share a CET was an important goal of the 1910 and the 1969 Agreements, and in the 2002 Agreement the facilitation of the cross-border movement of goods is listed as the first objective in article 2.

Development and the intention to address inequality between member states also appears in the preamble to the 2002 Agreement where the contracting governments declare themselves "(M)indful of the different levels of economic development of the Member

[18] McCarthy, op.cit., p. 612.

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".[19] Global integration thus became a SACU goal, which was not the case in the 1969 Agreement, thus reflecting the shift in South Africa's trade policy towards one of liberalisation and the enhancement of international competitiveness of industry.

In addition to this new angle of global integration the preamble and the objectives of the Agreement (Article 2) add a further three important elements that distinguish the 2002 Agreement from its predecessor:

- Effective democratic institutions are to be established, including provision for dispute settlement;

- Common policies and strategies, specifically the development of common industrial policies are to be adopted; and

- The important role of the tariff as an instrument of industrial development policy is recognised.

It is also significant that the 2002 Agreement, unlike the 1969 Agreement, recognises the customs union as a single negotiating entity in international negotiations and the conclusion of trade agreements. [20] The new agreement contains a separate section (Part Eight) that provides for common policies, of which the commitment to develop common industrial policies is of special significance.

The objective of democratising the management of SACU necessitated a radical change in customs union institutions and practices. The supreme governing function is allocated to the Council of Ministers (article 8), which is to be supported by the Customs Union Commission (article 9), the Secretariat (article 10), the Tariff Board (article 11), and four technical liaison committees (article 12, on agriculture, customs, trade and industry, and transport). A Tribunal (article 13) is to provide a dispute settlement mechanism. In addition to these customs union bodies each member state will also set up a National Body (article 14) or designated institution that will receive and investigate requests for tariff changes and other related SACU issues.

An extensive discussion of these institutions is not called for in this paper.[21] Suffice it to emphasise two important considerations:

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[19] Southern African Customs Union Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, 2002.

[20] World Trade Organization, *Trade Policy Review Southern African Customs Union*, Report prepared by the Secretariat, WT/TPR/S/114, March 2003.

[21] For a brief description of the SACU institutions in the context of the historical development of SACU see Colin McCarthy, *op.cit*., 2003 and for a critical legal analysis of the institutions see Gerhard Erasmus, "New SACU Institutions: Prospects for regional Integration", in: Dirk Hansohm, Willie Breytenbach, Trudi Hartzenberg & Colin McCarthy (eds.), *Monitoring Regional Integration in Southern Africa*, Volume 4, Namibian Economic Policy Research Unit, 2004.

- While the Commission and the Secretariat will primarily be responsible for administration and management of the customs union, policy issues and decisions on changes in the CET will rest with the Tariff Board, which is to be an independent body representative of all member states. The Tariff Board will consider requests and provisional recommendations from the National Bodies on customs tariffs and duty rebates, refunds and drawbacks, as well as trade-related remedies such as anti-dumping actions. The Board will in turn submit its recommendations to the Council for its decision on whether to accept or reject recommendations. It is apparent that the Tariff Board will play a crucial role in the trade and industrial policy of the customs union.

- Decisions by the Tariff Board and the Council are to be taken on the basis of consensus.[22] This means that each member state or representative will have a veto right. Should a dispute arise on the interpretation or application of the SACU Agreement the matter will be referred to the Tribunal. The latter will consist of three members, selected on an *ad hoc* basis from an approved list of potential candidates by the parties involved in the dispute, who by majority vote shall make final and binding decisions.

These two points demonstrate that the 2002 Agreement has been designed on the premise of a fundamentally different approach to the management of SACU. Major decisions with respect to trade and industrial policy will not be taken by South Africa, effectively deciding on behalf of SACU, but will now be delegated to supra-national (inter-state) SACU institutions. Overtures of Brussels make their appearance and once operational the economic management of the customs union will be a totally new ball game.

The policy environment that the new institutions will 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"; it goes further in recognising "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".[23] 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".[24]

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[22] In view of the large differences in economic size and level of economic development this was an unexpected move. For example, Gibb observed that "it is hard to envisage a situation where Lesotho has the same voting rights as South Africa", and consequently he envisaged a "form of proportional and/or qualified majority voting". Richard Gibb, "Regional Integration in Post-Apartheid Southern Africa: The Case of Renegotiating the Southern African Customs Union", *Journal of Southern African Studies*, 23**,** 1997, p. 83.
[23] Southern African Customs Union Agreement, 2002, Preamble, and Articles 2 and 38. With respect to agricultural policy (Article 39) and competition policy (Article 40) the key word is "co-operation" in policy design and implementation. Article 41 requires the Council, on the advice of the Commission, to develop policies and instruments to deal with unfair trade between members, which will be annexed to the Agreement.
[24] *Ibid*., Article 2 (g).

5. SACU as a source of revenue

The fact that fairness in the distribution of customs union revenue but not the significance of the tariff as a source of revenue is reflected in the 2002 Agreement should not detract from the importance that BLNS attach, in varying degrees, to the tariff as a source of government revenue. In 2006 the contribution of SACU revenue payments to government revenue came to 20.1% for Botswana, 53% for Lesotho, 41% for Namibia, 56.9% for Swaziland, and only 3.9% for South Africa.[25] Even for Botswana with its more favourable macro-economic conditions and other substantial sources of revenue, the contribution is substantial. For Namibia the dependence on this source of revenue is substantial and for Lesotho and Swaziland it is the principal source.

Table 1: Share of SACU Revenue (%)
Annual average for periods indicated

	South Africa	BLNS
1987 – 90	81.4	18.6
1991 – 95	70.0	30.0
1996 – 00	62.9	37.1
2001 - 04	55.9	44.1

Source: Derived from the South African *National Treasury Budget Review* 2004 and 2005, Pretoria.

Table 2 shows that over time the BLNS share in the revenue pool has grown progressively and has been approaching 50%, with estimates that under the distribution formula of the 1969 Agreement their share would exceed 100% by 2015.[26] If the latter materialised, South Africa would have been forced to pay additional funds into the pool from other revenue sources. Since the mid-1980s, table 2 shows, the real value of the revenue pool has declined because of the fall in the contribution of customs as a source of revenue. The fall in the real value of the customs component can be contributed to a number of factors: import surcharges that initially inflated the customs pool have since 1996/7 been phased out; the tariff has been lowered at the multilateral and regional level; and South Africa makes liberal use of tariff rebates to lower the input costs of South African industry.

[25] Frank Flatters & Matthew Stern, *SACU Revenue Sharing: Issues and Options*, unpublished Policy Brief, August 2006.
[26] Frank Flatters & Matthew Stern, *Implementing the SACU Revenue-Sharing Formula: Customs Revenues*, unpublished report prepared for the South African National Treasury, 8 April 2005.

Table 2: Annual average of revenue pool components (Real values, constant 2000 prices derived from RSA GDP deflator)

	Excise % of nominal values	Pool value	Customs value	Excise Value	BLNS share value	RSA share value
1987 - 90	41.6	18813.0	11076.8	7736.2	3473.7	15339.3
1991 – 95	48.1	16578.5	8630.0	7948.5	4942.1	11636.4
1996 – 00	55.7	16267.1	6047.3	9046.4	6023.8	10243.3
2001 - 04	56.3	16308.5	7134.7	9173.9	7191.2	9117.3

Sources: South African National Treasury Budget Review 2004 and 2005; South African Reserve Bank

The decline in the real value of the revenue pool would have been more serious had it not been for the inclusion of excise duties in the pool and the increase in the contribution of this source by nearly 19% from the average during 1987–90 to the 2001–04 average. This served as a counter to the 35% decline in the real value of the customs component (table 2). During this period the contribution of excise duties to the revenue pool increased from 41.6% to 56.3%. BLNS has not been affected by the decline in the real value of the pool, having more than doubled the real value of their average SACU revenue from R3 473.7 million during 1987–90 to R7191.2 million during 2000-04 (table 2). For South Africa there has, of course, been a more than proportional decline in revenue of 41%.

Under the 2002 Agreement revenue sharing will differ 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 will fall 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 practice in customs unions and during the early phases of the negotiations a change was anticipated. Apparently, the difficulty to administer separate excise regimes in a region with porous borders has led to the decision to keep excise in the revenue pool.

All customs, excise and additional trade duties collected in the common customs area are to be paid into a common revenue pool (article 32) managed by a member state or a SACU institution appointed by the Council (article 33). The revenue, net of the budgeted cost to finance SACU bodies, is to be distributed as the sum of three separate components.

- Customs revenue in the pool is distributed on the basis of each member state's share in intra-SACU imports. The implication of this method of revenue distribution is that it requires the rigorous recording of trade between member states, which runs counter to the rationale of a free flow of goods at low transactions behind the CET of a customs union.

- A development fund is provided, funded by 15% of excise revenue. This will be distributed more or less equally, i.e. 20% of the excise component, among the five member states, with marginal variations above or below 20% on the basis of a member's per capita GDP deviating from the mean per capita GDP of all member

states. If below the mean the member state will receive more than 20%, and above the mean the share will be lower than 20%.

- The remainder of the excise pool is divided among member states in proportion to the share of a member state in the SACU GDP.

The rationale of the distribution formula of customs and excise revenue is clear. The proportional sharing in the excise pool reflects the concern of South Africa, with its much larger GDP, to obtain the largest share of excise. This is a second best solution after having accepted the practicality of keeping excise duties in the revenue pool. As far as customs revenue is concerned, the architects of the new agreement recognised the dependence of the smaller member states on SACU revenue and consequently agreed on a revenue sharing formula that would provide BLNS with revenue protection. Linking revenue distribution to intra-SACU imports, bearing in mind South Africa's large trade surplus with BLNS, is also said to compensate BLNS for the cost-raising and polarisation disadvantages of being in a customs union with South Africa.[27] Under the new agreement with its democratic decision-taking procedures the argument of compensation for the lack of policy sovereignty on the part of BLNS falls away. The development fund is a misnomer of the first order since a separate fund to finance development projects is not provided for. It merely refers to a distribution of a part of excise revenue in a way that recognises differences in relative per capita levels and ends up as contributions to recurrent revenue in the states' coffers.

To base the distribution of customs union revenue on intra-customs union trade and not on shares in revenue-generating imports - imports into the common customs area - is unusual. This system of fiscal compensation could cause more problems than it solves and might in the end even prove to be unsustainable. The fact that the BLNS share will be largely at the cost of South Africa is not the problem *per se*. This, in fact, is intentional compensation. What will prove to be serious are the problems that will arise in managing the distribution mechanism.

It is not the intention of this paper to discuss revenue distribution at length. What is relevant to the story told is the cost of the mechanism and what the management of the distribution will do to relations between SACU members. Three points can be raised.

- The first point is the politically sensitivity built into a distribution system that creates an incentive for each member state to inflate its intra-customs union imports to increase its share of customs revenue. Since the revenue pool is a given amount that needs to be distributed among all members a member state can only increase its share at the cost of other member states. To avoid this problem the data supplied by member states on imports from the rest of SACU will have to be verified. This will require the rigorous recording of trade at border posts, using methodologies and forms that are harmonised and standardised. This will represent a departure form a principal objective of regional integration, and that is the lowering of the transactions costs of trade.

[27] Sifiso Ngwenya , "The New SACU (Southern African Customs Union) Draft Agreement", *Sisebenza Sonke*, Department of Trade and Industry, Pretoria, No. **4** , 2002.

- A second 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 have been distributed. To the extent that re-exports are recorded as imports from South Africa BLNS imports from South Africa will be artificially high.

- The third point of concern is the difference between BLNS and South Africa in their interpretation of the role of the import tariff. Should BLNS maintain a focus on the tariff and customs as a source of revenue, while South Africa sees the tariff as a negligible source of revenue but a meaningful instrument of industrial policy, a potential for conflict arises. The 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 the management of the Customs Union according to common policy guidelines. 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 as the mechanism to address inequality within SACU. To make the new agreement work will require a major change in a mindset that currently focuses on revenue distribution.

6. Industrial and trade policy

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 coordination 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.

In the language of the New Institutional Economics, these bodies are organisations[28] that must be established to achieve certain defined objectives. To formally establish a Tariff Board, a Secretariat, National bodies and a Tribunal is comparatively speaking the easy part of the exercise. The most difficult task will be to design and imbed a new culture of institutions or rules in the management of SACU relationships without which the organisations are bound to fail in their defined missions.[29]

[28] See Douglas C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press, 1990, p.3.

[29] Institutional economics define institutions as “the rules of the game in a society”. Institutions must be distinguished from the organisations that are developed to organise individuals to achieve defined objectives. North used the analogy of sport to illustrate the difference. There are rules (institutions) and players (organisations) in society. The rules define how the game is to be played, while the objective of the team – the organisation - is to play by the rules to win the game.

What are the institutions - the "rules of the game" - required for the effective implementation of the 2002 Agreement to give content to the spirit and the letter of the Agreement?

A first rule would be to develop a consensus vision on the industrial development of SACU and its member states. Such a vision is a prerequisite in deriving the policy criteria that the Tariff Board, Council of Ministers, and ultimately also the Tribunal, can apply in their decisions.[30] Having this rule will in turn require a new institution or rule of regular consultation between SACU member states in designing and aligning objectives and strategies. Only if this occurs can the SACU organisations take appropriate decisions on tariff and related issues and as a single legal entity, as the Agreement requires, participate in bilateral and multilateral trade negotiations. But the institution of sharing common policies and consultation to facilitate this can only be effective if organisations exist that can ensure that these policies are implemented.

On the organisational side of the new SACU management scheme the Council and the Commission are *ipso facto* in place and the Secretariat has been established and is in the process of building its capacity. The Tariff Board, which will be a crucial body in the operation of SACU, still has to be established. The same applies for the National Bodies of BLNS. South African legislation has designated ITAC to be the South African National Body. In the absence of a Tariff Board, ITAC has been tasked by Council to deal with SACU tariff issues but to do so in consideration of the development needs of BLNS.

Setting up the bodies provided for in the Agreement will be counterproductive if the member states continue to behave in the spirit of the 1969 Agreement and the earlier regime. Current indications are that the BLNS are still primarily concerned with the revenue issue while South Africa is involved in a serious effort of developing a new industrial policy. Currently, more than two years into the operational life of the new Agreement, South Africa is reviewing its industrial development policy and advanced drafts have been prepared on *Regional Industrial Development Strategy* and a *National Industrial Policy*, apparently without extensive consultations with BLNS. It is reported that significant industrial policy changes have been implemented or are planned for Lesotho and Swaziland, again without apparent consultation. All of this hardly testifies to a commitment to the development of common industrial policies in SACU.

A lack of commitment to honour the new Agreement as far as industrial development is concerned does not bode well for the effort that will be required to address particularly difficult problems. Article 38.1 requires Member States to "recognise the importance of balanced industrial development for the Common Customs Area as an important objective for economic development" and then to affect this, the Agreement proceeds in Article 38.2 to record that "Member States agree to develop common policies and strategies with respect to industrial development". As noted earlier the dominant economic position of South Africa has been the motive behind the objective of balanced industrial development.

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[30] The need for appropriate policy guidelines, given the commitment to the development of common industrial policies, is reviewed and emphasized in Colin McCarthy & Dirk Hansohm, "Integration through common policy: Challenges for industrial policy in SACU". In: Dirk Hansohm, Willie Breytenbach, Trudi Hartzenberg & Colin McCarthy (eds.), *Monitoring Regional Integration in Southern Africa*, Volume 5 - 2005, Windhoek: Namibian Economic Policy Research Unit & Konrad Adenauer Stiftung, forthcoming.

A couple of reasons can be identified for the difficulties that will be encountered in designing and implementing common industrial policies. The first problem, as a starting point, will be to find common ground on the definition of industrial policy. A daunting obstacle facing the implementation of the new SACU Agreement is that the architects of the Agreement require member states to develop common industrial policies without a clear and precise definition of industrial policy in place, let alone the implications of a commitment to develop common policies.

Industrial policy is one of those popular concepts encountered in discussions on economic development but on closer analysis proves difficult to define precisely. Differences in the definition of industrial policy are obviously reflected in the content found in designs of industrial policy. In this respect two strands in variation can be identified.[31] The first concerns the spread across the economic sectors regarded as the target of industrial policy. Two broad views can be distinguished in this regard, the one being the conventional narrow interpretation that understands the manufacturing sector to be the target of the policy, while the second would have a wider perspective to include not only manufacturing but also growth in sectors such as services. The second strand is a variation within the approach that focuses on manufacturing growth, distinguishing variations in the "hardness" or "narrowness" of industrial policy. At the one extreme there will be those who define industrial policy broadly to include all policies that facilitate industrial performance, while at the other extreme there are those who equate industrial policy to that of sector-specific targeting.[32]

Given these variations on the theme of industrial policy it understandable why it is often difficult to develop a common position on industrial policy in the national context. To do so within a RIA of disparate developing countries will be even more difficult.

The second problem, assuming a more or less common view among member states on the definition and content of industrial policy, will be to develop common policies for the disparate member states, and specifically to counter the agglomeration forces generated by the much larger and industrially more advanced South African economy without having a negative impact on growth overall. The challenge is complex since Article 38, in addition to encouraging industrial performance in general, will require regional development at two levels, that is, the need to address polarised growth in South Africa by encouraging industrial location and growth in BLNS at one level, and at the other to address regional inequalities within South Africa. In the SACU debate on inequality it is often not explicitly recognised that the number of absolutely poor people in South Africa exceed the total population of BLNS.

A final observation on industrial policy is the question of whether the development of *common* policies, as required by the Agreement, is a realistic goal given the widely disparate nature of the SACU economies. This issue requires substantial research and sober consideration of the definition of industrial policy, the meaning and implications of having common policies and the appropriateness of having such policies. As noted earlier, the 2002 Agreement is a framework agreement and clearly the Agreement lacks substance on these questions. Suffice it note that it would not be surprising to find that policy

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[31] McCarthy & Hansohm, *op.cit.*

[32] Ha-Joon Chang, *Evaluating the Current Industrial Policy of South Africa*, TIPS Working Paper No.1, 1997, p.3.

coordination and harmonisation will be sufficient to provide SACU institutions with the policy guidelines they need for decision making.

7. Future expansion of SACU membership

When the subject of regional integration in the larger region is considered SACU suggests itself as the established inner circle of variable geometry in the region. All SACU members also belong to the Southern African Development Community (SADC), the 14 member RIA that has adopted the ambitious roadmap of development towards a monetary union in 2016. Thus far, SADC member states have not all demonstrated a serious commitment to advancing regional integration, and against this background the expansion in the membership of an established customs union within SADC could represent a nucleus that could allow SADC to provide the opportunity for member states to effect deeper integration within the larger group. It is even possible to envisage the possibility of another SADC country to join not only SACU, but also to integrate its money and capital market with that of South Africa by becoming a party to the Common Monetary Agreement. Adding monetary integration to trade integration adds a further dimension to regional integration variable speeds.

The 2002 SACU Agreement in Article 6 provides for any state to join the customs union by acceding to the Agreement. Admission of a new member must be approved unanimously by the Council after the applicant state had followed the admission procedures determined by Council. Admission will be determined on the basis of criteria to be determined by Council.

With the revenue distribution mechanism that applied under the 1969 Agreement it can reasonably be assumed that South Africa would have opposed expanding membership since new members would have added to the fiscal burden without being adequately balanced by the benefit of improved market access.[33] Under the new revenue distribution mechanism the fiscal issue is a lesser issue for South Africa but BLNS, with their emphasis on revenue, will be very careful in evaluating the contribution to the revenue pool of a new member vis-à-vis the allocation it will receive on the basis of its share in intra-regional imports. What this implies is that the revenue factor could be an important constraint on the expansion of SACU membership.

But it may not be wise to consider an expansion of SACU membership before the new customs union management system has been fully deployed. The Secretariat is building capacity and still has to gain experience in managing procedures which are not even in place yet. The Tariff Board still has to be established and policy guidelines for tariff amendment decisions based on a common vision of industrial development in SACU are, as far as can be determined, not even being considered yet. Furthermore, the bone of contention, revenue distribution, remains that with informal reports emanating that the new revenue distribution mechanism is not working smoothly and without contention. Considering the accession of new member states will be a tall order for a customs union that is still struggling to fit into the new coat provided by the 2002 Agreement.

[33] Mozambique is often mentioned as a possible new member of SACU. Under the previous revenue distribution mechanism the fiscal burden would have increased without substantial market access benefits that do not already exist in terms of the bilateral agreement.

A final constraint on membership expansion could be the complex SACU tariff structure, noted for it large number of tariff bands and lines. Reconciling this structure with that of, for example, Mozambique with its simple tariff structure will be an onerous and complex exercise. Should the option be accepted of using an expanding SACU as a driving force of deeper integration in SADC, SACU will serve the cause of regional integration by taking renewed tariff simplification onto its agenda.

8. Conclusion

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 of economic development as objective and inequality in the level of development of member states in the 1969 Agreement. 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 the member states were 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 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 that will allow it to negotiate international trade agreements as a group, with the persona of a single, unified market that seeks integration into the global economy. This will also require a common vision of the industrial development of SACU and its member states.

A break with the past is required to transform integration from "integration through hysteresis" whereby organs and procedures inherited from the colonial era still survive through an agreement that "postulates the emergence of a new culture, based on consensus building, along with the establishment of new administrative organs...".[34] But the good intentions embodied in the new SACU Agreement could remain just that – good intentions – if it is not understood that the establishment of bodies with ambitious agendas does not guarantee that SACU will henceforth be an effective regional integration arrangement that can replace the earlier regime. 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.

The distribution of revenue remains an important issue and might prevent appropriate attention being focused on the customs union as an instrument of development. Flatters and Stern in their policy brief for the South African Treasury have proposed short-term and longer-term steps that could address the vexing problems of the distribution of

[34] Daniel Bach, "Integration through hysteresis: SACU in a comparative and contextual perspective", in: Dirk Hansohm, Willie Breytenbach, Trudi Hartzenberg & Colin McCarthy (eds.), *Monitoring Regional Integration in Southern Africa, yearbook Vol. 5 – 2005*, Windhoek: Namibian Economic Policy Research Unit & Konrad Adenauer Stiftung, forthcoming.

customs revenue.[35] But revenue is only part of the problem. A serious high-level dialogue on economic development policy for SACU and the development of common ground on policy objectives and the identification of policy guidelines that SACU bodies can use to guide their deliberations should be a first priority. The outcome of these deliberations should be annexes to the Agreement on the common and coordinated policies envisaged in Part 8 of the Agreement.

SACU is the oldest customs union in the world and in the spirit of variable geometry could act as a nucleus of deeper integration within SADC, thus countering the lethargic movement of the latter on its overambitious roadmap by offering neighbouring non-SACU states the opportunity of membership. This is a viable option, which unfortunately could be obstructed by revenue sharing expectation. But even regardless of this practical problem it is debatable whether SACU should consider an expansion of membership while it is still trying to fit operationally into the 2002 Agreement. SACU might be the world's oldest customs union but adjusting to the new Agreement may be as problematical as the de novo formation of a customs union.

[35] *Op. cit.*