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Editorial: Whither SADC integration and development?

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Lesotho hosted the Southern African Development Community (SADC) 26th Summit of the Heads of State and Government from 16 to 18 August 2006. Regional economic integration was the highlight of the meeting. It was not surprising therefore that key discussions revolved around the Trade Protocol.

The meeting endorsed an ambitious plan that aims to establish a Free Trade Area by 2008, customs union by 2010, a common market by 2015, monetary union by 2016 and a single currency by 2018.

SADC groups Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. One sensitive issue that continues to trouble SADC is the issue of membership to other regional blocks. This is more so as WTO regulations forbid countries from belonging to more than one customs union. All SADC countries except Mozambique have multiple memberships. Some members of the East African Community, the Common market for Eastern and Southern Africa, the Economic Community of Central African States and the Indian Ocean Commission are also part of the SADC. For example, South Africa,

Botswana, Lesotho, Swaziland and Namibia besides being SADC members are also members of the Southern African Customs Union (SACU). This inevitable means that although there is agreement on integration some countries would be worried about immediate losses should they forfeit their membership to other bodies. SACU members get a yearly dividend of US\$2.7 billion, and this is obviously a huge income especially for small countries like Lesotho and they would be worried about losing such an income. This seems to point to the need to introduce the principle of non-reciprocity. All countries in the SADC are in different stages of development. It is therefore too much to ask to expect reciprocal trade relations between unequals. Regional integration must then be able to grant non-reciprocal concessions to weaker countries, so that they too can grow and catch up before being burdened with extra demands.

The idea of SADC development and integration needs to be seriously investigated. What needs to be interrogated is the nature of development that is being sort as well as the kind of integration that is being advocated for. Integration must only take place on the basis of people's needs not because of the dictates of foreign capital. There is no denying that African ownership and management is of crucial importance in determining the content of developmental plans. Key to this process is the notion of self reliance. Officially opening the meeting the outgoing chairman of SADC, his excellence Festus Mogae, said: "As a regional organisation, we still have problems implementing any of our targeted development programmes with our own resources. For example, if one looks at the outlook budget for

2007/8, member states are expected to contribute 39%, while its international partners are expected to put in 61%. There is a need to instill a spirit of self-reliance in our community." It is obvious from President Mogae's statement that if SADC wants to determine the agenda and content of its development and integration, then it should be prepared to put its money where its mouth is. The current situation where member states are contributing just 39% to the SADC budget does not border well for 'homegrown' development.

If SADC integration and development is to be a successful, there is a need for a paradigm shift in the relationships between and among SADC countries. An integrated SADC in which only a couple of countries call the shots must be discouraged. Integration should not be about setting structures and crafting programmes that promote asymmetrical relations.

A serious developmental strategy should be guided by the main aim of addressing issues of poverty and closing the ever-widening income gap between the poor and the rich. It is after all the people of SADC whose lives are at stake, it is therefore not too much to ask that the integration and development being sort must seek to give a better life to all the people of SADC. Against this background, it is therefore not enough to be excited about talk of investment flowing into the region as well as the free movement of goods. This seems to suggest that the integration being called for is one that is guided by the liberalization of markets and the unfettered movement of capital. The history of SADC especially with Structural Adjustment Programmes is very clear that this kind of approach does not work. Doing the same thing

over and over again but expecting different results is the height of folly. These are difficult times that call for vigilance against the neo-liberal agenda that places total access to markets at the heart of the development paradigm.

The neo-liberal developmental strategy begins with calls for the total opening up of the economy and the reduction of budget deficits (a euphemism for curbs in money used to fund services like education, health, electricity, water for example). The neo-liberal developmental model pushes for the weakening of the state in fiscal matters. In most cases this leads to heavy cuts in grants that are given to local authorities (municipalities). This has the net effect of forcing local authorities to commercialize so that they can sustain themselves. In this model of integration and development, the operative word is 'cost-recovery' and governments are under pressure to recover the money ploughed into basic services. Needless to say basic services become a privilege far beyond the reach of the poor. These basic services are supposed to be cut off or shut down for those who are not able to pay. What else can be expected from a system where profits take precedence over all human values?

A people-centered developmental strategy recognizes from the onset that basic services (water, health, education, housing, electricity) are a human right. More so this strategy takes the position that government is responsible for the provision of these services. Governments cannot abdicate their responsibilities by hiding behind the invisible hand of the market. Access to water and health should never depend on whether one is able to pay for them. This calls for the abandonment of mercantilist principles

that are based on a winner take all ideology. The people-centered strategy rejects an export driven development model. Instead it advocates for a system that is rooted on domestic demand. A system that uses local resources and domestic savings to satisfy human needs. Production and distribution should be planned in such a way as to meet basic needs. It is wishful thinking to believe that these basic needs can be financed by private capital. While theoretical, the origin of savings is restrained consumption in practical terms it is retained profits. This means that if SADC is to have sustainable finance for development, the primary source of financing should be domestic resources. Foreign investment is not the way to go for sustainable development. Governments should come up with ways of plugging the externalization of domestic savings and withdraw from a system that encourages speculative finance.

In the final analysis, if regional integration and development is to take off, then it must be based on social justice and equity rather than on open markets and cost recovery.

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SADC and HIV/AIDS -- Countries should utilise TRIPS Flexibilities

**Aulline H. Mabika*

The challenge of HIV/AIDS

One of the issues discussed at the SADC Heads of State and Governments meeting in Lesotho was that of HIV/AIDS. Relevant sections of the final Communiqué of the summit provides as follows: *The Summit noted that the region continues*

to have high rates of mortality especially for women and children, which is worsened by the HIV epidemic that has reversed gains made by countries through immunisation and other health programmes. The Summit further noted with satisfaction that government expenditure on health, continued to improve. The Summit observed that programmes for combating the spread of HIV and mitigating the impact of AIDS remain very high on the region's agenda, and resolved that these interventions be up-scaled within the context of the Maseru Declaration on Combating HIV and AIDS of 2004.

For millions of people living with HIV/AIDS (PLWHA) worldwide, the issue of access to treatment is a big challenge. Data from UNAIDS/WHO reveals that of the 42 million PLWHA in the world 29.4 million are in sub-Saharan Africa, this represents 70% of the total. To make matters worse, just four SADC countries (Botswana, Lesotho, Swaziland and Zimbabwe) have national adult HIV prevalence rates that exceed 30%. It is encouraging to note that Heads of States continue in the realisation that the scourge of HIV in the region calls for attention at the highest level of governance. A number of issues need to be considered in this regard including issues such as pharmaceutical policy, trade and intellectual property in the HIV context.

The SADC sub-region is at the epicentre of the global HIV and AIDS epidemic. It becomes imperative therefore that governments do not become too focussed on establishing a Free Trade Area (FTA) by 2008 and completely forget public health issues. The realisation by the Heads of States that territorial borders are fictitious

should apply in the fight against diseases that are common to and affecting all the countries in the SADC sub-region. Co-operation between states is thus not only desirable, but also necessary.

The human rights community has been concerned about the detrimental impacts of drug patents and other intellectual property restrictions on access to affordable medicines and treatment. The provisions of essential drugs, equitable distribution of all health facilities, goods and services, and measures to prevent, treat and control epidemic and endemic diseases are considered to be core human rights obligations for all countries, rich or poor.

The UN Commission on Human Rights (2001/33) agrees that: "access to medication in the context of HIV/AIDS is one fundamental element for achieving progressively the full realisation of the right of everyone to the enjoyment of the highest physical and mental health."

Use of Trips flexibilities in SADC

It is instructive to note at this point that access to essential medication in respect of HIV/AIDS and other diseases is affected by World Trade Organisation (WTO) agreements particularly the Trade-Related Aspects of Intellectual Property Rights (TRIPS). All the SADC countries are members of WTO and hence are bound by the TRIPS provisions. It is therefore important to explore and understand the relationship between intellectual property rights and access to essential medicine. The TRIPS agreement should be implemented in a manner that respects the state's right to take measures to protect public health. The protection of pharmaceutical patents

can therefore not be seen as taking precedence over people's right to health. Indeed in 2001, WTO members adopted a declaration on TRIPS Agreement and Public Health in DOHA which states that: "the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly while reiterating our commitment to the TRIPS agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO member's right to protect public health and in particular to promote access to medicines for all."

Access to treatment in the context of HIV/AIDS relates to the emotional support that comes from the presence of care, provision of painkillers, treatment of opportunistic infections and availability of anti-retroviral drugs (ARVs), which help in suppressing the effect of the virus on the immune system. Although these drugs are not a cure for HIV/AIDS, they have dramatically improved the rates of mortality and morbidity, prolonged lives, improved quality of life, revitalised communities and transformed perceptions of HIV/AIDS from a plague to a manageable chronic disease.

A number of SADC member countries (Angola, Lesotho, Malawi, Mozambique and Zambia) fall into the Least Developed Countries category. The rest are categorised as developing nations. These categories have important implications for the use of TRIPS flexibilities by the different nations. The flexibilities include, transition periods, compulsory licenses, parallel importation, public, non-commercial use of patents, exceptions from patentability and limits on data protection.

For instance the least developing countries have until 2016 to suspend the use of pharmaceutical patents and test data. The LDCs should adopt necessary measures to use the 2016 transition period. The absence of pharmaceutical patents will ensure that patent rights will not be an obstacle to the supply of affordable generic drugs.

From a public health perspective, SADC nations not only have the leeway to utilize the TRIPS flexibilities in fact, they have an obligation to do so. Notwithstanding the efforts by some SADC countries like Zimbabwe, Zambia, Mozambique and South Africa to use the TRIPS flexibilities further guidance and clarity is still required and cooperation between states is of paramount importance. It is in meetings like the just ended summit that issues like these need to be raised for discussion and concrete steps taken to fulfil set objectives.

Failure by states to effectively use TRIPS flexibilities to prevent third parties like pharmaceutical companies from pricing essential drugs above the reach of many constitutes a violation of the state's obligation to protect the right to health and consequently the right to life.

Free Trade Agreements and implications on availability of medicines

Another issue that needs to be considered is the effect of free trade on the realisation of the right to health particularly on access to essential medicines in relation to HIV/AIDS. There have been reports of negotiations of a Free Trade Area (FTA) between the Southern African Customs Union (SACU) and the United States. Members of SACU (

South Africa, Botswana, Lesotho, Namibia and Swaziland) are also SADC members hence if this FTA is concluded it will have serious implications for the entire region.

This is evident from remarks from a former United States Trade Representative reporting to Congress:

*“We plan to use our negotiations with the SACU countries to ... address barriers in these countries to US exports – including high tariffs on certain goods, overly restrictive licensing measures, **inadequate protection of intellectual property rights**, and restrictions the SACU governments impose that make it difficult for our services firms to do business in these markets. We also see the negotiations as an opportunity to advance U.S objectives for the multilateral negotiations currently underway in the World Trade Organization (WTO).”* (Emphasis is mine)

The TRIPS plus provisions called for by the United States are particularly worrisome in as far as access to HIV/AIDS life saving drugs. It is positions like the one portrayed by the US in the above quote that SADC leaders should be particularly wary of. It is at summits like the recently ended one that a common position on important issues should be taken. There is after all strength in numbers and the voice of SADC stands to carry much weight than the voice of a single country.

It is therefore recommended that SADC member countries amend their current legislation to take advantage of the regulatory flexibility permitted by TRIPS before making any Intellectual Property-related commitments in the forthcoming SADC FTA or any other

FTA for that matter. SADC should reject any TRIPS-plus proposals and ensure that the standards of Intellectual Property protection in TRIPS remain the minimum standards. SADC should also consider the impact of non-IP issues that have the potential to limit access to health care services, such as provisions on investment measures, procurement, trade in services (particularly health, but also financial), and protect against their wholesale imposition.

There are countries like Brazil that have taken long strides in dealing with HIV/AIDS. Brazil has invested a lot in preventive efforts and combined these with an antiretroviral treatment programme that is funded by the state. The generic production of HIV/AIDS drugs has pushed prices to much lower than what is charged by multinational pharmaceutical companies. This is instructive and SADC can draw lessons from this.

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The failed WTO talks and EPAs negotiations

By Elijah Munyuki

Introduction

USA and EU trade negotiators have been quoted countless times declaring that if they do not get their way in the multilateral trade negotiations they will go bilateral. The WTO negotiations have been declared dead. No-one knows when efforts to start all over again will be made. Some analysts have pinned the future of the talks to the USA political landscape. The EU has gone quite far in cementing bilateral trade negotiations and has roped in its former colonies into

negotiating so-called Economic Partnership Agreements (EPAs). One of the regions which has gone quite far in this process is the so-called Eastern and Southern Africa (ESA) configuration. The ESA negotiators have been given the mandate to start text-based negotiations with the EU. A draft text for an agreement with the EU has already seen several versions, and is now a third draft. The text is long and covers a wide range of trade issues, from agriculture to investment rules and competition policy. This August the ESA group meets to iron out further details in preparation for engagement with the EU. Only recently the same group met to consider positions on services negotiations.

These events come in the wake of the collapse of the WTO talks. There is however no indication that the ESA countries have considered the implications of the failure of the WTO talks on the EPA negotiations. These processes are very closely linked. And the failure by the ESA group and indeed the rest of the ACP group to adjust their positions exposes them to serious harm.

Linkages with the WTO.

The Tactics

Many of the negotiating positions put forward by the EU under the WTO process reflect the interests of EU private capital. The corporations seek expanded markets for both trade in goods and in services. The EU has made it clear in its positions that it seeks deep and wide liberalisation. The EU seeks simplified conditions for its capital to take full advantage of market opportunities. These demands met with no success at the WTO. The same demands were made in the EPA context. More emphasis of these

demands will certainly be made in the EPA context. Thus there will be heavier pressure exerted on ACP negotiators and politicians. ACP countries should expect EU strategies to be much more forceful and even more cunning than before. Many impoverished ACP governments depend on EU finances. There will be political arm-twisting, promises of aid, and direct EU private sector campaigns. Already some EU-based multinationals are on a road-show to sell "investment friendly" advice. Recently the electrical multinational, Phillips mounted one such campaign in South Africa, and the target audience was governments and the private sector in the Southern African region. Elsewhere Reuters reports reveal that the USA will review whether to withdraw long time trade benefits for India, Brazil and 11 other advanced developing countries, following the recent collapse of WTO talks, which many members of Congress blame on the reluctance of India, Brazil and others to open their markets to more foreign goods. The 32-year-old programme expires December 31 2006 unless renewed by Congress. Targeted countries include Argentina, Brazil, Croatia, India, Indonesia, Kazakhstan, Philippines, Romania, Russia, South Africa, Thailand, Turkey and Venezuela.

The WTO norms

There are many issues which link the WTO process with the EPAs negotiations. The first obvious issue is the very essence of the EPAs. These are a form of Regional Trade Agreements (RTAs) whose structure should be consistent with the WTO system. The very nature of consistency was an issue under negotiation. The WTO work programme is yet to decide on the many requests put forward by the ACP grouping on the need for

flexibility with respect to RTAs. The ACP group is also worried about the possibility of preference erosion, this is apparent in the ESA draft text; but the WTO is yet to issue definitive guidelines on the question of preferences. In this context it is worth asking if there is any wisdom in continuing with an arrangement whose legal validity may very well be questioned, and potentially reversed under the WTO system. The EPAs process is time consuming. It is also very expensive.

The WTO Work Programme

Plenty of issues on the EPAs agenda are still to be completed under the WTO work programme. Since the ESA configuration has gone ahead to prepare a draft text we shall use parts of the text to illustrate the pitfalls of continuing with the EPA negotiations when several contents of the draft text depend on a successful completion of the WTO issues.

Subsidies

ESA countries are dependant on agriculture. Their agriculture will not survive competition with the EU producers in a free trade area arrangement. The WTO process had set 2013 as an end date for the elimination of all forms of agricultural export subsidies. Tentative indications had also been produced with respect to trade distorting domestic support measures. No real agreement was eventually produced on both forms of support measures. Presumably happy with the WTO indicators ESA countries have put no real pressure on the EU to eliminate all forms of trade distorting subsidies. In particular article 93 of the third draft text makes no mention of time-bound elimination of export and domestic subsidies. Relying on the WTO process for an automatic feed-in on the subsidies

issue is a strategic blunder. As it stands the draft text has no effective obligation for the EU to eliminate trade-distorting subsidies. This leaves ESA producers badly exposed should a final deal be sealed with this loophole intact.

Safeguard measures, Anti-dumping and Countervailing measures

ESA producers face potential demise. This is very possible if they remain exposed to the flooding of products by EU exporters in an FTA context. The ESA text (Title VII: Trade Remedies) has attempted to deal with this by making provision for safeguard measures. The same is true for antidumping and countervailing measures. However both protective measures are referenced to the WTO agreements on the issues. The WTO safeguards regime is useless to developing countries. It is thoroughly pointless and irrelevant to the specific needs of the poorer and weaker economies. To a lesser extent the antidumping and countervailing measures regime under the WTO has the same problems. Current proposals have been focussed on making these measures flexible for the purposes of the particular situation of weaker economies. The WTO regime has not even finalised work on the issues. If the EPA goes ahead in the absence of the necessary reforms to the safeguard and the antidumping rules ESA producers will be wiped out. They cannot rely on the WTO provisions as they stand at the moment.

Non-tariff barriers; Sanitary and Phytosanitary Measures, Technical Barriers to Trade

The common complaint by ACP exporters has been the stiff non-tariff barriers (NTBs) which the EU imposes on ACP products. These NTBs range from the sensible to the ridiculous. Although the

WTO has agreements on such issues as sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBTs) these remain ineffective because much of the work meant to develop common standards applicable to all WTO members. Harmonised standards will reduce the discriminatory application of standards. However the ESA text makes particular reference to the WTO process (Part III; Trade Related Issues). There has been no real movement on this issue under the WTO process. It is not even clear what will happen to the work that had been done before the WTO talks collapsed. These are crucial issues that determine the ACP region's productive systems. In the absence of WTO rules on NTBs the ACP region will continue to operate under the impossible EU regime. And the ESA countries do not help themselves by basing this crucial aspect on the stalled multilateral process.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The ESA draft covers intellectual property rights (Title VI). It also makes reference to the WTO agreement on the subject. However the TRIPS issue is a burning and contentious one. Developing countries have made numerous complaints about the TRIPS regime. They have further submitted several proposals for amending the regime, and have included issues such development in the whole WTO TRIPS regime. There is no conclusion in sight on the WTO front. Yet the ESA draft text proceeds as if the matter is settled at the WTO.

Services

Recent ESA discussions on services negotiations under EPAs reveal staggering confusion amongst the ESA countries. Negotiators have been

mandated to negotiate services, this happened very late in the process. It is not even clear what ESA countries seek to achieve in this process. At present the draft text has a title but no content on services. The ESA engagement with the EU on services is in remarkable contradiction with the ESA attitude on WTO services negotiations. ESA countries made very limited commitments under the WTO process. They agreed to open up only very few services sectors. In an FTA with the EU they will be required to open up substantially all sectors. This certainly means more sectors than the ESA countries have opened up under the WTO process. The WTO process is however meant to clarify these issues. It is not apparent what ESA countries think they will achieve in the middle of all these doubts.

Conclusion

ACP countries cannot continue with the EPAs agenda as if the failed WTO talks are irrelevant to the EPAs context. Those countries under ESA, which have gone ahead to prepare negotiating texts should pause and reflect on the implications of the collapse of the multilateral negotiations. So much remains doubtful, and it is foolhardy to proceed in the midst of this doubt. An option would be to take advantage of the proposed review of the Cotonou Agreement upon which the EPAs negotiations are based. This would see a specific section of the review fully analysing the linkages between EPAs and the current state of affairs at the WTO. ACP countries should not wait for the EU to do this for them. Rather discussions should start in the various capitals and move to regional positions. In the meantime there is no real sense in ACP countries moving towards conclusive deals with the EU.

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Reclaiming SADC for people's solidarity and development cooperation

"Sechaba Sea Bolaoa!" (Sotho saying which literally means that they are killing the NATION, or the land)

Statement from Southern African Peoples Solidarity Network (SAPSN).

We are the representatives of many economic justice networks, social development movements, women's, workers, youth and small-scale farmers, human rights, educational and environmental organisations, and many others, from across the Southern African region. We have gathered in Maseru under the auspices of the Southern African Peoples Solidarity Network (SAPSN), and with support from Development for Peace Education (DPE) as our host in Lesotho. We have come to hold a People's Summit to review our situation and share our views on the state of regional development and cooperation. We are here to present our views to the Summit of the Heads of State and Government Ministers' meeting in Maseru, 16-18 August 2006.

We have exchanged information on the pressing economic, social and unemployment challenges facing our people in our respective countries. We have been moved by the poetry, songs and dramatic representations of the many crises and forms of suffering of our people, particularly women and children. But we have also focused our attention on the overall state of the regional inter-government co-operation in these directions, and the necessity for them to respond to the needs and shared aspirations of our people.

Following from our extensive discussions, we support the profound affirmations of regional solidarity and called African Growth and Opportunities Act (AGOA), many of which do not serve the fundamental long-term needs of our peoples, and which erode the economic policy rights and political sovereignty of our countries. This is a very heavy price to pay for the minimal 'gains' made in the export access into the US for the exploitative clothing and textile sweatshops in Lesotho and other countries in SADC. Governments must not sign on to AGOA, or must withdraw if they already have.

We commend the governments of SADC, as part of the African Union, for standing firm in the WTO on our rights to protect the agricultural basis of our economies, our small-scale farmers, and the food production and food security of our peoples, and food sovereignty of our countries and region. Governments must also support our agriculture in their domestic policies, and refuse the infiltration of GMOs into our countries, in production or through 'food aid'. This includes other sanitary and health problems around the movement of livestock.

We see the stalemate in the Doha Round of the WTO as testimony to the effectiveness of the alliances of governments of Africa, with others in the Latin America, the Caribbean and Asia, in standing up to the major powers on issues of agriculture, and industrial and services liberalisation. We call upon these governments to sustain a determined defence of our interests and needs.

We call for the same determination by our governments, separately and together, to resist and bring to an end,

the intrusion of the IMF and the World Bank and powerful foreign governments into our national policies, especially in the promotion of privatisation of our natural resources, national assets and our public services. Such programs of privatisation, in various forms, have had drastic effects on costs and access for our people and especially women and children, to health, educational, social welfare, water and other basic services as their human rights. Privatisation also impedes the role of public institutions in furthering our national development potential. We call for an improvement in the functioning and appropriate government investment in public institutions instead of privatising them. There must be an end to all privatisation programs, and the reversal of previous privatizations and the growing foreign ownership of our public and national resources.

We are particularly concerned at the collusion of our governments in allowing and enabling the ever-increasing domination of our region by South African companies and South African based translational corporations using South Africa as their platform into the rest of the continent. In many cases, government leaders in the region benefit from such business operations although they sometimes publicly criticise them.

We further reject plans by the IMF, World Bank, and the powerful governments that control them, to turn Southern Africa into an "open region" to serve the "access rights" for all international exporters and investors into our region. We have a long experience of the damaging deindustrialisation and job destruction

effects of such trade liberalisation to the advantage of exporters from countries in the North, and now also from others in the South, particularly China. Trade liberalisation puts further pressures on working conditions and the security and very survival of jobs, adding to the existing totally unacceptable rates of unemployment in our countries.

We are concerned at the lack of commitment by national leaders to fully democratic governance and the guarantee of all the political, economic, social, cultural and environment rights of our people. We condemn growing corruption in the ranks of government and business. We demand full respect for fundamental human rights, and we commit ourselves to maintain our mutual support and build peoples solidarity on these issues in all the countries of our region.

We demand that the SADC governments carry out their inter-governmental negotiations for joint regional programmes of the basis of full transparency, and information dissemination in all local languages, for genuine public consultation and engagement. We commit ourselves to continue monitoring regional plans and programs on these and all issues and to actively express our views and vigorously assert our demands and alternatives to all the governments of SADC, separately and together.

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