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TRANSNATIONALS AND THE LEGAL REGULATION OF TECHNOLOGY: WHITHER SADCC ?

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1. INTRODUCTION

Technology transfer issues have always been at the centre of discussions and efforts regarding the "new international order". The explanation for this is not too far to seek. The issue of access to, control and management of advanced technology is a matter which is central to contemporary international relations. Therefore in the Southern African context the legal regulation of advanced technology will remain a central consideration as new technologies become the centre piece in the struggle for power in an increasingly competitive regional system.

The purpose of this paper is to examine the prospects for the reorganization of regional and international economic relations in a manner which will reflect the interests of the SADCC member states. The paper deals with five points.

First that the colonisation of Southern African States had the immediate consequence of incorporating them in the regional and international capitalist systems. The hegemonic role and presence of transnational corporations in the search for markets and sources of supply is discussed. The observation is made that the exploitation of mineral and other resources has depended on the ability of the transnationals to dominate the regional process of technology production and distribution. The overall effect has been a massive dependence of black ruled Southern African countries on South Africa and their existence as peripheral economies.

Secondly the paper outlines the contemporary legal infrastructure in SADCC countries with emphasis being placed on legal artifacts designed to accommodate regional and international capital. A key element in this legal framework is the legal protection of monopoly rights in respect of technology. The legal effect of this protection is to facilitate concentration of technical know-how in the hands of the transnationals. The concentration is further reinforced by a variety of legal instruments such as investment rules, international trade agreements, tax treaties and constitutional provisions. This discussion underlines the extent to which the distribution power (in favour of transnationals and the centres of industrial power especially South Africa) and the nature of political systems have decisively determined the legal framework within which economic activity in general and transnational operations in particular have been carried on. Specific mention will be made of, inter alia; the Southern African Customs Union and the Rand Monetary Agreement. The point will be made that South Africa in general and South African based transnationals have been significantly aided by the Customs and Monetary regimes. The outcome of the legal infrastructure has been the maintenance of South Africa as the industrial core and the rest of Southern Africa as a periphery.

Thirdly the paper discusses the response by SADCC to this over-dependence and peripheral status. The SADCC response has included a varierty of strategies which have sought, inter alia, to accelerate industrialisation and reduce dependence. The SADCC strategies have been geared to the channeling of the forces of economic growth to the advantage of the SADCC member states. The observation is, however, made that in order to succeed in this respect, SADCC states must have a substantial technological base. The transformation of SADCC from a peripheral status into a strong regional group capable of asserting its interests presupposes the ability to possess and control advanced technology, to generate own capital and provide managerial expertise. If the transformation was effectively executed, the status of SADCC would be greatly enhanced thus enabling the group to significantly undermine the economic order which to date has underwritten the framework within which transnationals have successfully functioned.

Fourth the paper points to the immense obstacles facing SADCC states in their quest for meaningful independence including an independent technological base in competition with transnationals. The observation is made that commercial and industrial activity in Southern Africa is a process of interaction involving a variety of actors, the major actors being the transnationals. The process of interaction results in a major disparity between Southern African black ruled states and the transnationals regarding control of technology as a source of power and wealth. The ability to participate effectively in commercial and industrial activity tends to link forward and backward to the existing stratified system, forward through the effect of better access to capital and technology and on the future fortunes of the actors and backward in time to the existing stratification system through the differential capabilities and resources of the actors. Traditional links mesh over time to form a rigid structure containing two levels of access to organizational ability, capital and technology: a circle of low status and low technological capacity (in this case the Southern African black ruled states) and a circle of high status which leads to favourable technological, organizational and capital opportunities that generate even higher status (in this case in favour of the multinationals). In the context of Southern Africa the key question is whether possibilities exist for the black ruled states to break the status linkages of the successive generations which have enabled transnationals to dominate the economic scene thanks to their control over advanced technology, managerial expertise and capital resources.

Finally the conclusion is made that though status linkages can be broken, the strategies which have been adopted by

SADCC are unlikely to effectively break up such linkages. The proposition is advanced that since SADCC has eschewed high level integrative strategies and has preferred bilateral trade exchanges, the implication is that by design SADCC will not develop a central authority which is a prerequisite for off- setting the market forces that underwrite the hegemonic role of the transnationals. Lacking an integrated central authority the consequence will be the continued inability of national regimes to regulate enlarged mobility. Given that the Southern African scene is dominated by the mobile transnationals, which control the available pool of advanced technology, national policies will be ineffective in exerting control. The functional limitations of national regimes will be manifested by the degree to which SADCC oriented commitments will be honoured more in breach than in observance. The suggestion is made that consequential legal regulation of economic interaction with transnationals will require political will and willingness to make national sacrifices. In particular the observation is made that the behaviour of Zimbabwe as the dominant economy will be decisive in the quest for a more meaningful and effective cooperative strategy.

2. COLONISATION AND CAPITALIST PENETRATION

The colonisation of Southern Africa at the end of the last century and beginning of this century resulted, inter alia, in the creation of a capitalist economy. The establishment of a capitalist economy was preceded by the establishment of a new form of legality which was designed to facilitate the operation of a market economy in which land, labour and capital would be allocated through "free" contractual exchanges.

After the introduction of the legal and institutional framework for capitalist enterprise, international and regional capital commenced a process of penetration of

Southern Africa with varrying degrees of intensity. When the black Southern African states achieved formal political independence, new economic and legal measures were adopted to encourage further participation of regional and international capital and technology in Southern African development.

3. THE LEGAL AND INSTITUTIONAL INFRASTRUCTURE FOR CAPITALIST ENTERPRISE IN SOUTHERN AFRICA

The technology, trade, investment, fiscal and monetary legal regimes of Southern African states are characterised by a variety of rules designed to accommodate regional and international capital. The overall effect of these rules is to entrench the position of transnationals in the Southern African economies.

3.1 Monopoly Rights Over Technology

Most SADCC states have patent legislations designed to cover exclusive rights in respect of technology in accordance with the Paris Convention. The Paris Convention which was adopted at the 1883 Paris International Conference seeks to establish norms and systems which are designed to provide protection to owners of technology.

The Paris Convention provides for a national treatment principle, which means that all individuals entitled to the benefits of the Convention are accorded the same protection which the laws of each member state grant to the citizens of the member.

The Convention establishes the right of priority. In the absence of a right of priority, applications for patent rights had to be filed simultaneously in all countries otherwise the novelty of the invention would be lost by previous publicity effected by filing elsewhere. Thus under the Convention, a filing in country X is recognised as a constructive filing in all countries even though no patent is granted in all countries.

In terms of the principle of the independence of patents, patents applied for in the various contracting parties by individuals who are entitled to the benefits of the Paris Convention, are treated as independent patents granted for the same invention in other states whether members of the Union or not. In consequence the termination or forfeiture of patents in one country does not affect patents in another.

Monopoly rights under the Paris Convention are extended to industrial designs and models. The principles of national treatment, priority right and non-forfeiture of rights because of non-working are therefore applicable to designs.

At the national level, patent and copyright legislations have been enacted for the domestic implementation of the norms prescribed by the Paris Convention. The legislations are, however, an eloquent expression of the dependent relationship between Southern Africa and the centres of industrial power. For example the Botswana Patents and Designs Protection Act provides that the registered proprietor of any patent in the United Kingdom shall enjoy the same rights in Botswana as though the patent granted or design registered in the United Kingdom had been granted with an extension to Botswana. The Act further provides that any person who is registered as a proprietor of a patent or design may, on production of the South African patent or the design registration certificate, be registered in the Botswana register. Upon registration the proprietor shall have and enjoy in Botswana the same rights and privileges as are conferred upon him by the patent or design registration within South Africa. Such rights in Botswana shall subsist so long as the patent or design registration remains in force in South Africa.

3.2 Investment Rules

Botswana, Lesotho, Swaziland, Zimbabwe and Malawi maintain relatively open door policies towards private capital whether from local or foreign sources. Investment rules have been enacted to provide protection and incentives to private entrepreneurs. The investment incentives take three forms, fiscal incentives, competitive incentives and investment assistance.

Fiscal incentives include generous allowances for new buildings, plant and machinery. In Botswana these are provided under the Income Tax Act. Extra tax relief can be granted under a development approval order which specifies the types and rates of additional tax relief. In Zimbabwe fiscal incentives include a 100% special initial allowance in respect of commercial buildings if such buildings are industrial buildings. In Swaziland fiscal incentives include depreciation allowances, initial allowances and so-called pioneer incentives. Lesotho provides several incentives under the Income Tax Order. Further incentives are granted under the Lesotho Pioneer Industries Act of 1967 for approved manufacturers. Under the Act, an approved manufacturer can choose either (a) complete exemption from company income tax for the first six years of operation or (b) deduction of specified capital and other allowances for purposes of taxation. Approved manufacturers are allowed to deduct from their taxable income 145% of the cost of machinery and equipment and an immediate deduction of 75% of new building costs plus an additional 5% deduction during the next 20 years of operation.

Competitive incentives shield approved investors from competitors. In Botswana it is possible for an investor to obtain an exclusive manufacturing licence for a specified project under the 1968 Industrial Development Act. The licence entitles the grantee to the exclusion of competition from other manufacturers for a renewable period of 4 years. In Zambia under the Industrial Development Act of 1977 preferential treatment with respect to government purchasing is accorded to so-called priority enterprises.

Several governments in Southern Africa grant investment assistance to attract private entrepreneurs. In Botswana a number of incentives are made available under the Financial Assistance Policy which was launched in 1982. In Swaziland, the National Industrial Development Corporation (NIDCS) provides assistance for feasibility research, local coordination, factory construction and finance. Lesotho provides investment assistance in the form of free land for industrial development.

3.3 International Trade Agreements

Botswana, Lesotho and Swaziland are members of the Southern African Customs Union (SACU) with South Africa. The effect of the SACU is to integrate the economies of the BLS countries into the South African economy. The integration dates back to 1910 when the Customs Union came into force. The dominant state has always been South Africa. South Africa dictated the terms of the 1910 Agreement. South Africa determined the external customs tariff and the South African laws concerning rebates, refunds and prohibitions were applied to the BLS countries.

When the BLS countries attained formal political independence, a new Customs Union Agreement was signed in 1969. Article 2 of the Agreement states that goods grown, produced or manufactured in the customs area are entitled to <u>unimpeded flow among member states</u>. Article

4 provides that "the customs tariff and duties and the sales duties as in force in South Africa from time to time shall be applied to goods imported into the common customs." Thus the Agreement grants power to South Africa to unilaterally determine a common external tariff and rules out any internal barriers to trade within the customs area. The hegemonic rôle of South Africa is further entrenched by other provisions of the Agreement.

Article 8 (1) provides that the excise and sales duties in force in South Africa shall be applied to all goods originating in the customs area. Article 8 (2) states that rebates, refunds, or draw back of such duties shall also be identical to those in force in South Africa. According to Article 10 the laws in force in the BLS countries in connection with customs, excise and sales duty shall be similar to those in the Republic of South Africa.

In "recognition" of the unequal positions of the parties to the Agreement, there are provisons which seek to protect BLS industrial development from South African competition. For example Article 6 (1) permits BLS countries to impose additional duties on imported goods if such goods compete with locally manufactured goods. Article 7 allows the BLS countries to specify industries of major importance and once specified the South African authorities are denied the right to abolish or decrease the duties imposed on competing goods originating from without the customs union.

In terms of Article 19 member states are prohibited from entering into or amending a trade agreement with country outside the customs area in terms of which concessions on the duties in force in the customs union are granted to that other country. Members are likewise prohibited from entering into an agreement with a third country if such an agreement conflicts with the 1969 Agreement unless the consent of the other members has been obtained.

3.4 **<u>Monetary Agreements</u>**:-

<u>The Rand Monetary Area</u>

As a reflection of the close economic integration of the BLS economies and the South African economy, for decades the South African rand was the sole currency circulating in the BLS countries. There were no payments restrictions between the four countries and the commercial banks in the BLS countries were mere extensions of the South African banks. This state of affairs was formalised in 1974 when the Rand Monetary Area Agreement was signed. Botswana did not sign the agreement but opted to set up its own central bank and issue its own currency.

The Rand Monetary Area Agreement consists of the following major elements:

1. The rand continued to circulate as the <u>legal tender</u> in Swaziland and Lesotho

2. The <u>South African Reserve</u> enjoys the <u>exclusive</u> right to manage the gold and <u>foreign exchange</u> reserves for the entire monetary area.

3. The Agreement provides for a <u>free movement of funds within the monetary area</u>.

4. Lesotho and Swaziland in effect <u>surrendered power</u> regarding <u>monetary policy</u>, <u>balance of payments policies</u> and <u>exchange control</u>.

3.5 **<u>International Tax Treaties</u>**

As an additional incentive to regional and international capital, states in Southern Africa have entered into agreements for the avoidance of double taxation. For example, Botswana has concluded treaties with United Kingdom, Sweden and South Africa covering dividends, interest and royalties. Zimbabwe entered into a double taxation treaty with United Kingdom effective from October in 1982 in respect of dividends, interest, royalities and management fees. Zambia has concluded several double taxation agreements with other countries including Denmark, France, Federal Republic of Germany, India, Ireland, Italy, Japan, Netherlands, Norway, Sweden, Switzerland and United Kingdom. Malawi, Swaziland and Lesotho have also entered into a number of tax treaties covering dividends, interest, royalties and management fees.

3.6 Import-Export Regulations

The 9 member states of SADCC do not have a uniform policy regarding import/export regulations. As stated previously there is no control of imports from, or exports to, the Southern African Customs Union Area with Botswana, Lesotho, South Africa and Swaziland. The BLS countries therefore have a free trade regime between them and South Africa. Further the BLS countries, though in theory require import licences in respect of non-SACU imports, in practice they are easily obtained. Malawi operates a fairly open import policy with few quantitative restrictions. Because the foreign exchange position of Malawi is not as good as that of the BLS countries, it does apply import regulation by quotas or other means to ration foreign exchange. Malawi has a preferential trade agreement with South Africa and has developed close trading links with that country though not to the same degree of intimacy as the BLS countries. Zimbabwe has been operating import regulation with an import licensing system and has a limited preferential agreement with South Africa. Due to the war situation, Angola does not trade with South Africa and it operates a strict import licence system which has reduced imports of luxury items. Mozambique, Tanzania and Zambia operate a strict foreign trade regime. Foreign exchange, which is in short supply, is allocated according to a fixed set of priorities.

3.7 Investment Protection, Expropriation and Dispute Settlement

Domestic Constitutional Protection

The Constitutions of most Southern African states have provisions which outlaw expropriation of private property. For example, the 1966 Botswana Constitution prohibits compulsory acquisition of property unless such acquisition is shown to be in the public interest and prompt compensation is paid. An aggrieved party has direct access to the High Court for determination of the legality of the compulsory acquisition and the amount of compensation.

Furthermore, the compensation is freely remittable within a "reasonable" time.

3.8 International Treaty Protection

Southern African states have signed and ratified the 1965 World Bank Convention on Settlement of Investment Disputes between States and Nationals of Other States. For example the Convention came into force for Botswana on 14 February 1970 and was enacted by the 1970 Settlement of Investment Disputes (Convention) Act. Swaziland ratified the Convention and it entered into force for Swaziland on 14 July 1971. Lesotho, Zambia and Zimbabwe are also signatories to the Convention.

4. REGIONAL/INTERNATIONAL CAPITAL AND TECHNOLOGY IN SOUTHERN AFRICA: THE DOMINANCE OF TRANSNATIONALS

In response to the colonial and post-colonial framework in Southern Africa, transnationals have become major actors on the Southern African scene. The first significant transnational penetration of Southern Africa was Cecil Rhodes' British Africa Company. The impact of this company on the then Northern and Southern Rhodesia on their colonisation was, without doubt, far reaching.

In the wake of Cecil Rhodes came the mining transnationals. The Anglo-American Corporation (AAC) and the Rhodesian Selection Trust (RST) started the exploitation of the Coperbelt. Powell Duffryn opened up Wankie but was subsequently taken over by AAC in 1953. Rio Tinto and Lonrho were also active in starting mining activities of the then Southern Rhodesia. In Botswana RST and AAC started the Selebi-Phikwe copper-nickel mine while De Beers exploited Botswana's diamond mines originally at Orapa but of late also in Jwaneng. It was the same De Beers which developed the diamond mines of Namibia and Lesotho.

In addition to predominance in the mining industry, transnationals have controlled other sectors including banks, agriculture and manufacturing.

For example an examination of the ownership trends in Botswana manufacturing from 1979 to 1984 (Table 1) confirms a constant expansion of international and regional capital. The profile of the Botswana formal manufacturing sector for 1984 (Table 2) also illustrates the dominant role of international and regional capital.

Ownership Trends in Botswana Manufacturing 1979-84

Ownership	1979 no. of firms	1979 %	1984 no. of firms	1984 %
Batswana	15	17,0	32	15,3
Joint Venture	26	29,5	55	26,3
Foreign	47	53,4	122	58,4
Total	88	100,0	209	100,0

Source: Ministry of Commerce and Industry

Table 2

Profile of the Formal Manufacturing Sector 1984

	Number of Establishments Operating				Labour Force	
Subsector	Botswana	Mixed	Foreign	Total	Local	Foreign
Meat & meat products	-	1	1	2	1,956	41
Dairy & Agro-based products	1	4	3	8	46	9
Beverages	1	7	5	13	579	27
Bakery products	3	3	7	13	377	20
Textiles	8	8	32	48	2,432	87
Tanning & Leather products	-	4	3	7	419	23
Chemical & Rubber products	-	2	14	16	393	32
Wood & wooden products	1	6	5	12	448	22
Paper & paper products	-	2	4	6	238	22
Metal products	9	7	21	37	1,490	79
Building materials	7	4	15	26	1,063	38
Plastics	1	3	4	8	262	16
Electrical	1	3	6	10	318	33
Handicrafts	-	1	2	3	52	4
Total	32	55	122	209	10,073	453

Source: Ministry of Commerce and Industry.

At the regional level, the hegemonic position of transnationals in the key sectors of the economies of Southern Africa states was revealed by a relatively recent study by eminent economist Ann Seidman. [Table 3]

Table 3

Transnational Corporate Domination of Commanding Heights of Economies of South Africa's neighbours in 1974
(Prior to Liberation of Portugues Colonies)

Commanding heights	Neighbouring countries				
	Namibia	Botswana	Lesotho	Swaziland	Zimbabwe
Banks	Barclays, Standard, French Bank	Barclays, Standard	Barclays, Standard	Barclays, Standard	Barclays. Standard National. Grindlays. Nedsual (70%)
Basic Industries Major mines	Uranium Rio Tinto Zinc Copper Anglo American AMAX, New mont, Falconbridge Diamonds De Beers	Diamonds De Beers Copper-nickel Anglo American AMAX (Government 15% share)		Iron ore Anglo American Asbestos Turner, Babcock Newell	Iron & Steel British Steel (33%) Coal, copper. nickel, iron Anglo American Crome Union Carbide Rio Tinto Zinc Phspahte AECI
Major estates/ Agro-industry	(Primary settler farms)			Lonrho Tate & Lyle Del Monte Nestles	Lonrho; BAT: Tate & Lyle; Anglo American Brooke Bond-Leibig
Foreign and Internal Wholesale Trade	All imports and exports handled by South African and Transnational firms within the South African Customs Union.				All imports/exports go through South Africa, Mozambique

(Table 3 cont.)

Commanding heights	Neighbouring countries			
	Malawi	Zambia	Angola	Mozambique
Banks	Barclays and Standard own 49% and manage commercial bank: Government owns 51%	Barclays, Standard National, Grindlays conduct 80-90% of bank business	Barclays, Standard and Anglo American held shares in Banco Standard Totla Alliance (a Portugues bank)	Standard and Anglo American held shares in Banco Standard Totla Mozambique (a Portugues bank)
Basic Industries Major mines	None	Copper Anglo American, AMAX (in partnership with Government, 51%)	Oil Gulf Oil; Texaco Diamonds De Beers and Portugues Iron ore Krupp	None
Major estates Agro-industry	Lonrho	Tate and Lyle (in partnership with Government)		Anglo American
Foreign and Internal Wholesale Trade	36% of imports from South Africa. unknown % from Zimbabwe	CBC (UK 49%; Zambia Government 51%); ZOK (formerly South African taken by government 100%)	Portugues interests handled imports: transnational mines/agricultural business handled much of exports	Portugues interests handled trade, with growing South African and transnational involvement.

(From Seidman. "Benefits to Botswana from Regional Integration" in Oomen et al Botswana's Economy since Independence 1983)

The 1986 SADCC Macro-Economic Survey confirmed that throughout the SADCC region transnationals exercised "significant though varying degrees of control over the mining sector". According to this survey, transnationals exercised control not only through ownership (on the basis of equity and/or loans) but also through technology ranging from inputs to the extra-active phase, processing and refining. The survey observed that control was also exerted through provision of managerial and technical services.

Summing up the negative consequences of dependence on foreign capital and technology the Survey concludes:

"--- Control though equity and loans is measurable. In some countries, governments are minority shareholders, allowing foreign partners a stake of 70 to 75 percent. In other countries there is equal shareholding (50 percent each), or foreign minority shareholding. But at 50 percent or 49 percent, the foreign shareholder often exercises considerable control, especially if he is also a creditor to the company.

3.8 Dependence on foreign capital impedes the development of independent business policy since multinationals are only interested in thosel fields that provide them with stable, cheap and unprocessed materials for their industries abroad. By imposing this condition, they constrain the balanced exploitation of regional mineral resources, limit the creation of downstream industries and thus hamper general development.

Foreign Technology

3.9 Deeply tied to foreign capital is dependence on foreign technology. This technology is often made available to mining industries in the region at extremely high cost. With the long-term worsening of the terms of trade, the importation of technology not only creates one more link of dependence, but also reduces the profitablility of mining. ----"

South Africa capital commands a significant share of foreign capital in Southern African economies especially in the BLS coutries, Zimbabwe, Malawi and to a lesser extent in Mozambique and Zambia where South Africa has a more limited ownership control. The predominant role of South African capital is underlined by statistics which show that South Africa accounts for around 7% of the SADCC countries' total exports and, as much as 30% of their combined imports [Table 4].

Table 4

Direction of Trade for the 9 SADCC coutries, 1982°
Percentage distribution of:

	Export to: SADDC	Export to: PTA. nes*	Export to: RSA	Imports from: SADCC	Imports from: PTA. nes*	Imports from: RSA
Angola	0.1	-		0.8	0.0	-
Botswana	11.9	0.1	11.3	6.3	0.1	85.1
Lesotho	0.1	0.0	41.3	0.1	0.0	97.1
Malawi	9.7	1.1	5.7	9.6	0.4	34.0
Mozambique	11.6	7.8	1.8	3.0	0.2	8.1
Swaziland	2.7	1.1	36.9	0.7	0.1	82.9
Tanzania	0.8	2.9	-	4.2	1.8	-
Zambia	3.5	0.2	0.3	6.3	0.4	14.5
Zimbabwe	11.5	0.7	17.1	7.6	0.0	22.1
SADCC-Total	5.0	0.9	7.0	4.4	0.3	30.2
SADCC-Total [in mill. USD]	276	47	382	316	24	2161

*PTA.nex signifies the non-SADCC PTA countries, including the 2 potential members [Madagascar and the Seychelles].

°1982 was the year for which the most complete data was available.
There have been no significant changes since.

The total amount of SADCC import/export trade with South Africa is in sharp contrast to the intra SADCC trade [Table 5]

Table 5

Intra-SADCC trade, 1982-84 average [estimates]

Country	**Imports [1] Mill.USD**	**%**	**Exports [2] Mill. USD**	**%**
Angola	12	4.3	2	0.8
Botswana	51	18.5	47	19.2
Lesotho	0.3	0.1	0	0.0
Malawi	26	9.4	21	8.6
Mozambique	26	9.4	14	5.7
Swaziland	3	1.1	7	2.9
Tanzania	24	8.7	4	1.6
Zambia	48	17.4	35	14.3
Zimbabwe	86	31.2	115	46.9
Total	276	100.1	245	100.0

1. As reported by the importing country.
2. As reported by the exporting country.

(Tables 4 and 5 were adopted from SADCC Inter-Regional Trade, Mmegi wa Dikgang 16 & 23 August 1986)

The degree and significance of South African originating multinational activity in Southern Africa is also emphasized by evidence of the extent to which the growth of exports to the BLS countries contributes heavily to South Africa's industrial output and employment growth [Table 6].

Table 6

Direct Effect of Botswana's Manufcturing Imports from RSA on RSA Manufacturing GDP (1970-79)

Year	Botswana's manufacturing imports from RSA (R millions current prices	Botswana's manufacturing imports from RSA (R millions, 1970 prices)	Change in Botswana's manufacturing imports from RSA (R millions 1970 prices)	Change in RSA manufacturing GDP equivalent of column 4 (R millions 1970 prices)
(1)	(2)	(3)	(4)	(5)
1970	28.0	28.0	-	-
1971	36.4	34.7	6.7	2.3
1972	49.2	43.9	9.2	3.1
1973	63.1	48.5	4.6	1.6
1974	79.5	54.2	5.7	1.9
1975	101.1	57.4	3.2	1.1
1976	119.5	56.9	-0.5	-0.2
1977	152.6	64.3	7.4	2.5
1978	212.4	86.2	21.9	7.4
1979	294.2	103.4	17.2	5.8
Total	1136.0	577.5	75.4	25.5

[Table 6 was adopted from E.L. McFarland, "Benefits to RSA of her Exports to BLS" in Oomen et al, Botswana's Economy since Independence 1983]

5. SOUTHERN AFRICAN RESPONSE

During the last 8 to 10 years Black Southern African states have initiated a variety of measures geared to the reduction of dependence on South Africa. The core of these measures has been transport and trade. In the area of trade the strategy has been the development of trade links and the strengthening of a technological base. The thrust of this strategy proceeded on the basis of bilateral arrangements as opposed to a free trade zone approach. This response has, however, been bedevilled by a number of constraints. These have included the hegemonic position of South Africa within SACU and RMA, the limited national markets, major differences in national strategies to development, limited national capacities to overcome technology stratification and the impotence of national regimes in controlling international mobility of transnationals.

5.1 Southern African Custom and Monetary Union

South Africa and South African based transnationals have used the regime of the Custom Union to assert their superiority and to frustrate efforts of the BLS countries to develop and control an independent technological base. The Customs Agreement has provisons "designed" to protect the BLS industries and thus stimulate industrialization and technological sophistication within the BLS countries. As stated earlier Articles 6 (1) and 7 permit the levying of additional protective duties and specification of major industries by the BLS countries. Notwithstanding the existence of these provisions minimal industrial activity has been stimulated and advanced technology remains the privilege of South Africa in general and transnationals in particular.

5.2 Limited National Markets

Against the background of a legacy of dependence upon South Africa, the creation of SADCC was welcomed as an opportunity for overcoming the constraints of small national markets.

For example in Botswana, apart from the constraints posed by the membership of SACU, the existence of a viable market has always been perceived as the most pressing obstacle against the development of a substantial technological base. Upon the creation of SADCC, several manufacturing concerns were set up with a view to exploiting the new opportunities. Prior to SADCC, industrial and major technological activities were limited to the Botswana Meat Commission and Kgalagadi Breweries but in the early eighties industrial production in particular and advanced technological activity in general have undergone a major expansion. A significant proportion of the recent growth has been geared to the SADCC export markets especially Zimbabwe. The prospects in this regard would however, appear to be dim given the 1985 Zimbabwe trade regulations as part of the new Customs and Excise Act. According to press reports in Botswana, the consequences for Botswana based manufacturers/exporters were quite adverse. By being shut out of the Zimbabwe market and given the foreign exchange problems of other potential SADCC markets, the Botswana based industrialists were back to the pre-SADCC limited domestic market.

Regarding the problems of small markets, the 1986 SADCC Survey made the following observations:

"--- The SADCC member countries taken individually are in many cases too small to constitute a market for efficient industrial production in many product categories. The problem of a small market size is of particular concern to Botswana, Swaziland, Lesotho and Malawi. Because of its much broader range of products to some extent Zimbabwe has faced similar concerns. Competition of goods from South Africa make the setting of most industries in Botswana, Lesotho and Swaziland and of some in Malawi, Zimbabwe and Zambia difficult. In the remaining four countries (Zambia, Tanzania, Angola and Mozambique), supply bottlenecks have tended to overshadow demand problems (as has also been the case for much of Zimbabwe's industrial sector) and it is apparent that the market size problems could re-emerge after present critical supply constraints have been overcome ----"

5.3 Major Differences in National Development Planning

Writers on regional cooperation have identified ideological difference between the affected states as a major source of dissensus. In the context of SADCC ideological differences have not come to the fore as a disintegrating force. This has especially been true as regards the core of SADCC, that is to say transport and communications. The explanation for this lies in the perception of transport and communications by the leadership elite as being largely non-political. The same cannot be said of trade and economic relationships. The history of SADCC would seem to support the view that economics is treated as high politics leading to major bottlenecks in implementing cooperative ventures in general and the articulation of uniform policies to deal with transnationals. In this context, one would expect an easier task in designing and implementing a common approach on the part of Tanzania, Mozambique and Angola. These three countries have pursued a policy of dismantling the colonial capitalist economies. To this end they have nationalised large enterprises, created state corporations and maintained close surveilance over the transnationals. Consistent with this approach Angola, Mozambique and Tanzania have operated trade regimes which have sought to limit imports. In contrast Botswana, Lesotho, Malawi, Swaziland and Zambia operate fairly open trade regimes characterised by strong investment incentives and open import policies.

Zimbabwe is in a class of its own lying somewhere between the above two extremes. Nevertheless ZANU-PF has stated that it intends to lead Zimbabwe in a transition to socialist relations of production.

The lack of a uniform policy regarding development planning in general and trade policy in particular can only render futile attempts to control transnationals by national regimes. By pursuing national policies in isolation, Southern African states leave themselves open to manipulation by transnationals. To the extent that transnationals can relocate from one SADCC state to another and as transantionals become more mobile, SADCC states will fail to achieve a significant measure of control over transnationals through the use of national programmes.

The functional limitations of national regimes were quite eloquently illustrated by the experience of the Andean Pact. Chile, Peru and Colombia all virtually honoured the Pact more in breach than in observance. The transnationals originally adopted a very hostile attitude against the Pact but they subsequently left the divisions among the member states to blunt the sharp edges of the treaty. The same fate cannot be ruled out in respect of SADCC states.

5.4 **Access to, and Control of, Technology**

In the struggle by the Southern African states to reduce external depends on South Africa the question of access and control of advanced technology is critical. Without an elaborate technological, and organisational infrastructure, the promises of independent development are unlikely to materialise. Yet as an accelerated creation of an independent technological base is the pre-requisite to genuine independence, access and control of technology poses political problems.

The process of technology production and distribution can be characterized as a process of interaction involving a variety of actors endowed with differing capabilities, the major actors being nation states and transantional corporations. In this process the transnationals have an upper hand thanks to the benefits conferred by the legal infrastructure and their control over R & D, capital and other resources. The process of interaction results in a sharp disparity between the participants with black Southern Africa existing as a peripheral economy. The present distribution patterns cannot, however, be altered without changes being effected in the "functional grid" of the process. In this context "functional grid" is used to as an expression to suggest that the legal infrastructure operates as a key mechanism that regulates access and control of, technology. In short, access to and control of, technology are determined by the nature of the legal system.

The role of law will, therefore, be critical for the purpose of changing the "functional grid" of technology production and distribution. However, in order to effect such a change one has to recognize that the law as an instrument which is affected by the power process - it is a process by which some people control other people and resources. It is, therefore, not a mere rigid set of rules but rather a process of authoritative decision in which patterns of authority and control are appropriately conjoined. In this context control means the making of policy choices and decisions which are in fact put into effect in a consequential manner.

If SADCC states are to succeed in breaking the existing stratification in terms of access to advanced technology, the requisite amount of power will have to be deployed and therein lies the crux of the matter.

The unfavourable position of black Southern Africa regarding science and technology is not peculiar to this region. To challenge the transnationals' proprietary rights over technology amounts to challenging what is perceived by the owners to be the underpinning of industrial capitalism and its ideological handmaiden, economic liberalism.

At the international level effective powr has been particularly crucial in questions relating to science and technology. This has been due to the fact that, as Tinbergen and others have concluded, Third World countries have largely depended upon multinational corporations for acquiring and expanding their technological capacities and that the growth of transnationals, which have been a major force in shaping the world economy, has been a phenomenon associated with Western industrial capitalism. In the late 70s of the largest transnationals, 638 were headquartered in North America, Western Europe or Japan. The largest 300 US enterprises and their foreign subsidiaries alone accounted for 28 per cent of global exports, including 44 per cent of primary products and 2 per cent of manufacturing. At the end of the last decade it was predicted that without changes in the trends of the 70s, transnationals could possibly control more than 40 per cent of the world's production by 1980. It was expected that in light of such factors as the increasing role of scientific expertise, the ability to form capital needed to underwrite major technological innovations, and the disproportionate control by transnationals of marketing knowledge and specialisation in transnational decision making, there was a real possibility that transnationals would in the future enjoy increased rather than decreased control.

The experience of Southern Africa especially in the case of the BLS countries has confirmed the foregoing predictions. In the exploitation of mineral resources, Southern Africa has increasingly relied on the transnationals. The mining and treatment of mineral products requires large capital investments and involves high risks which individual nation-states cannot mobilise. In the event they have been forced to rely on the mining transnationals and external financing.

6. CONCLUSION

The underlying premise of SADCC initiatives is that the existing international and regional economic and trade-cum-technology regimes perpetuates a division of labour in which the Southern African states predominantly export primary commodities in exchange for industrial goods. This pattern constrains Southern African opportunities for integrated economic development by stunting growth of their technological base in general and industiral sectors in particular. The SADCC initiatives seek to upgrade the technological capacity of the member states through a restructuring of the regional international division of labour. The restructuring would have to entail a partial disengagement from trade ties with South Africa and increasing trade and technological exchanges internal to SADCC.

The pertinent question is whether SADCC can change the existing regional and international system as it affects the member states in a way that markedly differs from the dominant ideology in the centres of regional and international power. Consequently change would consist of something much more than formal legal changes such as the adoption of a SADCC sponsored code of conduct on transnationals and the transfer of technology. Such formal changes have to be coordinated with control. In other words, legal changes in the regional or international systems as they relate to access to, and control of, advanced technology can only be effected through either a forcible redistribution of control or the concurrence of the transnationals and/or the centres of industrial capitalism and power. In isolated instances transnationals may voluntarily give up their monopoly rights otherwise by and large they will hold on to their positions in the hopes of utilising their industrial power - which is the cutting edge in the division of all things in great demand and short supply in collective life - to maintain the status quo.

The other possibility is for black Southern Africa to assert a forcible redistribution. What would be the chances of success?

An examination of the constraints and possibilities leads to the following conclusions. The SADCC objectives and strategies are to a certain incompatible. SADCC countries would find it difficult simultaneously to pursue a non-conventional integration strategy and at the same time muster a collective central authority to offset market forces and effectively regulate transnational operations. SADCC seeks to partially disengage economically from South Africa without displaying the requisite political will to forego a degree of sovereignty which is a prerequisite to the development of supranational institutions that are necessary for the effective restructuring of the existing division of labour. In short they wish to eat their case and have it at the same time.

Second there is a possibility that the potential benefits realized by SADCC will not be equally distributed among its members in such a way as to create core - periphery trade and economic relationships among the SADCC member states. This tendency would not be peculiar to SADCC and was anticipated during SADCC I.

The SADCC I Document thus stated:

"The first main problem with common markets or customs union is the growth of regional inequalities, i.e. regional distribution of benefits and costs of cooperation. Unless mechanisms can be developed to offset differential gains and losses, there will, inevitably, be pressures created in the less well-off countries to opt out of the agreement and to seek an alternative status that will improve their position. A basic requirement, therefore, for this degree of cooperation is political, that the participating states be prepared to forego a degree of autonomy in decision-taking for the common good of all partner states, and the political will exists on the part of the states who benefit most from the union to develop mechanisms to transfer part of their benefits to the not-so-fortunate countries."

This is collaborated by studies on Third World integration. For example Mytla and Axline argue that the tendency of economic integration to produce asymetical distribution patterns acts as a centrifugal force. In order to counter the centrifugal forces there must be a strong commitment toward collective action/solidarity. The solidarity and collectivity will, however, be undermined unless there is an agreement regarding the distribution of benefits.

More specifically, in the context of SADCC, Zimbabwe as the more industrially advanced and economically more diversified (thus the dominant state and economy) would be in a better position to benefit from a SADCC reduction of dependence upon RSA.

If this was to occur, it would set in motion centrifugal forces which would undermine the commitment to a unified approach. Therefore in order to forestall this a prior agreement regarding the apportioning of the benefits would be called for. The stability of such an agreement would however require the assumption of the leadership mantle. The assumption of the role of economic leader invariably carries with it the making of national sacrifices and provision of international or regional public (free) goods and services to the less powerful members. In sum, Zimbabwe would subsidize the less economically powerful members.

Finally it is worth noting that if the SADCC initiative succeeded in reducing dependence upon South Africa this would entail losses for the RSA. Given the significance of the RSA/SADCC inter-state trade we may then expect counter initiatives by RSA. Recent evidence of economic and military destabilization would confirm the view that

RSA will be willing to frustrate SADCC disengagement programmes.

Mozambique and Angola have in the past received the brunt of RSA destabilization. The 1986 SADCC Macro-Economic Survey concluded that as a result of destabilization and aggression in Angola and Mozambique, resources have been transferred from industry, supportive structures have been destroyed and transport links disrupted. We can therefore expect similar counter-initiatives, by RSA against the rest of SADCC.

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