WORLD TRADE ORGANIZATION

WT/REG231/3
12 December 2008

(08-6113)

Committee on Regional Trade Agreements Original: English

SOUTHERN AFRICAN CUSTOMS UNION (GOODS)

Questions and Replies

The following communication, dated 24 October and 10 December 2008, is being circulated at the request of the Southern African Customs Union.

This document reproduces the questions addressed to the Parties and the responses submitted.

Question from the Delegation of Canada

Import duties and charges, and quantitative restrictions

1. The report notes that "goods grown, produced or manufactured within the area of SACU are free of customs duties and quantitative restrictions when imported from one SACU Party to another, unless provided elsewhere in the Agreement." Could SACU indicate whether such exceptions to duty free treatment are found in the Agreement and, if so, for which goods?

The question above refers to Article 18 of the 2002 Agreement which provides for the elimination of customs duties and quantitative restrictions on goods imported from partner countries. Whilst no specific list of products exempted from this provision is contained in the Agreement, the latter provides for circumstances in which exceptions to duty free, quota free treatment may apply. These are contained in Article 18(2), which allows for the imposition of restrictions in accordance with national laws for the protection of *inter alia*: health, environment, security IPRS, etc. In addition, Articles 25 and 26 of the Agreement provide for import and export prohibitions and the protection of infant industries respectively. Article 29 allows for specific arrangements relating to the marketing of agricultural products. Article 34 deals with bilateral preferential trade agreements between individual SACU Members with third parties and allows that duties could be levied on goods imported under such preferential agreements.

Questions from the Delegation of Chinese Taipei

Trade Environment

2. According to paragraph 1 of the WTO Secretariat's Factual Presentation (WT/REG231/2), the South African Customs Union (SACU) was established in 1910 and is the world's oldest customs union. We would like to request SACU to further explain: Are there any plans for advancing the SACU toward a common market?

At this stage, there are no formalized plans to advance SACU to a Common Market.

However, in simple terms, a common market is a deeper integrated version of a Customs Union in which Member States agree to have common policy measures affecting the internal operations of the market in order to promote the free movement of the goods, capital, services and people. SACU is in the process of building out the provisions of the 2002 SACU Agreement through the development of common policies and national structures to compliment the SACU institutions established under Article 7, as a first step to possible deeper economic integration.

General Provisions of the Agreement

3. According to paragraph 37 of the WTO Secretariat's Factual Presentation, "when goods imported by a Party from outside the Common Customs Area under a preferential agreement are exported to another Party, the normal import duty applicable to such goods when imported into the rest of the Common Customs Area is charged. Any difference between the normal duty and the duty originally charged on such goods is paid into the Common Revenue Pool."

(i) We would like to request the SACU to further explain the ideas for the establishment of the Common Revenue Pool.

The idea for establishment of Common Revenue Pool (CRP) dates back to the 1969 SACU Agreement, in which all SACU Member States were mandated to pool customs and excise duty collections and share the receipts in accordance to the agreed formula. The 2002 SACU Agreement does not change the modalities of collecting customs and excise duties and still requires Member States to pool these collections. Currently, South Africa plays a central role in collecting her own customs and excise duties, which constitute the bulk of the Common Revenue Pool. South Africa also receives remittances of customs and excise duties from Botswana, Lesotho, Namibia and Swaziland (BLNS). Payments to SACU Member States from the Common Revenue Pool are made based on the calculation of revenue shares using the new revenue formula as contained in Annex 1 of the Agreement.

(ii) Could the Parties share their experiences about operating the Common Revenue Pool with other members? For example, the current situation regarding management and operation of the Common Revenue Pool.

Article (33) of the 2002 SACU Agreement defines the operational modalities of the CRP and calls for South Africa to manage the CRP on a transitional basis for two years from entry into force of the Agreement. However, South Africa is still managing the CRP pending the finalization of an on-going study on the options for the permanent arrangement for the management of the CRP.

South Africa is the current manager of CRP, which is a virtual pool operated within the South African Consolidated National Revenue Fund. South Africa remits duties daily into the CRP whilst the BLNS remit duties quarterly into the CRP. South Africa also collects some customs and excise duties on behalf of the BNLS and remits into the CRP.

The 2002 SACU Agreement provides for a revenue sharing formula that has three components; namely a Customs Component, Excise Component and Development Component. The customs share is allocated on the basis of each country's share of intra-SACU imports. The excise component is allocated on the basis of each country's share of Gross Domestic Product (GDP). The development component, which is fixed at 15% of total excise revenue, is distributed according to the inverse of each country's GDP per capita.

Member States shares are based on the forecasted size of the CRP and South Africa provides the revenue forecasts for year (t). The SACU Council of Ministers approves shares for year (t) in December of every financial year and South Africa, as manager, makes quarterly payments to the all Member States accordingly.

The 2002 SACU Agreement provides for payment of adjustment in years (t+1) and (t+2) to account for differences between the forecast and actual revenue collected.

Cognizant that South Africa is the transitional manager of CRP, the SACU Secretariat commissioned a study on the management of the CRP. The study provides options for the permanent arrangement for the management of the CRP, and operational modalities of the CRP intended to improve transparency and a low-cost revenue management system. It is anticipated that the permanent arrangement for managing the CRP would be implemented in the next financial year.

South Africa provides quarterly status reports on duty collections and proof of payment to the SACU Secretariat. The Secretariat in turn, prepares an analytical paper which is presented to the Finance Technical Liaison Committee each quarter.

(iii) Could the Parties provide further information about their application of rules of origin in this case?

No rules of origin apply and no mechanism is in place to administer the system of monitoring whether goods have incurred the normal duties once re-exported to other SACU Member States. The onus is on the exporting state to ensure that re-exported goods that were initially imported under a preferential arrangement pay the normal duty if re-exported to SACU Countries. The incentive to ensure this is the revenue pooling arrangement. In practice, this has only occurred in respect of the SA-EU TDCA and bilateral between some SACU Member States and Zimbabwe. With regard to the TDCA, Member States have given concurrence to South Africa that the EU imports under the TDCA, which are subsequently re-exported to the rest of SACU are not accompanied by a rules of origin certificate. It is envisaged that this issue will be resolved under the current EPA negotiations. With regard to the bilateral with Zimbabwe, this issue has been resolved by virtue of the coming into force of the SADC FTA.

(iv) According to footnote 5 of the Factual Presentation, "rules of origin apply on imported goods: once a good enters the customs union there is free movement of goods among SACU members". Therefore, is such a duty collection consistent with the purpose for establishing the customs union?

Duty collection at the first point of entry into the customs union is consistent with the application of a Common External Tariff and facilitates the pooling of revenues. A duty collected at the time of importing is consistent with the customs union as any difference in the duty between an importing SACU member and the final SACU destination is deposited into the common revenue pool which is shared amongst the Member States. This provision was imported from the 1969 SACU agreement, which allowed Member States to have bilateral trade agreements with third parties.

Infant Industry Safeguards

4. Regarding the protection of the infant industry, according to paragraph 23, footnote 8 of the Factual Presentation and Article 26 of this SACU Agreement, we would appreciate further clarification about the following:

(i) Is levying additional duties on imports to protect infant industries consistent with the relevant provisions contained in Article 24 of GATT 1994? For instance, Article 24.5 (a) provides that " … in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union …".

SACU was established long before the GATT. SACU's CET existed since 1910. In addition, no Infant Industry Duty levied by any SACU Member State exceeds that specific Member State's WTO Bound Duty rate. The infant industry protection clause as contained in the 2002 SACU Agreement is consistent with the provisions of Article XVIII of the GATT 1947 (2) "...those contracting parties should enjoy additional facilities to enable them (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry to enable contracting parties to meet the requirements of their economic development."

(ii) Is this protection period of 8 years a "temporary" measure?

Yes, it is a temporary measure. Protection is for a period of 8 years; however the SACU Council of Ministers may shorten this period if the industry at stake is able to achieve "maturity" in a period less than 8 years. If an Industry after 8 years is still an "infant", Council may decide to extend the period of protection until such time that the Industry achieves "maturity".

(iii) Has the Council of Ministers ever extended the 8-year period for any specific infant industry?

Yes. Extension was granted to Namibia for its UHT Milk Production Industry in light of the fact that establishment of dairy farming and processing facilities requires a period longer than 8 years. An extension was also granted to Namibia for her Pasta Manufacturing Industry.

Accession

5. According to paragraph 32 of the WTO Secretariat's Factual Presentation (WT/REG231/2) and Article 32 of this SACU Agreement, we know that this SACU Agreement is open to accession by any state upon unanimous approval by the Council of Ministers which determines the procedures and criteria for the admission of new members. We would appreciate further clarification about the following:

(i) Are there any specific procedures and criteria for the admission of new members in the SACU Agreement?

The SACU Council has not yet determined procedures and criteria for the admission of new members. However, it is envisaged that this will be in the near future.

(ii) Have there ever been any States which showed intention to apply for accession to this SACU Agreement?

None thus far.

(iii) On the other hand, has the SACU ever invited any States to accede to it?

None thus far.

(iv) Is accession to the SACU Agreement only limited to the states within South Africa?

The SACU Council has not yet determined procedures and criteria for the admission of new members. As such, no decision has yet been made on who would be able to accede and who would not be able to accede. The SACU Agreement therefore does not limit accession to only Southern African States.

Questions from the Delegation of Turkey

6. According to Paragraph 16 of the Factual Presentation, there are no rules of origin provisions in the Agreement of SACU; however, in footnote 5 it is explained by the Parties that rules of origin apply on imported goods. In this regard, we would appreciate clarification from the Parties whether SACU as a customs union did establish a common system for rules of origin against the third countries or not.

There are no rules of origin provisions in the SACU Agreement. Goods can therefore move freely without rules of origin certificates once it enters the Customs Union. At the point of entry into the Customs Union goods will however need to be accompanied by a Rule of Origin certificate. This is because Customs Administrations in SACU Member States will have to administer both "preferential" and "non-preferential" rules of origin *vis-à-vis* third countries. In this context "preferential" rules of origin refers to trade under a specific bilateral arrangement whilst "non-preferential" refers to most favoured nation (MFN) trade.

SACU has agreement-specific (preferential) rules of origin with third parties, which are agreed at the time of negotiating the Agreements. By virtue of negotiating as a group, SACU countries negotiate a common set of rules of origin for every third party trade arrangement SACU enters into and hence a common system exists in respect of those trade partners.

With regard to countries with which SACU has not yet negotiated an agreement (i.e. most favoured nation trade), non-preferential rules of origin apply. These non-preferential rules of origin are determined in terms of the WTO GATT agreement and are enacted in the customs legislation of the SACU Member States. Therefore, although no common system has been developed at the SACU level, by virtue of all SACU Member States being Members of the WTO and Members States having to apply similar customs legislation, a similar system for administering non-preferential rules of origin also exists.

Question from the Delegation of the United States

Import duties and charges, and quantitative restrictions

7. Paragraph 13 notes that "goods grown, produced or manufactured within the area of SACU are free of customs duties and quantitative restrictions when imported from one SACU party to another, unless provided for elsewhere in the Agreement." Could the Parties please clarify exactly what is provided for elsewhere in the Agreement? Do these go beyond the exceptions and reservations noted in paragraphs 30 and 31?

Same as Response to Question 1.

Sanitary and phytosanitary (SPS) measures

8. Article 30 of the SACU Agreement does not mention the WTO SPS Agreement. Why have the members of SACU chosen not to reaffirm the rights and obligations contained in the WTO SPS Agreement?

This is covered under the preamble where SACU Member States specifically refer to the outcome of the Uruguay Round.

Infant industry safeguards

9. Paragraph 23 of the Factual Presentation notes that Botswana, Lesotho, Namibia and Swaziland may utilize infant industry safeguards and thus temporarily impose additional duties upon goods produced or manufactured within the Common Customs Area or third parties. Since 2004, has any SACU member utilized infant industry safeguards? If so, please provide information by country, including the HTS tariff line, new duty rate, and time period, for any cases of imposed infant industry safeguards.

Namibia currently utilises the Infant Industry mechanism for two infant industries: on pasta products of tariff lines 1902.11 and 1902.19, at 40%; on certain UHT Milk, namely tariff lines 0401.10, 0401.20.10, 0401.30.10 and 0401.30.90 at rates down-scaled from 40%. Since these measures also apply against imports from other SACU Members, developmental and food security aspects were thoroughly deliberated upon. It must be mentioned however that the protection of these two Namibian industries have commenced during 2002 under the 1969 Agreement, thus before the 2002 Agreement entered into force on 15 July 2004.

Botswana utilizes the infant industry protection mechanism since 2007 for one industry, namely UHT milk.

Participation in RTAs by SACU members

10. Table IV.1 lists for Botswana, Namibia and South Africa a total of six RTAs which have not yet been notified to the WTO. Can these Members please outline when they plan to notify each of these agreements, as required by the GATT, the Enabling Clause, as well as the Transparency Mechanism for Regional Trade Agreements?

Still consulting with SACU Member States on this question. They will probably also communicate their answers directly to the WTO Secretariat.