

Committee on Regional Trade Agreements
Fifty-third Session

CONSIDERATION OF THE SOUTHERN AFRICAN CUSTOMS UNION, GOODS

Note of the Meeting of 20 April 2009

Chairman: Mr D. Brauns (Germany)

1. The meeting was convened in document WTO/AIR/3332/Rev.1, dated 1 April 2009.
2. Under Agenda Item C.II of its 53rd Session, the Committee on Regional Trade Agreements (hereinafter CRTA or the Committee) considered the Southern African Customs Union (SACU), goods (hereinafter referred to as 'the Agreement').
3. The Chairman said that the Agreement had entered into force on 15 July 2004 and had been notified to the WTO on 25 June 2007 under Article XXIV:7(a) of the GATT 1994 and the Understanding on the Interpretation of Article XXIV as an Agreement establishing a Customs Union (document WT/REG231/N/1). The text of the Agreement, together with its Annexes, was available on the Parties' official websites. The Factual Presentation on the goods aspects (document WT/REG231/2, dated 3 October 2008) had been prepared by the Secretariat on its own responsibility in full consultation with the Parties, in accordance with paragraph 7(b) of the Transparency Mechanism (TM) for Regional Trade Agreements (document WT/L/671). In addition, written questions and replies on the Agreement had been recently distributed in document WT/REG231/3, dated 12 December 2008, and document WT/REG231/3/Add.1, dated 17 March 2009. The document containing the result of the general incidence calculation for SACU prepared by the Secretariat had been also distributed as document WT/REG231/1, dated 3 October 2008. He proposed to organize the consideration of the Agreement by asking first the Parties and other Members to give any general comments. The Committee would then turn to the specifics of the Agreement by using the Factual Presentation by section to guide the debate, to the questions and replies document, and finally to the document containing the results of the general incidence calculation.
4. The representative of Lesotho, on behalf of the SACU (the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa, and the Kingdom of Swaziland) thanked the Secretariat for having prepared the Factual Presentation. The SACU had been concluded in 1910 ('the 1910 Agreement') and had been in effect until 1969. The 1910 Agreement had already created: (i) free movement of goods originating in the Common Customs Area without any duties or quantitative restrictions; (ii) a revenue-sharing formula (RSF) for the distribution of customs and excise revenues collected by the union; (iii) a common external tariff (CET) on all goods imported into the Union from the rest of the world; (iv) a common pool of customs duties as per the total volume of external trade; and (v) excise duties based on the total production and consumption of excisable goods. Following the independence of the former British High Commission Territories in the mid-1960s, a new SACU Agreement had been signed on 11 December 1969 ('the 1969 Agreement'), to reflect the changed political environment in the region. However, an important missing element in the 1969 Agreement was the absence of joint decision-making. He recalled that

all SACU member states were also signatories to the 1994 Marrakech Agreement establishing the WTO. At the same time, important political developments had taken place in Southern Africa with the achievement of independence for Namibia in 1990 and the attainment of democracy in South Africa in 1994. Following these important global and regional developments, SACU member states had decided to renegotiate the 1969 Agreement, to better reflect the prevailing political and economic environment. The aim had also been to create an internationally recognised organization with effective, transparent and democratic institutions providing also for joint decision-making, dispute settlement and the development of common policies. The main areas of renegotiations had been in the following: (i) joint decision-making processes - prior to 2002, SACU had had no common institutions and therefore had been administered through annual meetings of the Customs Union Commission. There had been also no effective procedures to ensure compliance or resolve disputes; (ii) revenue-sharing formula - the issue of most concern in the 1969 Agreement had been the RSF. With the expected trade liberalization following the Marrakech Agreement, it had become necessary to review the RSF; and (iii) trade relations with third parties - with trade liberalization evident, it had become also necessary for SACU as a Customs Union to develop a joint mechanism to engage third parties in trade negotiations with a view to enhancing SACU member states' integration into the global economy.

5. Following the renegotiations which lasted seven years, the new Agreement had been signed in 2002 ('the 2002 Agreement') in Gaborone, Botswana, and had entered into force on 15 July 2004, following ratifications by the five SACU member states. SACU believed this Agreement to be comprehensive comparing to the 1969 Agreement, as it not only covered revenue-sharing but also provided for deeper integration, enhanced economic cooperation through common institutions, common policies, and dispute settlement mechanisms. A new and transparent revenue sharing formula and joint mechanisms to deal with trade negotiations with third parties had been adopted. The main objective of the 2002 Agreement was to enhance trade among member states by facilitating the free movement of goods, whilst deepening integration through cooperation in the development of mutually beneficial economic and trade policies. At the same time, the Agreement recognised the different levels of economic development of the member states and the need to provide for their economic development. The specific objectives of the 2002 Agreement were to: (i) facilitate the cross-border movement of goods between the territories of member states; (ii) create effective, transparent and democratic institutions ensuring equitable trade benefits to member states; (iii) promote conditions of fair competition in the Common Customs Area; (iv) substantially increase investment opportunities in the Common Customs Area; (v) enhance the economic development, diversification, industrialization and competitiveness of member states; (vi) promote the integration of member states into the global economy through enhanced trade and investment; (vii) facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by member states; and (viii) facilitate the development of common policies and strategies. He further pointed out that the 2002 Agreement provided for the liberalization of trade in goods only to facilitate free trade amongst the member states, while providing for a common external tariff and a mechanism to collect and share revenue. In this regard, all customs, excise and additional duties collected in the Common Customs Area were paid into a Common Revenue Pool. The respective share of each member state of the total customs, excise and additional duties collected in the Common Customs Area during any financial year was determined by applying a revenue-sharing formula, which comprised customs, excise and development components.

6. As a Customs Union, SACU member states had decided to collectively undertake trade negotiations with third parties through a Common Negotiating Mechanism (CNM). In addition, SACU members sought to develop a common industrial development policy, while cooperation mechanisms were envisaged in the areas of agriculture and competition policy. The Agreement was also aimed at addressing unfair trade practices within SACU. He recalled that the African continent, through the African Union, had taken decisions to accelerate regional economic integration to promote economic development. As members of the African Union, Southern African countries were

contributing to the achievement of these objectives. Given these developments, SACU Council of Ministers had been engaged in a process to provide strategic direction on how SACU could be repositioned to play a catalytic role towards the achievement of deeper integration in Southern Africa. SACU member states had also resolved to accelerate the full implementation of the 2002 Agreement, including policy development and harmonization initiatives, and strengthening and establishing effective institutions to facilitate the achievement of SACU objectives. At the sub-regional level, SACU aimed to strategically position itself as a nucleus for strengthening and deepening regional integration and trade relations with its neighbours. In this regard, SACU actively sought to initiate and strengthen trade relations with other regional economic bodies on the continent. SACU member states believed that although deeper integration posed challenges, the benefits of expanded market opportunities, increased trade and overall improvement in welfare, outweighed these drawbacks.

7. In conclusion, he emphasized that SACU presented an ideal tool for trade liberalization in Southern Africa as it facilitated the integration of the economies of its member states into the global trading system. The 2002 Agreement recognized the impact of the Uruguay Round of Multilateral Trade Negotiations on global trade liberalization and the SACU member states remained fully committed to the rules-based multilateral trading system and the successful conclusion of the Doha Development Round. Finally, he informed the Committee that SACU was about to commemorate a hundred years of existence in 2010 demonstrating its longstanding commitment to integration. In reviewing its existence, SACU member states had concluded that the Customs Union had well served them despite the historical challenges and that, given its existing level of integration as a Customs Union, it had the potential to be an effective instrument for further integration and economic cooperation. Therefore, member states had recommitted themselves to further strengthen the SACU as a vehicle for implementing a common agenda towards regional integration in Southern Africa.

8. The representative of the United States remarked that SACU was an important comprehensive agreement, from both a global and a regional perspective. As noted in the Factual Presentation, SACU was the oldest customs union in the world, with a common external tariff in place since 1 July 1910. SACU's membership was diverse from an economic development perspective and despite many challenges it maintained a high share of duty-free tariff lines both on agricultural and non-agricultural products. She thus encouraged SACU members to continue to push forward with additional tariff liberalization, as this would benefit SACU's development and that of SACU's regional partners. She understood that South Africa might increase tariffs on apparel products and asked whether other SACU member states would take the same action and if so would this change the common external tariff on such products. If not, how would it be reconciled with the terms of the SACU agreement. The representative of Lesotho clarified that SACU had a well-established procedure in the Agreement for changes to the common external tariffs. This procedure provided for the final decision-making on amendments to such tariffs by the SACU Council of Ministers. Individual member states therefore were not able to change the common external tariff, but could, however, propose to amend such tariff, which would then trigger the SACU mechanism and procedures for tariff setting.

9. The representative of the European Communities (EC) thanked the Parties for the comprehensive presentation. She drew the Committee's attention to Table IV.1 on page 15 of the Factual Presentation. She noted that six RTAs concluded by the Parties had not been notified to the WTO. Noting that the Parties had already responded to this question in writing, she asked for a more detailed explanation. In addition, the EC believed that the table was incomplete, given the fact that SACU members had recently signed some other preferential trade agreements (PTAs), such as EFTA-SACU, MERCOSUR-SACU, or US-SACU Trade, Investment, Development, Cooperative Agreement (TIDCA). The representative of the United States supported the EC's question.

10. In response, the representative of Lesotho noted that information on FTAs/PTAs and bilateral agreements that had been in force at the time when SACU had been notified to the WTO was circulated in its notification. The SACU-EFTA FTA had only entered into force on 1 May 2008, while the SACU-MERCOSUR PTA was envisaged to only enter into force on 1 January 2010. The SACU-EFTA FTA had been notified to the WTO on 29 October 2008 and its consideration had been scheduled on 19-20 November 2009. The SACU-US TIDCA Agreement did not include a tariff liberalization schedule and was merely a cooperation agreement in the areas of investment, trade and development. The bilateral agreement between Botswana and Zimbabwe was currently under review and a decision on its notification would be taken at a later stage. The bilateral agreement between Botswana and Malawi was an old Agreement that had been signed in 1956. In practice, trade between the two countries was however governed by the SADC Protocol on Trade and an assessment by the two Parties of the need for the continuation of the Botswana-Malawi Agreement would be undertaken in the context of the SADC Protocol on Trade. With respect to the bilateral agreement between Namibia and Zimbabwe, Namibia planned to take this up with Zimbabwe for the two countries to jointly determine when and how to notify the Agreement, taking into account that the two parties were also members of the SADC FTA, which may render the PTA obsolete in the near future. Regarding the agreements between South Africa and Mozambique, Zimbabwe and Malawi, respectively, these were old agreements and trade between South Africa and these countries was mainly governed by the SADC Protocol on Trade.

11. The representative of the EC as a follow-up requested the Parties to clarify (i) the possibility for SACU member states to negotiate and to enter into new PTAs with third parties, or to amend existing ones; and (ii) the legal difference between the term "concurrence" in the 1969 Agreement and "consensus" in Article 31.3 of the 2002 Agreement. The representative of Lesotho said that although he could not at this stage provide a legal interpretation, he could indicate that under the 1969 Agreement, SACU member states could unilaterally decide to enter into negotiations with third parties and could also conclude such negotiations and seek "concurrence", after concluding negotiations, from the rest of the SACU Membership. In comparison, under the 2002 Agreement, consent was required before a member state entered into negotiations with a third party. This allowed for an assessment beforehand to determine the potential impact of a future agreement on the Customs Union collectively and member states individually.

12. The representative of the United States asked whether SACU member states envisaged to modify their revenue sharing programme over the next years, and if so in what ways. The representative of Lesotho recalled Article 43 of the SACU Agreement under which amendments to the Agreement were allowed. However, he replied that, at this stage, the current programme of sharing revenue was not expected to change. Moreover, SACU member states recognized the impact of the current economic downturn on their economies and subsequently on the Customs Union's tariff revenue, as well as the possible negative effects that further trade liberalization, both bilateral and multilateral, would have on expected customs revenue. The SACU member states were therefore expecting lower payouts from the Common Revenue Pool and discussions were underway within SACU to address the possible adverse implications of expected lower tariff revenue.

13. The representative of Japan expressed her appreciation to SACU member states for their presentation of the Agreement and to the Secretariat for the Factual Presentation. She also thanked SACU member states for the written responses provided to the question submitted by Japan even after the deadline suggested by the Secretariat.

14. The representative of Lesotho appreciated the positive feedback from WTO Members during the consideration, and in particular the United States and Japan for their encouragement. He assured Members that SACU member states remained committed to further liberalization, as clearly stated in Article 2 of the 2002 Agreement. He thanked again all the delegations for their interest in SACU. He hoped that WTO Members would, while taking into account of SACU's unique history and specific

challenges, continue to support them in their attempts to strengthen the Customs Union and further integrate into the global economy.

15. The Chairman noted that the consideration of the goods aspects of the Southern Africa Customs Union had allowed the Committee to clarify a number of questions and oral discussion of the Agreement could be concluded in accordance with paragraph 11 of the TM. If any delegations wished to ask follow-up questions they were invited to forward submission in writing to the Secretariat by 27 April 2009 and the Parties were asked to submit replies in writing by no later than 4 May 2009. In accordance with paragraph 13 of the TM all written submissions, as well as minutes of this meeting would be circulated promptly, in all WTO official languages, and would be made available on the WTO website.

16. The Committee took note of the comments made.
