SACU Information Brochure

SACU

SOUTHERN AFRICAN CUSTOMS UNION

What is SACU?

The Southern African Customs Union (SACU) consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. SACU was established in 1910, making it the world's oldest Customs Union.

The SACU Secretariat is located in Windhoek, Namibia.

Historically SACU was administered by South Africa, through the 1910 and 1969 Agreements. The customs union collected duties on local production and customs duties on members' imports from outside SACU, and the resulting revenue was allocated to member countries in quarterly installments utilizing a revenue-sharing formula.

Negotiations to reform the 1969 Agreement started in 1994, and a new agreement was signed in 2002. The new arrangement was ratified by SACU Heads of State. The Economic structure of the Union links the Member states by a single tariff and no customs duties between them. The Member States form a single customs territory in which tariffs and other barriers are eliminated on substantially all the trade between the Member States for products originating in these countries; and there is a common external tariff that applies to nonmembers of SACU.

The aims and Objectives of SACU

The primary aim of SACU is to promote economic development among its members through the regional coordination of trade.

The objectives of SACU as contained in the 2002 SACU Agreement are:

a. to facilitate the cross-border movement of goods between the territories of the Member States;

b. to create effective, transparent and democratic institutions which will ensure equitable trade benefits to Member States;

c. to promote conditions of fair competition in the Common Customs Area;

d. to substantially increase investment opportunities in the Common Customs Area.

e. to enhance the economic development diversification, industrialization and competitiveness of Member States;

f. to promote the integration of Member States into the global economy through enhanced trade and investment;

g. to facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by Member States; and

h. to facilitate the development of common policies and strategies.

History of SACU

As the world's oldest custom union, the Southern African Customs Union (SACU) dates back to 1889 Customs Union Convention between the British Colony of Cape of Good Hope and the Orange Free State Boer Republic. A new agreement, signed on June 29, 1910, was extended to the Union of South Africa and the British High Commission Territories (HCTs), i.e. Basutoland (Lesotho), Bechuanaland (Botswana), and Swaziland, South West Africa (Namibia) "was a defacto member, since it was administered as part of South Africa" before it became a dejure member. The primary goal was to promote economic development through regional coordination of trade.

The 1910 SACU Agreement which was in force until 1969, created the following:

1. A common external tariff (CET) on all goods imported into the Union from the rest of the world; a common pool of customs duties as per the total volume of external trade, and excise duties based on the total production and consumption of excisable goods.

2. Free movement of SACU manufactured products within SACU, without any duties or quantitative restrictions.

3. A revenue-sharing formula (RSF) for the distribution of customs and excise revenues collected by the union.

As early as 1925, South Africa adopted import substitution industrialization (ISI) policies, backed by the common external tariffs on non-SACU products. These measures guaranteed a regional market for South African manufactures, while relegating the British High Commission Territories (HCTs) to producing primary commodities. Under apartheid, South Africa was the sole administrator of the common SACU revenue pool, setting SACU import duties and setting excise policy.

With the structural issues of management and decision-making processes and the issues arising from the inequitable revenue sharing, the British High Commission Territories (HCTs) constantly called for a revision of the 1910 agreement. Negotiations to change the 1910 Agreement began after the HTCs gained their independence in the early 1960s, resulting in the 1969 Agreement.

The 1969 SACU Agreement, Signed by the sovereign states of Botswana, Lesotho, Swaziland (BLS) and South Africa, on December 11, 1969 provided two major changes:

1. The inclusion of excise duties in the revenue pool and

2. A multiplier in the revenue sharing formula that enhanced BLS revenues annually by 42 percent.

However, similar to the 1910 agreement, South Africa retained the sole decision-making power over customs and excise policies.

It also retained open access to the BLS market, while the high common tariff raised barriers for Southern African neighbors' exports to SACU. These trade-diverting effects benefited South African manufacturers.

Because of the "absence of a joint decision-making" process, the BLS requested factoring compensation into the revenue sharing formula, in order to address the loss of fiscal discretion (From 1969 onwards), the BLS expressed their concern with the following three key issues:

1. No joint decision making processes – Prior to 2002 SACU was administered on a part-time basis by annual meetings of the Customs Union Commission and there were no effective procedures to ensure compliance or resolve disputes.

2. Revenue sharing formula - The issue of most concern in the 1969 Agreement was the Revenue Sharing Formula (RSF), which determined each country's share of the CommonRevenue Pool. Following negotiations, the RSF was amended in 1976 to include a stabilization factor that ensured that the BLS received at least 17 percent, and at most 23 percent, of the value of their imports and excise duties.

3. Question of external (outside SACU) trade - The BLS argued that South Africa consistently entered into preferential agreements which benefited only one of the five members.

With the independence of Namibia in 1990 and the end of apartheid in South Africa in 1994, SACU members embarked on new negotiations in November 1994, which culminated in a new SACU agreement in 2002.

The 2002 SACU Agreement addressed the following three outstanding issues:

1. Joint decision making processes: Article 3 established an independent Administrative Secretariat to oversee SACU with its headquarters in Windhoek, Namibia. Article 7 created several independent institutions including a Council of Ministers, a Customs Union Commission, Technical Liaison Committees, a SACU Tribunal and a SACU Tariff Board. These institutions are designed to enhance equal participation by member states. The 2002 Agreement also provides for policy coordination in agriculture, industry, competition, and unfair trade practices, and protection of infant industries.

2. New Revenue Sharing Formula: Revision of the RSF to include a customs excise and development component.

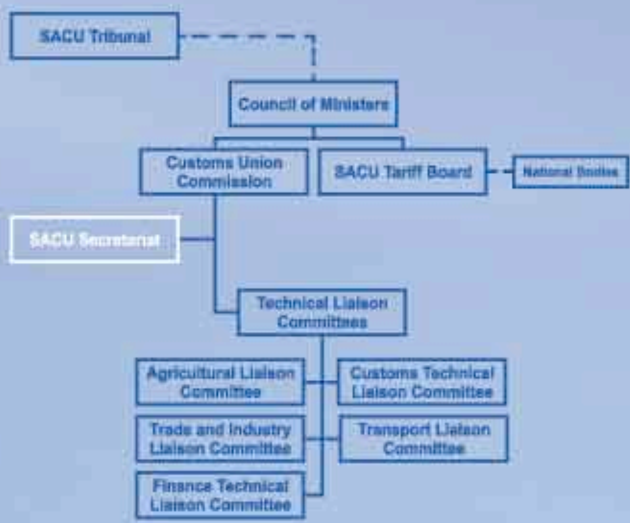
3. Question of external (outside SACU) trade: the need to develop strategies that enhance the political, economic, social, and cultural integration of the region without jeopardizing the economies of the smaller states.

The 2002 SACU Agreement has set out a New Legal Framework for the Organization that is makes modern rules based dispensation.

The Key features of the 2002 SACU Agreement that sets it apart from the 1910 and 1969 Agreements are:

- Creation of effective democratic institutions and joint decision making
- Provision for dispute settlement
- Provision for the adoption of common policies
- The revision of the Revenue Sharing Mechanism

The Structure of SACU



SACU Institutions

SACU Institutions are contained in Article 7 of the 2002 SACU Agreement and include the SACU Council of Ministers, the Secretariat, the Commission, National Bodies, a Tariff Board, Technical Liaison Committees and a Tribunal.

SACU Council of Ministers

The SACU Council of Ministers is the supreme policy and decision making body on all SACU matters. It consists of at least one Minister from the Ministry of Finance or Ministry of Trade of each Member State and is responsible for the overall policy direction and functioning of SACU Institutions, including the formulation of policy mandates, procedures and guidelines for these Institutions. Amongst others, the Council shall appoint an Executive Secretary of SACU, shall appoint the members of the SACU Tariff Board, and approve the Budget of the Secretariat, the Tariff Board and the Tribunal.

The Council has to oversee the implementation of the policies of SACU and approves customs tariffs, rebates, refunds or drawbacks and trade related remedies, upon recommendation from the Tariff Board. The Council also has the authority to create additional Technical Liaison Committees and other additional Institutions and to determine and alter their terms of reference.

The Chair of the Council is held in turn by each Member State for a period of twelve months in the order to be decided by the Council.

Customs Union Commission

The Commission consists of senior officials at the level of Permanent Secretaries, Directors-General, Principal Secretaries or other officials of equivalent rank, from each Member State and shall be responsible to and report to the Council. The Commission is responsible for the implementation of the SACU Agreement and the decisions of the Council.

The Commission is also responsible for overseeing the management of the Common Revenue Pool in accordance with the policy guidelines decided by the Council. It also supervises the work of the Secretariat.

Secretariat

The Secretariat is one of the SACU permanent institutions. It has its headquarters in Windhoek, Namibia and is headed by an Executive Secretary who is a citizen of a SACU Member State. It is responsible for the day-to-day administration of SACU. The Secretariat further has to coordinate and monitor the implementation of all decisions of the Council and the Commission. It also arranges meetings, disseminates information and keeps minutes of meetings of the SACU Institutions. In addition, the Secretariat must assist in the harmonization of national policies and strategies of Member States in so far as they relate to SACU. The Secretariat is also responsible for keeping a record of all transactions into and out of the Common Revenue Pool and coordinates and assists in the negotiation of trade agreements with third parties. The Secretariat is the depositary of all records of SACU.

Tariff Board

The Tariff Board is an independent institution consisting of experts drawn from Member States. The Tariff Board is responsible for making recommendations to the Council on the level and changes of customs, anti-dumping, countervailing and safeguard duties on goods imported from outside the Common Customs Area, and rebates, refunds, or duty drawbacks based on the directives given to it by the Council as provided for in Article 8 of the SACU Agreement.

The terms of reference, policy mandates, procedures and regulations of the Tariff Board is determined by the Council in accordance with Article 8 of the SACU Agreement.

National Bodies

National Bodies are Member States specialized independent and dedicated entities entrusted with the receiving requests for tariff changes and other related SACU issues. The National Bodies are to carry out preliminary investigations and recommend any tariff changes necessary to the Tariff Board.

National Bodies are in the process of being developed. Common procedures and capacity is being developed to ensure efficient and transparent functioning of the National Bodies.

Tribunal

Although not yet established, (but the process has been started) the SACU Agreement does make provision for an ad hoc Tribunal, which reports directly to the Council. No, this is wrong. The Tribunal will be assisted by the Secretariat in its work and it will be composed of three members except as otherwise determined by Council. Decisions will be made by a majority vote.

It will adjudicate on any issue concerning the application or interpretation of the SACU Agreement 2002 or any dispute arising there under at the request of the Council. Its determinations will be final and binding. The Tribunal will also, at the request of the Council, consider any issue and furnish the Council with its recommendations.

In the event of any dispute or difference arising between Member States in relation to or arising out of the SACU Agreement, including its interpretation, the parties shall in the first instance meet and consult in an attempt to settle such dispute or difference before referring the matter to the Tribunal.

Technical Liaison Committees

There are five Technical Liaison Committees, which have to assist and advise the Commission in its work. They include the following:

- Agricultural Liaison Committee
- Customs Technical Liaison Committee
- Trade and Industry Liaison Committee
- Transport Liaison Committee
- Finance liaison Committee.

The Terms of Reference of these Committees are determined by the Council. They are specialized Committees, covering specific sectors, and advice the Commission in its work.

SACU Work Programme

Trade Facilitation

Adopted 5 customs initiatives:

- One stop border post arrangement
- Single Administrative Document;
- Joint Border Controls – cooperation programme;
- Electronic data interchange;
- Capacity building

Working with the WCO to develop a Customs Reform and Modernization Program

It is anticipated that implementation of these initiatives will result in:

- Reduce transactions costs in trade
- Create more predictable environment for conducting trade in SACU

Revenue Management

In the establishment of a Customs Union, a key decision which has to be made concerns the establishment of a mechanism for the collection and distribution of revenue from trade taxes. Part Six of the 2002 SACU Agreement establishes a Common Revenue Pool consisting of all customs, excise and additional duties collected in the Common Customs Area. Part Seven of the Agreement provides a formula for the determination of the respective shares of each Member State.

Annex 1 of the SACU Agreement details the Revenue Sharing Formula that is used for determining each Member State's share out of the Common Revenue Pool. The Annex identifies the data that is required to apply the formula for determining revenue shares. In practice, duties are collected by all Member States and transferred to the Common Revenue Pool on a quarterly basis. Each year, revenue shares are determined by the Council of Ministers and payouts to Member States are made on a quarterly basis.

Important initiatives in implementing the Revenue Management initiative as contained in the SACU 2002 Agreement are:

- Trade Data
- Statistical Data Base
- Implementation of the new Revenue Formula
- Management of the Common Revenue Pool

Trade Data

The integrity of the key data, such a county's GDP, population size; are important in the determination of Member States' customs share of the Common Revenue Pool.

In 2006 the auditing of intra-SACU trade data was undertaken. The audit focused on the processes and systems for the collection, compilation and submission of data to the SACU Secretariat for purposes of determining revenue shares. In particular, the audit considered definition issues, accounting (valuation) principles as well as the processes for collection, capture and collation of trade data.

Statistical Database

In order to facilitate the collection of data from Member States, the Secretariat has developed a template for the preparation of Economic Background Papers. This template specifies both qualitative and quantitative information analyzing economic performance in each Member State. During the year, Economic Background Papers are received from all Member States. In addition, a template for the submission of intra-SACU trade data has been developed for use by the Member States.

Implementation of the new Revenue Sharing Formula

The implementation of the new Revenue Sharing Formula as contained in the 2002 SACU Agreement began in 2005. The new formula has the following components:

The Customs component: Each Member State share of the customs component shall be calculated from the Cost Insurance Freight (CIF) value at border posts of goods imported from all other Member Sates into the area of each as a percentage of the total CIF value of intra –SACU imports.

The Excise Component: Each Member State's share of the excise component shall be calculated from the value of its GDP in a specific calendar year as a percentage of total SACU GDP in such a year.

The Development Component: The development component shall initially be set at 15% of the excise component, but shall be reviewed from time to time and will be adjusted if agreed to by all Member Sates.

Management of the Common Revenue Pool

As part of the implementation of Article 33 (1) of the 2002 SACU Agreement, which stipulates that "A Member State or SACU Institution may be appointed to manage the Common revenue Pool", a study was commissioned in November 2006, to evaluate the options on the management of the Common Revenue Pool.

The SACU Council is to make a decision on the revenue management option.

Policy Development & Research

The work of Policy Development and Research is divided into two areas: Trade Negotiations and Policy Development

Trade Negotiations

One of the Objectives of the 2002 SACU Agreement provides for the promotion of the integration of Member States into the global economy through enhanced trade and investment. There is the particular challenge of economic diversity and of uneven development within the SACU region and the key response to this challenge is for SACU Members to identify common interests on regional issues and global trade as well as the priority trade links that SACU should pursue, from which all SACU members can benefit.

The basic motivation for a global trade strategy for SACU is to achieve sustained economic growth on the basis of export and investment expansion, as articulated in the United Nations Millennium Development Goals.

The obligations of SACU Members under the Multilateral and

Bilateral Trade Negotiations function are contained in Part 5 of the 2002 SACU Agreement, dealing with Trade Liberalization, and specifically in Article 31 on Trade Relations with Third Parties.

Trade Liberalization

Trade Liberalization is contained in Part five of the 2002 SACU Agreement. It covers the following areas:

- Free movement of Domestic Products within the SACU Region.
- Goods imported from outside the Customs Union.
- Customs Duties on Imported Goods
- Specific Excise and ad valorem Excise Duties and Specific Customs and ad valoremCustoms Duties on Imported Goods of the Same class or Kind.
- Legislation Relating to Customs and Excise Duties
- Customs Cooperation
- Freedom of Transit
- Import and Export Prohibitions and Restrictions
- Protection of Infant Industries
- Rail Road Transport
- Technical Barriers to Trade
- Arrangements for Regulating the Marketing of Agricultural Products
- Sanitary and Phyto – Sanitary (SPS) Measures.

Trade Relations with 3rd Parties

Article 31 of the 2002 SACU Agreement states that No Member State shall enter into new preferential trade arrangement with third parties or amend existing arrangements without the consent of other member States.

Member States may maintain preferential trade and other related arrangements existing at the time of entry into force of the 2002 SACU Agreement in July 2004.

To date concluded Trade Negotiations with 3rd parties that have upheld Article 31 of the 2002 SACU Agreement since it entered into force in 2004 are:

- SACU – EFTA FTA 2006
- SACU – MERCOSUR PTA 2004

Policy Development

For SACU to develop as a viable regional economic entity, progress is needed in the intra-SACU policy development and harmonization.

The focus for SACU on common policy development is contained in Part Eight of the SACU Agreement, which deals with Common policies. Specific areas include *industrial policies and strategies (Article 38), agricultural policies (Article 39), competition policies, laws and regulations (Article 40), and policies and instruments to address unfair trade practices (Article 41).*

It also included in areas under Part Five of the Agreement such *as harmonized technical regulations and product standards (Article 28) and sanitary and phytosanitary measures (Article 30).*

Key Economic Indicators of SACU as a collective

- Membership of 5 countries (Botswana, Lesotho, Namibia, South Africa and Swaziland).
- Population of 55 million
- GDP of around R1 200 billion, accounting for about 75% of SADC GDP
- Average per capita of R20 000

For further information please contact:

SACU

SOUTHERN AFRICAN CUSTOMS UNION

Physical Address:
Corner Robert Mugabe
& Sam Nujoma Avenue
Windhoek, Namibia

Postal Address:
The Executive Secretary
Private Bag 13285
Windhoek, Namibia

Telephone: (+264) 61 295 8000
Fax: (+264) 61 245 611
Email: info@sacu.int
www.sacu.int