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SACU

SACU's participation in the SADC EPA Negotiations
By Catherine Sasman

With different positions to the EPA negotiations, fears were expressed that this could mean the end of SACU. *New Era* spoke to SACU Executive Secretary **Ms. Tswelopele Moremi**, and Director: Policy Development & Research, **Mr. Anton Faul** to find out more.

At the end of last year Botswana, Lesotho, Namibia and Swaziland (BNLS countries) initialed an Interim Economic Partnership Agreement (IEPA) with the European Union (EU). South Africa decided against the initialing of an IEPA. This has placed the integrity of the Southern African Customs Union (SACU) under pressure and gave rise to speculation of a breakup of the oldest customs union. Could you give a comment on these developments?

Moremi: I think it is fair to say that the fact that different SACU Member States reached different decisions was contrary to our own expectations because within the context of the SACU Agreement we have been approaching negotiations with third parties as a bloc. In this instance it is important to note that SACU is participating in the EU EPA Negotiations through the SADC Configuration as all members of SACU are members of SADC. However, we do not expect that that development will lead to a breakdown of SACU. In fact, this was a matter that was discussed at the Council Meeting in December **2007**, where Council resolved that, yes there were setbacks, but it is important that we should now regroup with the view to continue with our traditional approach as provided for in the SACU Agreement.

Right now we are dealing with these issues. The Trade Ministers have met at least twice since the beginning of this year under the instruction of the SACU Council of Ministers.

As far as we are concerned, this will not necessarily lead to a breakup of SACU. I think it is important to understand that first of all, SACU has got its own agreement. Within the context of the SADC EPA, those differences cannot automatically lead to a SACU breakdown. For that to happen, fundamentally,

Member States would have to consider all the implications of the SACU Agreement itself.

This was also not the ideal situation in the past. But we have learnt to live side by side with agreements that were entered into – like the Trade, Development and Cooperation Agreement (**TDCA**) between South Africa and the EU– but that did not break up SACU.

In our view, SACU has actually withstood so many other challenges. The SADC EPA's have been taxing on SACU, I agree, but I think there is a commitment to address those issues that made Member States take different positions.

For those Member States **whose** market access in the EU was going to come to an end on December 31 2007 , there was a lot of concern about what would happen after December 31st if countries would not be able to reach this agreement, and therefore what would happen to their market access in the EU.

So, for the moment there is no undue pressure on SACU?

Moremi: There is pressure on SACU but that comes from within SACU itself to make sure that these issues are being addressed. There is no pressure from outside. There is recognition within SACU – even at the last Council meeting held in April this year – that we need to address and create the necessary conditions to ensure our cohesion and integrity as a **Customs Union**, and maintain that integrity as a Customs Union. This is the mandate that everyone understands and are working towards.

Faul: Trade negotiations in general are pressured situations because you have to compromise. If you do that as a group the pressure is even more. If you consider how long the WTO [World Trade Organization] Doha negotiations have been on the table, there is no way of knowing how long it will take to get to the point where a conclusion will be reached. But **if** there **wasn't** this pressure; one would not know how far integration has been achieved. I think this pressure brings different parties closer. They know they have a duty towards their citizens. Member States are more willing to engage. They meet more often and they know they have to think carefully about what they are dealing with.

Moremi: To add to that, this was a particular setback, but if you look back at the way SACU has operated in terms of its relationship with third parties especially in trade negotiations, SACU has done very well over the last couple of years. We currently have a team in Buenos Aires in Argentina to finalize a trade agreement between SACU and the **MERCOSUR** group of countries (Paraguay, Uruguay, Brazil, Argentina and Venezuela) which we hope will have been concluded by the end of this month.

SACU has started preferential trade negotiations with India, which is being led by Namibia. We have concluded a cooperation framework with the USA that we hope will be signed very soon. From next month we will be implementing an FTA agreement between SACU and the EFTA group of countries (which is Norway, Switzerland, Lichtenstein and Iceland).

The EPA negotiations in 2007 only commenced in March last year after the EU responded to the SADC EPA Strategic Framework proposals and ended with the initialing of a goods-only IEPA. Do you think the SACU Member States are equipped to negotiate a full EPA, including services and other new generation issues by the end of 2008?

Moremi: The decision lies with the SACU Member States but as a **Secretariat** we understand there is a commitment by the Member States to **move** forward towards a full EPA by the end of 2008.

Faul: We have raised our concerns and the EU has agreed that those can still be addressed. But the commitment is that all Member States want to get on board. Trade Ministers that have met at SACU level, with the European Commission **and** have agreed on a roadmap with schedules. They are confident that they will conclude negotiations by the end of 2008.

Moremi: As far as the new generation issues are concerned, yes, the SACU Agreement is about trade in goods only, but we have, in past negotiations, been able to develop a common approach as SACU even though the agreement does not cover those issues. I am raising this to illustrate that whilst we have no formal position to engage in those collectively as SACU, we understand that in any future negotiations there is increasing pressure to include new generation issues. Indeed, these are issues that have been placed before the Council.

If at the end of 2008 the same scenario prevails where BNLS countries have signed the full EPA with EU excluding South Africa, what would the effect be on SACU?

Moremi: Right from the beginning, when we started the negotiations with the EU, our intention was to streamline trade relations between SACU and the EU. That was the overall objective. Because we have the TDCA on the other hand we wanted to make sure that we can bring South Africa on board so that on the Trade Side we at least have one trade regime. Right now I think there is still hope that there will be enough commitment and willingness to resolve the outstanding obstacles, in negotiations amongst SACU Member States to enable them to collectively engage with the EU. I also think there is a desire from South Africa to be included in the negotiations.

Namibia has initialed the IEPA contingent on the fact that a list of unresolved issues encountered in 2007 would be re-opened for negotiation. Do you think these issues are relevant in terms of SACU? If so, why did Botswana, Lesotho and Swaziland initial the IEPA without these concerns?

Moremi: South Africa and Namibia submitted a list of their concerns at the SACU Trade Ministers meeting, **where** it has been decided that the senior officials should study these concerns and begin to determine which concerns could have implications for SACU. This is a process that is currently ongoing. The senior officials still have to give a final report to the Trade Ministers. This may be towards the middle of May or towards the end of next month.

The SACU 2002 Agreement still lacks finalization. For example, Article 41 on Unfair Trade Practices is on the drawing board now for more than four years without a resolution. There is still no harmonization between the agricultural policy for SACU (Article 39) and no common industrial development policy (Article 39). Do you not think that international developments have overtaken the slow pace to finalize the 2002 SACU Agreement and that this has contributed to the differences between the Member States in the EPA negotiations?

Moremi: International Developments have not overtaken the implementation of the 2002 SACU Agreement. You are right that there has not been a full implementation of the 2002 SACU Agreement. But it has only been three-and-a-half years that the new agreement has been in place. The new agreement is a fundamental departure from the previous **ones**. It is a major transformation and provides for deeper integration amongst the five Member States. Under the previous agreement, there were meetings once or twice a year where Member States met to share the SACU revenue and then would go their own way. The new agreement provides for democratic institutions to be set up. There has been some progress despite the fact that this new SACU Treaty is still in its infancy.

Previously, individual states were only looking at their own national interests. There was nothing they saw as common because it was then only about Revenue Sharing.

The new arrangement provides for much more engagement of stakeholders. This is something Member States have begun to understand; there is a need to look beyond their own national interests for the broader interest for deeper integration.

This is a matter that was much debated at the last Ministers' Council in April 2008. The Council has resolved that the SACU Task Team on Regional Integration should meet to address issues such as how best to consolidate the institutions with a view to make SACU realize its own objectives.

Has the fact that the non-implementation of the full SACU Agreement contributed to the differences between Member States in the EPA negotiations?

Faul: One would have to look at the realities on the ground. Member States had to weigh the costs and benefits, recognizing that it is still an interim agreement. There was tremendous time pressure as well; it was a do or die situation for Member States. It was in their interest to sign **and** initial EPA's because it safeguarded their market access to the EU. And even if they were not ready, at some point they had to make a decision because the negotiations were still ongoing. And yes, it was about striking a compromise. South Africa did not have much to lose because they already have a TDCA, while the other countries do not have that.

Namibia had to initial the interim agreement, but it does not mean that that is final. Some concerns are national because the countries are all different, but in the end those that have initialed recognized the concerns affecting SACU as a bloc and SADC for that matter. It is not something we cannot resolve unanimously amongst SACU States as we need to consider the other Negotiation Party, in this case the EU, which does not recognize South Africa at the same level as the other SACU countries. They don't want to give the same market access to South Africa as to the other four SACU Member States. That is where the problem started. I suppose SADC is equally affected because a lot of the members have signed the EPA's in Economic Arrangements elsewhere/outside SADC.

Moremi: For a long time it was only the issue of negotiating to meet the December 31 deadline last year. It was only in the middle of last year that it became clear that countries would not be ready to sign a full EPA. The point I want to make is that since a decision was taken to implement the 2002 SACU Agreement in 2004, SACU has done very well in negotiating as a block, harmonizing our own positions, and so on. But SACU finds itself within a broader framework; that is where the complications come in, and perhaps the fundamental problems regarding the implications of EPA are much deeper and affect SADC in a very fundamental manner in the sense that we have some SADC Member States negotiating under SADC EPA, and others negotiating under the Eastern African Community - EAC EPA.

What is the SACU Secretariat doing to address the problem of lack of a common negotiating mechanism between Member States?

Faul: Article 31 of the SACU Agreement deals with the common negotiating mechanism. We have already drafted a common negotiating mechanism after a lot of consultation with Member States. This draft has already gone to some of the technical institutions where it was approved. The senior official level has also approved it. It is now before the Trade Ministers. They will be considering it at the next meeting, after which it will go to the Council. The process is quite advanced. If the Council agrees to it, will begin to be implemented.

Moremi: We have adopted a common approach for negotiations with third parties. Currently we have a team of people out there who are negotiating on behalf of SACU as a bloc in the MERCOSUR Trade Negotiations with SACU. In the secretariat this is important because we can begin to build capacity in our dealings with third parties. As I said if you look back at the way SACU has operated in terms of its relationship with third parties SACU has done very well over the last couple of years especially in Trade Negotiations.