

Trade Policy Review Body
23 and 25 April 2003

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TRADE POLICY REVIEW

Southern African Customs Union (SACU)

Minutes of Meeting

Addendum

Chairperson: H.E. Ms Mary Whelan (Ireland)

This document contains the advance written questions, and replies provided by the Southern African Customs Union (SACU).¹

Organe d'examen des politiques commerciales
23 et 25 avril 2003

EXAMEN DES POLITIQUES COMMERCIALES

Union Douanière d'Afrique australe (SACU)

Compte rendu de la réunion

Addendum

Présidente: S.E. Mme Mary Whelan (Irlande)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par l'Union Douanière d'Afrique australe (SACU).¹

Órgano de Examen de las Políticas Comerciales
23 y 25 de abril de 2003

EXAMEN DE LAS POLÍTICAS COMERCIALES

Unión Aduanera del África Meridional (SACU)

Acta de la reunión

Addendum

Presidente: Excma. Sra. Mary Whelan (Irlanda)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por la Unión Aduanera del África Meridional (SACU).¹

¹ In English only./En anglais seulement./En inglés solamente.

**ADVANCE WRITTEN QUESTIONS BY MEMBERS AND REPLIES PROVIDED BY
THE SOUTHERN AFRICAN CUSTOMS UNION**

Questions from Brazil

SACU

Question 1

The SACU Agreement is currently under negotiation, but it is not clear when those discussions will be completed. What are the key topics under discussion? What is the direction of work on the "revenue sharing formula"? What powers are envisaged for the new SACU Secretariat?

Answer

In the wake of the signing of the new SACU Agreement by all member countries, work is currently proceeding on a multi-pronged basis to be concluded during 2003, viz the ratification of the Agreement, the establishment of the new SACU Secretariat, and the development of SACU procedures for tariffs-setting and trade remedies.

Question 2

Import tariffs imposed on goods from outside of SACU generally discourage the switching of imports into Botswana, Lesotho, Namibia, and Swaziland to alternative sources of supply, even where the cost of South African products is higher than for comparable items sourced elsewhere. If so, what are the implications to the four countries for the majority of their imports?

Answer

Since the mid-1990s, SACU has been involved in a process of liberalisation. This has included fairly substantial tariff cuts especially in respect of applied rates, the phasing out of quotas and specific duties, as well as the conclusion of free trade agreements with the EU and in SADC. This has resulted in a fairly open trade regime in SACU, the effect of which has been the general lowering of the cost structure in SACU economies. These activities were carried out in pursuit of an outward-oriented trade policy in SACU.

Question 3

Since trade in services seems to be excluded from SACU's scope and objectives, and taking into consideration the importance of such trade, how do SACU member states address issues involving the services sector? Is there any framework to deal with issues concerning trade in services (e.g. transport services) arising from discussions on matters addressed by the Agreement? Will trade liberalisation be dealt with under the SADC free trade area? If so, how?

Answer

The Agreement does not expressly include services although there have never been restrictions on services in the customs area. In terms of the crafting of common policies, this will be taken up as part of the work programme.

Question 4

In Chapter III, item 11, of document WT/TPR/S/114, it is stated that Southern African Customs Union (SACU) countries also apply rules of origin for preferential purposes (on a reciprocal basis) under regional trade agreements such as the Southern African Development Community (SADC) Trade Protocol, and under bilateral trade agreements to which they are individually signatories. Could clarification be provided as to who are the authorities responsible for issuing certificates of origin?

Answer

In the case of South Africa, the South African Revenue Service is responsible for the administration of preferential rules of origin emanating from regional and bilateral trade agreements. In South Africa, the South African Revenue Service issues certificates. In the case of BLNS states, customs and trade authorities handle the administration and issuing of certificates.

Question 5

In Chapter III, item 8, Table II.1, Annex 4, of document WT/TPR/S/114, it is stated that a list of products related to the Agreement on Textiles and Clothing to be integrated in Stages I and II was provided to the WTO. Could South Africa inform when the products list related to Stage III will be provided?

Answer

South Africa fully complies with its obligations to the GATT Agreement in terms of textiles and clothing and all requirements are satisfied. No special safeguards and/or quotas exist with regard to the importation of textiles and clothing into South Africa. South Africa will officially notify the WTO shortly.

Question 6

In Chapter III, item 12, Table III.2, Annex 4, of document WT/TPR/S/114, it is mentioned that new pneumatic tyre imports are under monitoring for quality specification. Could South Africa specify how and on what basis this monitoring is carried out?

Answer

The South African Bureau of Standards has administered compulsory specifications for new pneumatic tyres since 1995. This entails, in essence, that all locally manufactured as well as imported pneumatic tyres must comply with the compulsory specification. This is a process that engages local manufacturers, importers, and the South African Bureau of Standards. Import control measures on imported pneumatic tyres are in support of the activities of the South African Bureau of Standards. No quantitative import restrictions apply and permits are issued freely where there is compliance with specifications.

Question 7

Is there any kind of register required by SACU for prior import licensing? What would the required procedures be?

Answer

There is no register required by SACU for prior import licensing. However, each SACU member has rules and regulations that require, inter alia, that importers apply for permits and comply with certain rules.

Question 8

With reference to paragraph 27 of document WT/TPR/G/114, could the South African Customs Union (SACU) elaborate more on the new International Trade Administration Act?

Answer

The International Trade Administration Act was passed in 2002, pursuant to the new trade regime in SACU as provided for in the new SACU Agreement, with particular reference to the establishment of new institutions (National Bodies, etc). The Act provides an improved institutional basis for SACU's trade policy, especially the application of customs tariffs, in line with the objectives of competitiveness, as well as SACU's commitments under international trade agreements such as with the WTO, EU and SADC.

Furthermore, the Act is a concrete move towards separating administrative and investigative functions from adjudicative functions, thus enabling transparent and objective decision-making.

Question 9

With reference to paragraph 36 of document WT/TPR/G/114, does SACU intend to elaborate a common anti-dumping, countervailing and safeguard legislation?

Answer

SACU envisages common action against unfair trade in respect of third party states.

Question 10

In paragraph 19 of document WT/TPR/S/114, it is mentioned that due to their SACU membership, BLNS are required to implement the anti-dumping, countervailing and safeguard measures determined by South Africa. Could the representatives of SACU elaborate more on this matter? Could SACU explain if in such cases the investigation has taken into consideration the imports of all the BLNS countries, as well as the domestic market related to the customs union as a whole?

Answer

In order to determine industry standing, the common SACU market is taken into account.

BOTSWANA

Question 11

In paragraph 27 of document WT/TPR/S/114/BWA, it is mentioned that Botswana recognises the need to implement legislation on anti-dumping, safeguards and countervailing measures. Does Botswana intend to implement its own legislation, or does it intend to implement common SACU legislation?

Answer

The Government of Botswana recognises the need for the legislation. However, it does not as yet have any legislation on anti-dumping, safeguards and countervailing measures. When such legislation is developed, it will be aligned with the common SACU legislation.

SWAZILAND

Question 12

With reference to paragraph 5 of document WT/TPR/S/114/SWZ, why is Swaziland not required to implement South African anti-dumping and countervailing duties while other BLNS countries are?

Answer

Provisions exist for Swaziland, as for Botswana Lesotho and Namibia, to apply the South African anti-dumping and countervailing duties. However, an occasion has not yet arisen for Swaziland to implement these duties. Therefore, should the need arise, Swaziland would apply duties in the same manner as do Botswana, Lesotho and Namibia.

Questions from Canada

SACU

Questions 1 and 2

How do the five SACU countries envisage meeting the commitments they have set for themselves in the 2002 SACU Agreement, when all five countries suffer from a lack of capacity and resources to address these issues?

How do the five SACU countries plan to address the issue of building the necessary capacity that will enable them to participate, not only in the multilateral forum of the WTO, but also in the various regional and bilateral trade forums to which they are also members and have made commitments? Technical assistance is mentioned as being necessary or required. From whom are you seeking this assistance? Have you submitted specific requests in this regard?

Answer

As a developing region, SACU attaches great importance to technical assistance and capacity building, which supports the efforts of SACU members to promote economic growth and development, to establish the necessary policies and institutions, and to enhance participation in regional and multilateral forums such as the WTO. We acknowledge and appreciate the offers made by Norway, Canada, the European Union and other WTO member states.

BOTSWANA

Question 3

If economic performance, in the short term, is dependent on diamonds, what does the Government of Botswana see being the mainstay of the economy in the long term?

Answer

The Government of Botswana has long recognised the need to diversify its economy. At the time of Independence in 1966, agriculture was the mainstay of the economy in terms of output. Agriculture contributed at least 40% of GDP. Since the mid-1980s, the Government of Botswana has continued to promote sustainable diversification of economy through various policies and programmes. While diamonds continue to be the main source of revenue (at least 50% of government revenue) and a major contributor to GDP (at least 30%), government has continued to promote diversification into other sectors of the economy. For example, the successive National Development Plans have focused on other sectors such as tourism and manufacturing.

The theme of the current National Development Plan (NDP 9 2003-2009) is “Towards Realisation of Vision 2016: Sustainable and Diversified Development through Competitiveness in Global Markets”, which demonstrates government’s continued commitment towards sustainable economic development.

The need to redouble efforts to further diversify the economy has become critical in view of the fact that diamonds are a non-renewable resource, dependent on world market prices and therefore highly unpredictable. Recently, there have been serious threats to the diamond industry owing to international campaigns against trade in “conflict diamonds”. In addition, the current global economic slowdown has had adverse consequences for the diamond industry by dampening international demand.

The prospects for Botswana’s economic growth depends upon the diversification in the agricultural, manufacturing, tourism, and financial services sectors, in addition to the diversification of the mining sector itself. These sectors are important in addressing unemployment, inequality and poverty. For the sectors mentioned above, sustainable competitiveness in global markets depends upon government-directed investment in research and development in science and technology, including information and communications technology.

Government will facilitate the diversification process by providing an environment conducive to private initiative and innovation. This entails appropriate tax regimes, competitive exchange rates and interest rates, an environment free of foreign exchange controls, access to credit, and price stability. Continued macro-economic stability will boost investor confidence and attract necessary foreign direct investment.

Question 4

How successful was the Eighth National Development Plan whose initial theme was sustainable economic diversification, which was later changed to accelerating economic diversification? What were its key objectives and were they achieved?

Answer

Successive budget speeches have adopted themes giving further impetus to NDP 8 (for example, the theme for the 2001 budget speech was “Accelerating Economic Diversification”). The major policy objectives of NDP 8 were economic diversification, poverty reduction, policy reform in the public sector, provision of infrastructure and cost recovery, human resource development, rural development and environmental conservation. Overall, these policy objectives have been achieved to varying degrees. In addition, some of the objectives were advanced beyond the time frame of NDP8.

Overall economic performance during NDP 8 was significantly better than initially anticipated. Average annual real GDP growth of 6.7% was achieved, as compared to the projected 5.2% at the beginning of the Plan. Formal sector employment is projected to increase from 226,900 in September 1997 to 285,305 in September 2003. The 2001 National Housing and Population Census showed that unemployment had fallen from 21.6% in 1994 to around 19%.

Botswana had favourable terms of trade and balance of payments. The performance of the current account in NDP 8 was better than expected, with the exception of 1998/99. Foreign exchange reserves in current prices have exceeded the original NDP 8 projections.

Government continued its drive towards economic empowerment during NDP 8 through various initiatives such as universal free education, development and implementation of Small Medium and Micro Enterprises (SMME), the establishment of the Citizen Entrepreneurial Development Agency (CEDA) and the Citizen Entrepreneur Mortgage Assistance Equity Fund (CEMAEF). In addition, Government developed a system of reservation and price preference for consultants and IT services.

In addition, Botswana has developed a new Rural Development Policy and the National Poverty Reduction Strategy. Other policy initiatives implemented during NDP 8 included the Science and Technology Policy and the National Master Plan for Arable Agriculture and Dairy Development. During this period Botswana has continued to improve infrastructure throughout the country.

Question 5

Botswana has had considerable success in codifying and making public its foreign investment regimes. Canada encourages the Government of Botswana, if it has not already done so, to share its experiences in reforming its investment regime. Is there any mechanism, which allows SACU members to share such experiences with their SACU partners?

Answer

Recently, Botswana has intensified its efforts to attract foreign direct investment in order to promote economic diversification. The Botswana Investment and Export Authority (BEDIA) was established in 1998 specifically for this purpose. Currently, Botswana is developing a foreign investment strategy. Botswana has regularly co-operated with neighbours in promoting inward investment and is prepared to share its experiences in this regard. However, Botswana like other African countries continues to experience a decline in FDI flows.

Question 6

When will the privatisation Master Plan currently being prepared by the Public Enterprise and Privatisation Agency be ready? Does the Government of Botswana have target dates for privatisation to either have begun or be completed?

Answer

The implementation of the privatisation policy for Botswana was preceded by wide public consultation with all relevant stakeholders. In addition, Botswana has developed policy implementation capacity by putting in place necessary institutional structures and modalities. It is anticipated that the policy will be implemented once government has approved the privatisation master plan during the course of 2003.

Question 7

Does Botswana envisage taking on any telecommunications services commitments during the current round of GATS negotiations?

Answer

Botswana is committed to the further liberalisation on trade in services. However, the decision on whether or not to make further commitments on telecommunications services during the current round of GATS negotiations has not yet been taken. The decision will depend upon several factors including the size of the domestic market and the general implications of further liberalisation in this area for the economy.

Question 8

We also understand that you plan to privatise the Botswana Telecommunications Corporation. What kind of time frame do you envisage for this?

Answer

The Botswana telecommunications market has been liberalised further by the introduction of two mobile telephone companies. Further liberalisation includes the restructuring of the fixed line operator and its subsequent privatisation. It is difficult to provide a precise time frame for the privatisation of the Botswana Telecommunications Corporation.

Question 9

Paragraph 79 indicates that Botswana plans to develop a Tourism Board and Tourism Development Fund. Could the Government of Botswana please indicate what sort of work has been done so far to establish these entities?

Answer

A Bill to establish the Botswana Tourism Board has been tabled before the Botswana National Assembly. It is expected that the bill will be debated by parliament and passed into law during the course of 2003. Thereafter we expect the Tourism Board to be established. No decision was taken to establish a Tourism Development Fund. Instead a venture capital fund has been established, which will assist investors in joint venture arrangements to access funds and loans.

LESOTHO

Question 10

Lesotho's land ownership rules could be viewed as a barrier to foreign investment. Has Lesotho taken any steps to implement the Land Policy Review Commission's recommendation to make it easier for foreign investors to own land?

Answer

The land reform policy has been completed and recommendations are currently under consideration for implementation.

Question 11

Does Lesotho envisage taking on any basic telecommunications services commitments during the current round of GATS negotiations?

Answer

Lesotho is developing a strategic telecommunications policy. However, decisions on whether Lesotho will make further commitments during the current round of GATS negotiations in any services sector, including the telecommunications sector, will be determined in the context of our preparatory process, after consultations with all relevant stakeholders.

Question 12

Canada would like to comment on the statement which reads, "In 2002, the former executive director of the Lesotho Highlands Development Authority was convicted of misuse of funds, while a Canadian construction firm, which had been involved in the scheme, faces substantial fines for bribery and, as a result, blacklisting by the World Bank."

The only Canadian company involved in the Lesotho Highlands Water Development Project was a consulting engineering firm, which along with a number of other international consulting companies involved in the Project, was charged with bribery. The Canadian company was convicted, but has been granted leave to appeal the conviction and the sentence, and the case is currently under appeal. The Canadian company was one of three international firms involved in the Project reviewed by the World Bank. The World Bank has not blacklisted the company.

NAMIBIA

Question 13

Namibia has had considerable success in codifying and making public its foreign investment regime. Canada encourages the Government of Namibia, if it has not already done so, to share its experiences in reforming its investment regime. Is there any mechanism, which allows SACU members to share such experiences with their SACU partners?

Answer

On the investment regime, Namibia, through the Technical Liaison Committees established under the SACU Agreement, is prepared to share its experience with other SACU member countries on its investment framework.

Question 14

Does Namibia envisage taking on any telecommunications services commitments during the current round of GATS negotiations?

Answer

Namibia has already undertaken autonomous liberalisation in part of the telecommunication sector (i.e. voice services) by admitting a second network operator. We intend to strengthen this by making commitments in this sector.

Question 15

Namibia has indicated that the telecommunications services market will be completely open by 2004. Is this timetable still valid?

Answer

Namibia is undertaking to put in place enabling instruments, which will include the participation of Namibians in this sector.

SOUTH AFRICA

Question 16

Please update us on the second phase of privatisation of Telkom.

Answer

The second stage of the privatisation of Telkom commenced with the Initial Public Offering of Telkom shares on the JSE Securities Exchange in South Africa and the New York Stock Exchange on 4 March 2003. This has reduced the government's ownership of Telkom to 39.3% of the total ownership. Thintana LLC (consisting of SBC and Telekom Malaysia) owns 30%, 27.7% is publicly owned and Ucingo owns 3%.

Question 17

Paragraph 27 states that "...some SADC countries have criticised South Africa for breaking ranks with the regional opposition to GM crops, while South Africa's parliament has called for an urgent discussion on whether the country needs to amend its laws in this regard. Also, some consumer groups have urged the Ministry of Health of South Africa to introduce compulsory biotechnology labelling." Canada would like to know what the government response has been to this call for parliamentary discussions and whether new labelling requirements for GMOs are being considered at this time.

Answer

South Africa is not aware of any specific criticism of its GMO policy by its SADC partners. South Africa's position on GMO's is derived from its National Strategy on Biotechnology, which was approved by Cabinet in 2001. The joint session of the parliamentary committee was unanimous in its recommendation that the current GMO Act was to be retained. The labeling of GMO foods has in principle been decided with the publication of the relevant Act. Currently, a process to develop an identity preservation system is underway. A final date for the implementation of the labeling system has not yet been decided.

Question 18

We note that you have established a new Independent Communications Authority of South Africa (ICASA). What is the range of its powers to ensure effective implementation of its decisions?

Answer

ICASA has the power to enforce its decisions through sections 100, 101 and 96 of the Telecommunications Act. Section 100 of the Telecommunications Act deals with offences by licensees and section 101 deals with offences by persons (who are not licensees). ICASA can investigate and adjudicate any alleged failure by one of its licensees to comply with a provision of the Telecommunications Act, its licence or any other agreement entered into in terms of the Act (e.g. interconnection, facilities leasing). ICASA also has the power in terms of this provision to enforce any decision it makes on a complaint from a customer or end-user against a licensee. The Authority may, after investigation, if it finds a licensee guilty: direct the licensee to desist from the action; direct them to pay a prescribed fine; direct them to take remedial steps; if the licensee has repeatedly been found guilty of the failure, revoke the licence.

In terms of section 96 of the Telecommunications Act, ICASA has the power to make regulations on various issues that have either been prescribed in the Act, are technical matters, or are matters of procedure or form. These regulations in turn enable the Authority to act to enforce certain provisions of the Act (e.g. in terms of s43 on Interconnection, the Authority's enforcement powers with respect to interconnection matters are described).

Question 19

In paragraph 66, the third sentence reads "Total assets held by the financial sub sector represented the equivalent of about 370% of GDP in 1999, with banks accounting for roughly 27% of total assets." Could South Africa please confirm that the percentage of total assets held by the financial sector is actually 370%?

Answer

The correct figure is 37%.

Question 20

Paragraph 67 states that: For all financial services (excluding insurance services), South Africa made commitments only with respect to commercial presence on: national treatment, under which branches of banks not incorporated in South Africa must maintain a minimum balance of R 1 million on the deposit accounts of natural persons; and market access, under which companies need to be incorporated as public companies in South Africa, and registered with the Registrar of Banks in order to carry on business in the country.

Could the Government of South Africa please explain the requirement for foreign bank branches to maintain a minimum balance of R1million (around \$US 130,000)? Does it mean that foreign bank branches cannot accept deposits from individual persons of less than R 1 million? Also would South Africa please clarify the meaning of the incorporation as a public company to carry business in the country? Does it mean that the shares of the company must be traded on a South African stock exchange? Can a public company be 100% foreign-owned?

Answer

The R1 million requirement related to a minimum deposit by individual depositors in a foreign branch office and was intended to provide a measure of protection for depositors. This requirement has been

lifted and the protection of depositors is now regulated through bilateral agreements with the head office of the foreign bank branch.

The requirement to incorporate as a public company in SA is to ensure that the relevant authorities have jurisdiction over the institutions. The company can incorporate by registering with the Registrar of Companies and its shares do not have to be traded on the Johannesburg Securities Exchange. A public company can be 100% foreign owned.

Question 21

The Secretariat Report states that “Any person, whether South African or foreigner, may control an insurance company in South Africa. However, foreign insurers cannot open branches in South Africa, but may register subsidiaries.” Would South Africa please explain the rationale for this policy? Could the Government of South Africa please indicate whether there is any possibility that this policy could be revisited in the future?

Answer

The restriction is in place to ensure that the home supervisor (the Financial Services Board) has jurisdiction over the insurer. In the case of a branch office there is no such jurisdiction. It is unlikely that this restriction will be removed in the near future.

Question 22

In paragraph 85, the World Tourism Organisation states that there is a lack of promotion of tourism investment in South Africa. In paragraph 88, it appears that the Tourism Growth Strategy aims at, inter alia, increasing investment, both foreign and domestic, in the tourism industry. Could South Africa please elaborate on what measures in the Tourism Growth strategy aim at increasing investment in tourism?

Answer

South Africa has recently published the South African Tourism Growth Strategy. The objectives of the strategy are:

1. Economic growth of the industry
2. Growth of Foreign and Domestic investment into the industry.
3. Skills, training and mentorship development of tourism enterprises
4. Employment and job growth.
5. Development of a world-class SMME's industry within the tourism economy
6. Transformation and empowering previously disadvantaged individuals to partake in the industry fully.

The implementing agencies to deliver on the strategy mentioned above are the following:

1. National Government as represented by the Departments of Trade and Industry and Environmental Affairs and Tourism.
2. Provincial Investment promotion agencies.
3. Local governments and major city agencies.
4. Special bodies e.g. National Parks Board and other bodies that are promoting specific areas like the Lebombo and Wild Coast development zones.
5. Private bodies e.g. South African Property Owners Association.

The areas of focus are:

1. Urban and rural conference facilities
2. Game lodges
3. Golf courses and conference facilities
4. Leisure hotels
5. Heritage site development
6. Eco tourism
7. Cultural Tourism

In order to support these developments, complementary services are also being promoted e.g. tour operators and related activities.

SWAZILAND

Question 23

We understand that the Government has formulated a new Telecommunications Policy aimed at liberalizing the sector through the passage of a new Telecommunications Act and that this will eliminate the Swaziland Posts and Telecommunications Corporation (SPTC), which currently enjoys a national monopoly on fixed telecommunications services. Can you update us on this process?

Does Swaziland envisage taking on any telecommunications services commitments during the current round of GATS negotiations?

Answer

Government policy is aimed at separating the regulatory aspect from the operational aspect. The regulator will issue licenses to the operators in order improve efficiency and liberalise the market. It is expected that the service delivery will also improve. Once the Swaziland communications commission is fully operational, Swaziland will be in a position to consider the extent of commitments it can make in the GATS negotiations.

Questions from Colombia

SACU

Question 1

What is the basic process for the development of economic integration in SACU? What are the characteristics and the structures of the common external tariff? What treatment is given to agricultural products?

Answer

Economic integration within SACU has largely been achieved through the common external tariff that has been in place since 1910. All countries, except Botswana, belong to a common monetary area. The present agreement provides a basic framework for the development of common policies. SACU has a common tariff book and levy the same duties. All products appear in the tariff book as laid down in the harmonised system convention.

SOUTH AFRICA

Question 2

What are the main changes achieved by the Republic of South Africa, since the last review, in modernising its institutions of trade and industrial development and, in particular, in relation to its competitiveness policy?

Answer

The Department of Trade and Industry has strengthened its institutional capacity and delivery mechanisms. Special policy and delivery capacity has been created to deal with trade and industrial development respectively.

Question 3

What are the characteristics of South Africa's "draw back scheme"?

Answer

Characteristics of the draw back scheme are; reduction of input cost for manufacturing, processing and packaging of imported material used in the manufacture of product for exports; the facilitation of exports at international competitive prices.

Question 4

Why are products contained in tariff items between 27.07 and 27.15 (mineral fuels, mineral oils and products of their distillation) subject to an import control regime? What is the reason for the surtax that affects petroleum and bituminous oil imports?

Answer

The Department of Minerals and Energy utilises the import control regime as a mechanism to monitor demand and supply in the country to enable it to make adjustments where necessary.

Question 5

How do you expect the difference between the tariff levels for cane sugar and its derivatives (of 35%, see Annex 4, page A-267 of the Secretariat report WT/TPR/W/114) and the level applicable to the aggregate of agricultural products (5% average MFN rate, page A-262)?

Answer

The sugar market is arguably one of the most distorted in international agricultural trade today. These distortions are a result of protection and support policies in a few developed countries. The South African sugar industry, as well as in other SACU countries, do not receive subsidies from Government. Tariffs are the only form of protection enjoyed by the SACU sugar sector. Sugar tariffs are expected to be maintained above the average level of agricultural tariffs until such time as the major distortions are removed in the international sugar market.

Questions from the European Union

Question 1

How far is sustainable development being taken into consideration in the SACU Trade Policy?

Answer

SACU countries take sustainable development into account in all efforts aimed at the socio-economic development of the SACU region and its economies.

Question 2

Please explain whether and to what extent Fair Trade (which takes into account economic, environmental and social sustainability) is integrated into the SACU Agricultural Policy.

Answer

The SACU Agreement does not provide for a common agricultural policy. However, the new SACU agreement provides for co-ordinated agricultural policy development. SACU countries follow a common approach in the WTO agricultural negotiations and, in this regard, Fair Trade is of crucial importance to all SACU members. It is well known that SACU regards a very ambitious reform programme as fundamental to the DDA. In relation to market access and trade preferences, South Africa has proposed guidelines in the current agricultural negotiations which include:

- (i) Vulnerable, preference dependent countries should not bear the costs of further liberalisation;
- (ii) Developing countries that do not currently enjoy preferences and are discriminated against by the EU and other preferential regimes, should not have their current positions exacerbated by the above approach; and
- (iii) Capacity-building to support countries efforts at diversification should be focused on the specific needs and situation of particular developing countries requiring this assistance.

However, in developing the above guidelines, we need to ensure that the mechanism created to address the issue of preferences does not delay the dismantling of the protective regime in the North. Nor should developing countries who seek relief from protection in the North be held hostage by the above complexity.

BOTSWANA

Question 3

How far do assessments of the impacts on sustainable development flow into the setting up of the National Export Strategy?

Answer

Botswana, in close cooperation with the International Trade Centre (ITC) in Geneva, has recently embarked on the development of a comprehensive National Export Strategy. The Strategy is being developed through a strong public-private sector partnership, using the comprehensive model

(template) developed by the ITC for the elaboration of such strategies. More specifically, the Strategy will not only focus on identifying and promoting export markets (border-out) activities but, more importantly, it will have an inward-looking (border-in) focus to develop new approaches and to strengthen the production capacity and competitiveness of firms to compete in international markets. An important element will be the development of export competency through management training.

In order to achieve sustainable development through the development of export capacity and competitiveness, the Export Strategy also includes a significant “pro-poor” dimension (development component). More specifically, the National Export Strategy will be mainstreamed into the overall planning process by focusing strategic initiatives on the core development issues of poverty alleviation, employment generation and decentralisation of industry. It is expected that pro-poor export initiatives will have a significant and sustainable development impact in terms of new export earnings generated, employment opportunities created and the share of export receipts retained by disadvantaged groups.

Question 4

Please set forth to whether and to what extent Fair Trade (which takes into account economic, environmental and social sustainability) is being promoted by the authorities as an element of sustainable development.

Answer

The existing pieces of legislation such as the Consumer Protection Act, the Industrial Property Act, and the Botswana Telecommunications Act are aimed at among others, promoting Fair Trade. In addition, Botswana is currently finalising a draft Competition Policy, which will, inter alia, promote competition among various private sector actors as well as protecting consumer rights, thereby enhancing fair trade. This policy will pave the way for the formulation of a Competition Law and the establishment of a Competition Authority to further enhance Botswana’s full commitment to promoting and safeguarding open competition and fair trade.

Question 5

Please explain how far sustainable development and Fair Trade are being promoted to reduce poverty and foster local agriculture?

Answer

Sustainable development is a cornerstone of our National Development Planning process. It is also enshrined within the National Vision 2016 document which guides national development plans, policies, programmes and projects.

Agricultural development is based on “sustainable economic diversification”. The introduction of the National Master Plan for Arable Agriculture and Dairy advocates the diversification of production. The Master Plan is intended to create opportunities for investments and employment in the agricultural sector, which will lead to poverty alleviation. The Increase in employment is attributed to the forward and backward linkages in addition to primary production in the agricultural sector.

Trade in agriculture has been substantially liberalised to ensure that consumers can have access to different varieties of food at competitive prices. Liberalisation is managed with due regard to infant industries so that their development is not disrupted.

Question 6

Please set out the extent to which environmentally sound forestry practices are being promoted to counter deforestation.

Answer

Government is finalising a forestry development policy. It is also reviewing associated legislation in order to use and conserve natural forest resources in a sustainable manner. Government is also establishing a programme of community-based woodland management in order to use indigenous woodland species to provide wind-breaks and arrest wind erosion of cropland catchments.

Question 7

Please explain the scope of Sustainable Development in the National Ecotourism Strategy.

Answer

The Botswana Tourism Policy encompasses, among other things, an eco-tourism component. There is a clear recognition that for Botswana to continue to benefit from tourism, it has to be based on sustainable development. An eco-tourism strategy has been developed which emphasises the need for long-term sustainability.

NAMIBIA

Question 8

Namibia is both a member of the SACU and of COMESA. Please explain Namibia's current position vis-à-vis the COMESA Customs Union. Does Namibia intend to remain in COMESA?

Answer

It is true that Namibia is a member of both organisations. Namibia has not joined the Free Trade Area because of its membership of SACU. Namibia is evaluating and reviewing its position within the context of all the regional trade initiatives as well as developments in the context of the Cotonou process with the view to rationalising its membership.

Question 9

To which extent does Namibia intend to include trade liberalisation as an element of its poverty reduction strategy?

Answer

Government through the National Development Plan, has indicated its desire to mainstream trade into poverty reduction programmes and strategies. This would ensure that trade liberalisation is poverty-reducing and not poverty enhancing. Thus, the Government recognises and appreciates the link between trade and development.

Question 10

Please explain to which extent Fair Trade (which takes into account economic, environmental and social sustainability) is integrated into the National Agricultural Policy.

Answer

The Government of the Republic of Namibia has an integrated framework that seeks to balance agricultural policies and sustainability issues (environment) and sustainable livelihoods (social). To this end, agricultural policies are targeted at rural communities to ensure a balance between environmental imperatives and agriculture. A primary objective is to address the issue of land disparity. This is done through land acquisition on a commercial basis and land re-distribution to the landless and rural communities. A parallel objective is to mitigate against land degradation. In addition, extension programmes have been introduced in order to ensure sustainable utilisation of resources.

Question 11

To what extent do the Ministry of Environment and Tourism and the Namibian Tourist Board take ecological, economic and social sustainability on board when formulating tourism strategies?

Answer

Government has put in place a tourism management authority that ensures that ecological systems are safeguarded and maintained. A good example in this regard is the Skeleton Coast management system. About 5% of available land is designated as national parks. Communities along these national parks are involved in the sustainable management of these parks. Thus, ecological interests are balanced with the economic and social needs of the rural communities. Thus, government is committed to formulating strategies and policies based on ecological, economic and social sustainability. Namibia's membership to the CBD and Bio-Safety Protocol offers a vivid example of government determination to deal with issues of sustainability.

LESOTHO

Question 12

To which extent do programmes such as the Interim Poverty Reduction Strategy Paper and the Pro-Poor Integrated Framework recognise the role of trade in supporting sustainable development?

Answer

Lesotho wishes to highlight recent developments regarding the formulation of the Poverty Reduction Strategy Paper (PRSP), which supersedes the Interim Poverty Reduction Strategy Paper (IPRSP). The former contains long-term objectives and strategies derived from a consultative process with all stakeholders, including recommendations of a Diagnostic Trade Integration Study (DTIS). To ensure recognition of the role of trade in supporting sustainable development, the processes of formulating PRSP and developing a Pro-Poor Integrated Framework were carried out on the basis of consultations with communities and the principle of Smart Partnership.

Strategies include, among others, the development of the private sector, in particular the SMME development and the promotion of exports in agricultural and industrial sectors.

Question 13

Please explain how far sustainable development and Fair Trade are being promoted to reduce poverty and foster local agricultural capacity building?

Answer

The Government of Lesotho pursues policies and programmes geared towards the enhancement of commercialisation and diversification. These programmes and policies are based on comparative advantages and an outward looking approach. At the same time, they are expected to enhance food security. To achieve the above, support is provided to the farming communities engaged in production of exportables. Extension programmes have been intensified to expedite the introduction of cash crops and improvement of farmer's husbandry and marketing skills. Other support can only be provided on exigencies such as critical food shortfalls resulting from severe droughts.

Question 14

Please set out the extent to which sustainable forestry practices are being promoted to counter deforestation.

Answer

The Government of Lesotho, in order to counter deforestation with sustainable forestry practices, has introduced a scheme, which transfers production of seedlings from government to local communities. The initiative provides the communities with the opportunities to produce seedlings for sale to government, distribution and planting. As an indication of government commitment to redress deforestation, a new fully-fledged government ministry has been created to address the above-mentioned problems.

Question 15

Please explain the role of the Lesotho Tourism Development Corporation towards Sustainable Development.

Answer

The Government of Lesotho, in an effort to maintain the eco-system, provides continued, tailored educational programmes aimed at cultivating the culture of environmental protection. LTDC's role is to promote and develop sustainable tourism.

SOUTH AFRICA

Question 16

To which extent does South Africa intend to include trade liberalisation as an element of its poverty reduction efforts?

Answer

Our own studies found that for the economy as a whole, net trade has had a distinctly positive effect on employment, particularly for the unskilled. Enhanced employment is the major mechanism in

poverty reduction and hence we see trade liberalisation as being directly in accord with our central objectives of poverty reduction.

Question 17

Please point out to what degree South Africa is making use of assessments of the impacts on sustainable development when defining its national trade and export strategies.

Answer

South Africa considers sustainable development when defining its national trade and export strategy. The idea is to find a proper balance between environmental sustainability and job creation, poverty reduction and economic development. Amongst other initiatives is the National Environmental Management Second Amendment Bill, which is currently being drafted. Some of the key provisions of this Bill is the elimination or reduction of production or use of certain products. This Bill will supplement other legislative requirements that must be observed before development is undertaken. Environmental consideration and sustainability are legislative requirements in South Africa.

Question 18

Please explain to which extent Fair Trade (which takes into account economic, environmental and social sustainability) is integrated into the Strategic Plan for South African Agriculture.

Answer

The strategic plan for South African Agriculture is to generate equitable access and participation in a globally competitive, profitable and sustainable agricultural sector contributing to a better life for all. In order to meet this objective for the sector, real structural change in the distorting policies of the major developed countries need to take place, which will enable South Africa and its custom union partners to realise their competitive and comparative advantage on international markets. South Africa envisages addressing sustainable rural agricultural development and poverty alleviation with mainly Green Box measures.

Question 19

Please set out the extent to which sustainable forestry practices are being promoted to counter deforestation.

Answer

At the beginning of 2000, the Department of Water Affairs and Forestry initiated a process to develop a set of Criteria, Indicators and Standards for sustainable forest management according to the Principles contained in the National Forest Act. This process resulted in the development of a broad set of criteria and indicators that are representative of South Africa's concerns and priorities in this area. The criteria and indicators are currently subject to a validation exercise to test their relevance, adequacy and efficacy. The end result of this exercise is the development of criteria and indicators, for use by all stakeholders, to monitor forest conditions and promote/guide sustainable forest management.

Questions 20 and 21

As stated repeatedly in the different reports, SACU countries' trade regime is highly complex due to, in particular, these countries' membership in different regional integration initiatives. COMESA and SADC, for example, both aim at eventually becoming customs unions. How do the SACU countries intend to reconcile this situation with the need for greater consistency in terms of regional integration?

How does the emergence of a revitalised SACU affect the regional integration processes?

Answer

As a regional integration initiative itself, SACU is fully committed to the advancement of integration in both Southern Africa (under the aegis of SADC and COMESA) and in the rest of the African continent. Further, SACU believes that regional integration efforts are compatible with multilateral trade liberalisation under the WTO.

SACU considers that SADC and COMESA share the common objective of promoting regional integration in Southern Africa, albeit through different modalities and schedules. While it is not practically possible for SACU to be part of both SADC and COMESA, SACU supports co-operation and co-ordination between SADC and COMESA while each organisation consolidates its integration programme.

Question 22

Will SACU negotiate as one in the context of both the DDA and future preferential agreements?

Answer

The new SACU provides for SACU members to negotiate with third parties as a bloc. Pursuant to this, SACU members coordinated their positions on the DDA and will continue to do so as the DDA unfolds. Similarly, SACU is preparing to undertake the negotiations of preferential agreements with the US and Mercosur as a bloc. For this purpose, a SACU common negotiating mechanism will be established, as provided for in the new SACU Agreement.

Question 23

By when can it be expected that the new Treaty will enter into force (estimation of the length of the ratification process)?

Answer

The Agreement will enter into force after domestic constitutional proceedings by respective members states are completed.

Question 24

By when will the future SACU Secretariat become operational?

Answer

Please refer to answer to question 23.

Question 25

Are there plans to enlarge SACU to new members in the future?

Answer

The new agreement makes provision for the accession of new members.

Question 26

How will SACU co-operation in the area of competition be addressed?

Answer

The new SACU Agreement provides that SACU Members shall cooperate with each other with respect to the enforcement of competition laws and regulations. The mechanisms of cooperation will be developed and agreed upon as Members States implement the Agreement, which includes development of new competition laws and regulations.

Question 27

We understand that SACU intends to extend trade liberalisation to services, but that negotiations are yet to commence. Has SACU already undertaken any steps towards regional integration of their services markets of developed common sectoral policies in services? Do SACU members coordinate their trade policy with regard to services?

Answer

The Agreement does not expressly include Services, However, there have never been restrictions on services in the customs area.

In terms of the crafting of common policies, this will be taken up as part of the work programme.

Question 28

According to para 22 the Tariff Board is responsible for recommendations to the Council in regard to trade defence measures. Item 19 states that the Council of Ministers has to decide on these matters. Can the SACU please elaborate on how decisions are taken in the Council of Ministers (weighted votes, simple majority etc.)?

Answer

Decisions will be taken by consensus In the Council of Ministers.

Question 29

Paragraph 24 mentions the establishment of a Tribunal to decide on issues concerning the application or interpretation of the agreement. Can interested parties of a trade defence dispute appeal with this Tribunal?

Answer

In terms of the new SACU Agreement, only Members States can appear before the Tribunal as parties to any dispute that may arise.

Question 30

The report states that, because of their membership in SACU, BLNS countries apply anti-dumping, countervailing and safeguard measures imposed by South Africa. Can the SACU please elaborate how and to which extent the producers outside of South Africa are taken into account for the determination of „domestic industry“?

Answer

SACU is fully taken into account when the determination of domestic industry is made in SA.

Question 31

The report gives the definitions of dumping and subsidies according to SACU legislation. However, it does not elaborate on the occurrence of injury and causality in order to take measures. Can the SACU confirm that these requirements are part of the legislation?

Answer

Regulations will be developed in this regard.

Question 32

The report states that safeguard actions are taken in case of „disruptive competition“. Can the SACU please confirm that the new legislation is in conformity with the WTO agreement on safeguards and that the character of exceptional application and the requirement of „serious injury or the threat thereof“ is respected.

Answer

SACU does not have legislation on safeguards yet. This will form part of the future work programme.

Question 33

Could information be given on efforts at the SACU level to introduce trade facilitation measures – in particular simplification and standardisation of import and export procedures, transit arrangements, and modern customs methods?

Answer

The work on harmonisation and simplification is part of the work programme of the union.

BOTSWANA

Question 34

Botswana indicated a need for seminars to help stakeholders understand and prepare for negotiations on several DDA issues. How has the WTO responded to that?

Answer

The WTO Secretariat has always demonstrated a willingness to assist Botswana whenever requests for technical assistance have been made. The main problem has been the under-utilisation of WTO assistance because of capacity constraints on the ground. Botswana is currently developing a comprehensive capacity building programme, which will determine the short, medium and long technical assistance and capacity building needs.

Question 35

How can foreign firms register as contractors in order to be eligible for procurement? Are there any particular requirements for foreigners only?

Answer

The Public Procurement & Asset Disposal Act [No.10 of 2001] provides for the Registration of Contractors. The eligibility requirements in place comprise:

That the proponent must be licensed or incorporated under the relevant laws of Botswana (section 117 of the Public Procurement & Asset Disposal Act, refers) this requirement exists both in respect of foreign and citizen contractors.

Section 121 of the Act further provides that Registration in the Contractors Register shall be inter alia by classification of Contractors by grades and codes, based on scale and complexity of procurement and the capacity of contractors, according to international practice. In this regard, Grades Opportunity Category (OC), A, and B which are lower grades reserved for 100% Citizen owned companies only. Foreign contractors are eligible to participate in higher categories of Grade C (which predominantly comprises joint-ventures between citizen and non-citizen contractors), Grade D and Grade E (Unlimited).

With particular reference to providers of consultancy services, such as professional consultancy services, there exists a requirement that in order to be eligible to tender, the firm must have a local office and must have been operating within Botswana for a period of one year immediately preceding the application for registration.

Companies which intend to do business in Botswana should be in possession of appropriate licenses authorising them to carry on such business. This applies to both citizen foreign companies.

The Public Procurement & Asset Disposal Act provides for mandatory registration with the PPADB for contractors as a condition of eligibility.

Question 36

Besides the Local Procurement Programme, what reservation and preference schemes are currently in force in Botswana?

Answer

There is a 30 % Reservation of the Government of Botswana's annual procurement budget for building construction which is reserved for 100% Citizen owned firms only.

There is also a 2 ½ % Price Preference for Citizen Contractors up to a ceiling of P300 000, which is reviewed every three years.

Government has also introduced a combination of reservations and price preferences for Citizen Consultants and IT providers. Reservation ceilings vary according to professional disciplines whereas the price preferences are in accordance with the degree of citizen ownership of the bidder. 100 % Citizen owned contractors get a 5% price preference, majority owned 3% and minority owned 2% respectively.

Question 37

Will the new computerized system of registering suppliers be open to foreign suppliers? Do any of the tendering procedures revisions pertain to transparency?

Answer

The new computerised system is intended to enhance efficiency and not promote discrimination between foreign and citizen owned companies. Therefore the current system of registering both foreign and citizen will continue. The Public Procurement and Asset Disposal Act of 2001 aims at, among other things, promoting transparency in public procurement. In particular, the Act requires all reservation and preference schemes to:

- (a) be targeted and time bound;
- (b) be phased in and out;
- (c) be non-discriminatory in respect of the targeted group or grade of contractors;
- (d) be based on competition among eligible groups;
- (e) entail their calculation of cost versus the cost of unrestricted procurement or disposal;
- (f) have clear quantifiable objectives to be achieved; and
- (g) contain benchmarks to assess progress.

In addition all construction projects with an estimated cost of P 50 Million or more must be subject to open to international competitive bidding.

The Act also provides for an Independent body known as the Independent Complaints Review Committee. This Committee was established to deal with queries by contractors arising at any point in the procurement and disposal process, including complaints by contractors at registration, reclassification, etc.

Question 38

What further revisions are being made to tendering procedures?

Answer

The Government has introduced the Standard Bidding Documents for mandatory use by procuring and disposing entities. The Board is required to adopt, circulate and amend, where necessary, standardised bidding packages and public assets disposal contracts which shall be used on a mandatory basis by all procuring and disposing entities in their respective bidding packages. These standard bidding packages have been proposed and are awaiting formal adoption by the Board before their introduction.

Detailed regulations covering all aspects of the tendering system are currently being drafted to complement the Act and to provide particular guidance on the procedural aspects of bid submission, evaluation and adjudication.

In addition, there has also been decentralisation and devolution of the procurement function to Ministerial and District Administration Tender Committees within specified financial thresholds to speed up the procurement process and reduce bureaucracy.

LESOTHO

Questions 39-42

How are notices of invitations to tender advertised?

How can prospective foreign bidders access information on tender notices, bidding procedures and awarding criteria?

Are contract awards published?

How does Lesotho intend to review its government procurement system?

Answer

The Government of Lesotho has a procurement system, which allows for advertisement through notice boards, radios and newspapers that command wide readership. Prospective foreign bidders access information pertaining to tenders through the above means, while bidding procedures are available for familiarisation. It is important to note that the outcome of the evaluation process, as stipulated in the bidding procedures, is communicated to all bidders individually, whether successful or otherwise. It is also important to note that the current government procurement process is also under review by a task force comprising of members from both the private and public sector. Among other objectives, the review aims to minimise government involvement.

Question 43

The report informs about interest rate subsidies and reduced tax rates for manufacturing companies. Are these subsidies export contingent?

Answer

Reduced corporate tax is applied uniformly to all manufacturing entities regardless of the intended markets, whether local or international. In that way the corporate tax is not necessarily used as an export incentive.

Questions 44-46

How many service providers are there for mobile services, internet access services, fixed data and voice services?

Do the responsibilities of the Telecommunications Authority cover licensing, remedy against anti-competitive practices, interconnection rules, arbitration of disputes, attribution of numbers and frequencies?

Is there a scheme to expand access to the network for the poor and isolated?

Answer

There are 2 mobile operators viz Vodacom Lesotho and Telecom Mobile Lesotho, which is trading as Econet Ezi-cel Lesotho. In addition there are also 4 internet service providers, Viz: National University of Lesotho, Square One Commet Lesotho, Lesotho Office Equipment trading as LEO, and Adelfang Computing. There is one (1) fixed line operator by the name of Telecom Lesotho, providing fixed data and voice services. Also one (1) Internet bandwidth refiler trading as OSCAR communications. This service provider has already been licensed and will resume operations later in the year.

The government policy is that access to network should be expanded to all people, including the poor and isolated. Lesotho Telecommunications Authority is working on a policy document and strategy to address issues of Universal Access. The development of the paper has involved various stakeholders, including ministries, utilities companies and network operators. Work is nearing completion. The strategy anticipated will take the next 3 years from 2003/4. The idea is not to charge the Universal Service Fund contributions but to direct network operators in particular areas where the majority of people obtain services in accordance with a new license obligations. The strategy paper is not completed yet.

NAMIBIA

Question 47

The report states that "Namibia's capacity to negotiate preferential trade agreements is further limited by the 2002 SACU Agreement" - Is this the case? If so, why?

Answer

The 2002 SACU agreement Article 31 provides that member countries of SACU should enter into negotiations with third parties on a collective basis. This means that the extent to which Namibia can pursue preferential trade negotiations is constricted by this legal position. The rationale that underpins this legal position is that the credibility of the common external tariffs should be maintained by all SACU members.

Question 48

For the sake of completeness, we would like to indicate the following: The Report does not mention under II (4)(i) - Point 34 that the EC agreed to allocate under its Country Strategy Paper at least EUR 2 million for a Namibia trade and regional integration programme which should address Namibia's capacity constraints, including strengthened negotiation capacities, analytical and research capacities, inter-institutional consultation mechanisms and support to undertake impact studies. In addition, the EC and the EIB are actively involved in supporting the private sector and addressing the supply side constraints.

Answer

Yes, this programme is being put into place and this may help to explain why it has not been mentioned at the time when the report was finalised. Notwithstanding, the unintended omission, the Namibian government would like to extend its gratitude to the European Union for its consistent support in the area of technical assistance and capacity building. It is our hope that this support will be maintained in the future as we assume additional obligations as a result of the Cotonou process and the possible outcomes of the Doha Development Agenda.

Questions 49-53

Has Namibia planned to organise workshops and seminars in government procurement for the training of officials?

Are awards of contracts also advertised?

How is the necessary technical expertise of suppliers determined by the Tender Board of Namibia?

How can foreign suppliers register in Namibia in order to receive price preferences?

How can foreign investors obtain the Certificate of Status Investment (CSI)?

Answer

Indeed, we organise workshops in this area to train and sensitise officials. The awards are advertised and the technical specifications are evaluated by the agency or institution that would require the service. The institution may recommend the supplier to the Tender Board which in turn would evaluate and accept or reject the recommendation. The Tender Board is constituted by presence of both the government and private sector representatives. The private sector always presides as deputy chair. The tender opening is a transparent process and each supplier would usually be aware of the offer that would have been made by the other competitors. This is both in terms of price and technical specifications. The tenders are open to both foreign and domestic suppliers. If the foreign supplier is able to secure the applications from the Ministry of Finance, Room 15, then it is up to them to submit the applications timeously. In as far as the Certificate of Status of Investment is concerned, this does not apply to the tender process.

Questions 54-56

Export subsidies, assistance and processing zones

The report states that 80% tax deduction exists on income derived from manufactured exports, other than meat and fish. Can Namibia please explain how this measure complies with its obligations according to Art 3 ASCM?

The report elaborates on tax and tariff concessions for companies in EPZs and states that for EPZ status eligibility an export share of the production of 70% is required. Can Namibia please explain how this measure complies with its obligations according to Art 3 ASCM?

Answer

The general policy thrust of the measures that Namibia has put in place is to encourage industrialisation, poverty alleviation, employment creation and growth. It is a considered view of this delegation, that these policy measures will invite support by partners in view of the high unemployment situation as indicated in the Secretariat report, and the concentration of the economic activities. Indeed, Article 2(c) of the Agreement on Subsidies and Countervailing measures provides for a test in that it allows for “account to be taken of the extent of diversification of the economic activities within the jurisdiction of the granting authority”. Namibia, being a country which seeks to achieve both industrial diversification and export base diversification would therefore require government to put in place measures that would respond to these economic realities. We appreciate the support that has been extended to us by the EU in this regard.

In as far as the EPZ is concerned, the regime is of a general nature and is non-discriminatory. Given the objectives that we have alluded to, we hope that our partners will support our efforts to increase Namibia’s share of world trade.

SOUTH AFRICA

Question 57

Please explain how the promotion of “black economic empowerment” programme will impact on the government procurement system.

Answer

South Africa has recently released its Black Economic Empowerment strategy. One of the instruments to promote this strategy is to use procurement by government and state-owned enterprises. A detailed policy statement on procurement is being finalised. This will include a review of current legislation relating to preferential procurement as well as the drafting of a code of good practice to introduce consistency between different tiers of government and state-owned enterprises. Further details will be available once the policy on procurement is finalised.

Questions 58-62

How does South Africa intend to align the buying procedures of its national, provincial, and local entities, as well as state-owned companies?

Do any legal instruments ensure the transparency of the procurement practices?

What criteria are used for the award of contracts? What development objective criteria could justify the choice of a tenderer? Could you provide any examples of development objective criteria? Is the presence of a local agent the only requirement for foreign firms to participate in a bid?

As regards parastatal contracts, please explain further the “industrial participation” plan and the requirement to invest in a new or incremental business in South Africa.

Answer

Government procurement is regulated by the Preferential Procurement Act, 2000. This Act ensures transparency by clearly specifying the levels of preferences that could be applied in different instances. Price competitiveness and value for money remain the primary criteria for all government procurement.

The development objective criteria that would be considered for preference purposes will be spelt out in codes of good practice, which are presently under consideration. These voluntary codes will be issued in terms of Black Economic Empowerment legislation which is presently before the South African Parliament. The requirement to participate in industrial participation programmes and to invest in new or incremental business in South Africa only applies to government purchases in excess of USD 10 million.

Question 63

Section III enumerates various export incentives. Can South Africa please explain in further details the requirements for credit facilities offered to exporters by the Industrial Development Corporation and the promotion of exports of secondary steel products by means of financial assistance?

Answer

To assist local importers, credit facilities have been established with banks and other financial institutions in virtually all South Africa’s major trading partner countries. Repayment normally ranges from two to five years but dedicated credit lines can be concluded for larger projects requiring tailor-made solutions and longer credit periods of up to ten years. The International Finance division assists exporters of capital goods by structuring finance – extended in rand or US dollars at guaranteed rates of exchange – to ensure that exporters receive payment of full contract price of delivery. The division also offers short-term working capital finance to exporters for the execution of export orders.

Question 64

Why is Telkom still setting standards for telecom equipment now that competition is allowed in the telecommunications sector (and has been alive for mobile services for a number of years)? Is this practice not undermining liberalisation in the sector?

Answer

Telkom does not set the standards for telecommunications equipment in South Africa. They determine the requirements for their networks from suppliers. The setting of standards and type-approval of equipment is provided by the Independent Communications Authority of South Africa (ICASA).

Question 65

Would South Africa agree that the much lower teledensity in fixed networks is the result of the lack of incentive for Telkom to invest so long as it is not faced with real competition?

Answer

The low teledensity in terms of fixed lines is a result of a number of factors; including the large rural population and terrain in these areas. Costs are a significant impediment to the roll-out of lines. Telkom has had specific roll-out obligations which were tied to their exclusivity and monopoly status, including penalties for non-delivery.

Question 66

Why has South Africa decided to limit competition to two operators? Given the low teledensity in fixed networks, how can one single operator (SNO) remedy the lack of investments of Telkom?

Answer

The determination of a single competitor was based on a feasibility study undertaken to assess the ability of the market to sustain a second operator and the ability of investors to establish such operators.

Question 67

What is the real coverage of the country by Telkom?

Answer

In terms of its license, Telkom is mandated to provide coverage for the whole of South Africa. Telkom currently has 4.9 million subscribers, located primarily in the urban centres.

Question 68

What are the obligations of expansion of coverage imposed on Telkom?

Answer

Telkom has had an obligation to roll-out 1.4 million lines over the five year period of exclusivity, which ended on 7 May 2002.

Question 69

What is the rationale for an 80% coverage target within two years for the SNO?

Answer

The Second National Operator (SNO) is able to "piggy-back" on the Telkom network for two years thus allowing it to establish its own network. The requirements for network coverage are aimed at addressing the need for fixed-line infrastructure in the country.

Question 70

Which interconnection obligations have been imposed on Telkom in order to promote competition and the offering of services by the SNO?

Answer

The interconnection guidelines are being drafted by the independent regulator to ensure greater competition in the sector. These guidelines are to be in line with the Government's commitments to managed liberalisation of the telecommunications sector.

Question 71

Can you confirm that the Ministry of Telecommunications is represented on the board of Telkom?

Answer

The Minister of Communications is the government representative on the Telkom Board.

Question 72

The Minister of Telecommunications acts as a regulator on a number of issues (as indicated he gives policy directions to ICASA, but also decides upon licenses, upon interconnection conditions with TELKOM, and upon the prices of TELKOM): how can the Minister be impartial given that the State still owns 70% of Telkom?

Answer

The Minister does not determine the regulatory issues, other than to provide policy directives in line with Government policy for the sector. It is the responsibility of the Independent Communications Authority of South Africa, (ICASA) to determine interconnection guidelines, licensing of operators, and tariffs for Telkom. In addition, following the IPO for Telkom the Government now owns less than 40% of Telkom.

Question 73

Which anti-competitive practices have been dealt in the past by ICASA in the sector?

Answer

ICASA has ruled on the dispute between Value-Added Network Service Providers and Telkom on the provision of services. Competition issues are primarily dealt with by our Competition Commission.

Question 74

What provisions are foreseen to prevent anti-competitive practices by TELKOM vis-à-vis the SNO?

Answer

The prevention of anti-competitive behaviour by Telkom towards the SNO is to be regulated by the Independent Communications Authority of South Africa (ICASA), the telecommunications regulator, as well as by the Competition Commission. The Competition Act of 1998 was changed to accommodate concurrent jurisdiction between South Africa's regulatory bodies and the Competition Commission.

Question 75

Is there an independent entity, which can arbitrate disputes between operators, and in the future potential disputes between ICASA and TELKOM?

Answer

ICASA, as the regulator, is responsible for arbitrating disputes between the operators. Disputes between Telkom and ICASA are to be resolved by the courts, if no agreement can be reached between the parties.

Question 76

Could South Africa please detail the capital requirements for subsidiaries and branches?

Answer

Article 70 of the Bank Act requires (a prudential requirement) that the minimum share capital and unimpaired reserve fund be at least R250 million or 10% of the risk weighted earnings. Normally the R250 million requirement applies. Representative offices are not subject to the above since they may not conduct banking business.

Question 77

Could South Africa please indicate whether there is any limit on foreign shareholding in a brokerage company that is a member of the Johannesburg Stock Exchange?

Answer

There is no limit on foreign shareholding in brokerage companies but they must be separately capitalised in South Africa. They may, however, take any form (Ltd., Pty Ltd., partnership, etc.).

Question 78

Could South Africa explain the reasons why establishment through branches is allowed in the banking sector, and not in the insurance sector?

Answer

The establishment through a branch is not allowed in the insurance sector so that the home supervisor (the Financial Services Board) has jurisdiction over the insurer. In the case of a branch office there is no such jurisdiction.

Question 79

Are there barriers to the cross-border provision to South Africa of insurance services, in particular of reinsurance and of air, maritime and transport insurance?

Answer

All insurers or reinsurers, as well as insurers on whose behalf policies are sold, must be incorporated as a public company in South Africa and must be registered with the supervisory authority to conduct insurance business in South Africa.

Question 80

Could South Africa please clarify whether the approval to acquire a major stake in a South African insurance company is based on non-discriminatory and solely prudential criteria?

Answer

Approval to acquire a major stake in a South African insurance company is based on non-discriminatory prudential criteria. In addition, South Africa's commitments state that "the acquisition of shares or any other interest (by a resident or non-resident) in a registered insurer resulting in a holding of 25% or more of the value of all shares or other interest in that business, requires the written approval of the Registrar of Insurance".

Question 81

Has South Africa taken measures within the Tourism Growth Strategy to ensure non-discrimination of foreign services suppliers, mainly tour operators, hotels and travel agencies?

Answer

The recently published Tourism Growth Strategy aims, inter alia, at the development and growth of the tourism industry in South Africa with the objective of supporting strategic economic objectives such as black economic empowerment, development of SMMEs, employment creation, attracting both foreign and domestic investment, as well as ensuring even development of all our geographical areas. The development of rules and regulations that may apply or impact on foreign services suppliers in this sector will form part of South Africa's preparatory process and strategy in the context of current WTO services negotiations.

Question 82

What are the government's plans in terms of consultation with the industry operating in the country?

Answer

The Tourism Business Council of South Africa is the umbrella organisation that represents business in consultations with government. The government adopts broad consultation processes in various areas of policy formulation. In the process of developing the Tourism Growth Strategy, for example, the government consulted all relevant stakeholders to ensure maximum participation and buy-in from industry. Further interaction and consultations will take place in the process of the implementation of the Strategy.

Question 83

How is the government approaching the regulation of tourism-related activities in key regions (environment, wildlife, urban planning, etc)?

Answer

The Department of Environmental Affairs and Tourism has developed guidelines to provide national guidance and indicators to enable the tourism sector to demonstrate progress towards the principles of responsible tourism embodied in the 1996 White Paper on the "Development and Promotion of Tourism in SA". The 1996 White Paper sets forth the concept of responsible tourism and a comprehensive statement of policy guidelines. A copy of the White Paper can be obtained on www.environment.gov.za.

Question 84

What is South Africa's experience in terms of tourism and public security, promotion of local cultures, development of supply of water and sanitation services, other relevant areas of interest/concern?

Answer

The Tourism Growth Strategy recognises that tourism development and growth flourish in safe and secure conditions. To this end, the Government embarked on a range of approaches and strategies (e.g. visible policing, strengthening safety and security agencies and services), in cooperation with other government departments to ensure the safety and security of all citizens and visitors. In 2002-2003, significant strides have been made to achieve the objectives of the Tourism Growth Strategy and these developments have shown positive impact on, inter alia, promotion of local cultures, development of SMMEs, and provision of services.

Question 85

Has South Africa undertaken an assessment of impact in growth and employment in other sectors (like construction, computer services, education and professional training, others)?

Answer

South Africa has undertaken impact studies across a range of sectors which, inter alia, look at growth, employment and other variables and issues. This information can be found on www.tips.org.za

Question 86

Has South Africa taken measures to liberalise these related sectors?

Answer

South Africa has taken measures to open certain services sectors as per its current commitments under the WTO. Some of the sectors that have been opened include construction and computer and related services. However, the opening up of other sectors will be considered in the context of South Africa's preparatory process for WTO negotiations, which has involved consultations with all relevant stakeholders domestically with the objective of developing South Africa's negotiating positions and strategies.

Question 87

Some figures are difficult to grasp: reception capacity of 1.500.000 rooms in 2001 vs 50.000 in 1996? (note that arrivals only doubled in that period) Could we please get clarification?

Answer

The figures quoted are correct.

SWAZILAND

Question 88

How are notices of invitations to tender advertised?

Answer

Notices of invitations to tenders are advertised in the local media. However for donor funded projects advertisements are made in the international media including ACP, CBL Chamber of Commerce monthly newsletter.

Question 89

Are foreign companies allowed to register in Swaziland in order to receive the 15% preferential price difference?

Answer

A company registered in the country with commercial presence in the country is regarded as a local company. Therefore a company registered and commercially present in the country will qualify for the 15% preferential price.

Questions from Hong Kong, China

SACU

Question 1

We are pleased to note that SACU members are committed under the 2002 SACU Agreement to harmonizing product standards and technical regulations within the customs union, and that they will apply product standards and technical regulations in accordance with the WTO Agreement on Technical Barriers to Trade. We are interested to know if there is any plan or target for the harmonisation.

Answer

It is important to note that SACU members have already been co-ordinating and co-operating on many of the above policies, within the framework of the 1969 SACU agreement, and in the framework of the Common Monetary Area between Lesotho, Namibia, South Africa, and Swaziland, and the Liaison Committees on Customs and Trade and Industry, for example.

The 2002 SACU agreement seeks to deepen and expand this co-ordination and co-operation by strengthening the institutional arrangements for it, so as to lay the basis for the harmonisation of policies, as and when conditions allow, and ultimately for the creation of a more cohesive regional market.

In the wake of the signing of the new SACU agreement by all member countries, work is currently proceeding on a multi-pronged basis to conclude the ratification of the Agreement during 2003; the establishment of the new SACU Secretariat, and the development of SACU procedures for tariff-setting and trade remedies.

SOUTH AFRICA

Question 2

We note that South Africa, as the fifth largest user of anti-dumping (AD) actions, initiated 157 AD investigations and applied 106 AD measures during the period 1 January 1995 to 30 June 2002. As at June 2002, a total of 98 definitive AD duties were in force compared with 35 at the end of 1996. We consider that proliferation of AD actions and any abuse of such actions would significantly hamper trade activities and nullify benefits resulted from market access liberalisation. In this regard, we would be interested to know South Africa's comments on the growing trend in its use of AD measures in recent years, and whether it has put in place any measures to prevent abusive and protectionist use of AD measures.

Answer

Anti-dumping measures are fair trade remedies applied internationally in cases of unfair trade practices. Each case is dealt with on its merits and duties are only applied after rigorous investigations of facts. Although there was a substantial increase in anti-dumping activity in the period 1995 to 1998, it should be viewed in the light of the extraordinary circumstances which prevailed then:

- (I) South African increased its bindings from about 17% of tariff lines to 99% in the Uruguay round;
- (II) The applied tariff cut was substantially more than the agreed 33%; and
- (III) As a result of this liberalisation, and the democratisation of South Africa in 1994 a large number of foreign companies started to explore the Southern African market. In such circumstances, it is not unusual to have an increase in anti-dumping investigations.

Since 2000, the number of initiations has decreased significantly:

2000	21
2001	6
2002	4

All investigation initiated by South Africa have been conducted in full compliance with its WTO obligations. The absence of challenges through the DSB attests to our compliance with WTO commitments.

Under the new SACU Agreement, new regulations on anti-dumping have been published for public comment in the Government Gazette (28 March 2003). A copy of these draft regulations is also available on the dti website (www.thedti.gov.za). Once the process in South Africa is complete the WTO will be notified.

Question 3

We note that the second stage of the privatization of Telkom of South Africa was postponed to fiscal year 2002/03. We would like to know when the privatization would or did take place, and whether South Africa would consider reflecting it in its GATS commitments in the current round of services negotiations. Besides, it is noted that Telkom still enjoys monopoly powers over basic public switched telecommunication services, which is supposed to terminate by end December this year as indicated in the GATS commitments, and thereafter duopoly. We would be interested to have more information on the future arrangement for this duopoly.

Answer

The second stage of the privatisation of Telkom commenced with the Initial Public Offering of Telkom shares on the JSE Securities Exchange in South Africa and the New York Stock Exchange on 4 March 2003. This has reduced the Government's ownership of Telkom to 39.3%. Thintana LLC (consisting of SBC and Telekom Malaysia) owns 30%, 27.7% is publicly owned, and 3% is owned by Ucingo.

The process to appoint a second fixed line operator is underway. At the end of the tender process Telkom's monopoly will end, and a duopoly will be in place.

Question from India

Question 1

India's export of recorded video cassettes, recorded CDs etc. get affected because of piracy and violation of intellectual property rights/copy rights that take place in the field of recorded video cassettes and recorded CDs in South Africa. Would the Government of South Africa indicate steps being taken to address this problem?

Answer

South Africa introduced the Counterfeit Goods Act in 1997 and the law is rigorously enforced through co-operation with the private sector, South African Revenue Service and South African Police.

South Africa is continuously exploring means to enhance its enforcement capacity with regards to intellectual property rights.

Questions from Japan

SACU

Question 1

The tariffs of SACU countries have been reduced due to the concluding of the Trade Development and Co-operation Agreement between South Africa and the European Community. In view of such a situation where tariffs have been reduced, how does each member country perceive the future role of the SACU?

Answer

The reduction of tariffs has necessitated a review of the functioning of SACU by its members. In particular, the revenue sharing formula was reviewed to ensure a fair distribution of the common revenue pool and introduced a new 'development component' to ensure that countries with smaller per capita GDP, such as Lesotho, receive a greater share of the revenue. SACU members further acknowledge that in order to promote longer-term economic growth, they need to move towards sources of income other than the SACU revenue pool, and to advance their fiscal reform process. In this regard, technical co-operation on tax collection has already started among SACU members.

Question 2

The Report states that the broadening of the scope of negotiations to include "new issues" will severely test the human and institutional capacity of SACU countries. In this connection, Japan would like to remind the SACU countries that it has been extending TRTA, including convening seminars in African countries, through the WTO Technical Assistance Plan and through bilateral cooperation. Japan hopes that SACU countries will take advantage of such opportunities.

Answer

As a developing region, SACU attaches great importance to technical assistance, which supports the efforts of SACU members to promote economic growth and development, to establish the necessary policies, and institutions, and to enhance participation in regional and multilateral fora such as the WTO.

BOTSWANA

Question 3

According to the Report, Botswana intended to ratify the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty during 2002. Although Japan commends Botswana for initiating such intentions, it is concerned that, according to information from the WIPO dated 13th March 2003, Botswana has not yet ratified either Treaty. Please indicate Botswana's intentions on ratifying these two treaties.

Answer

It remains Botswana's intention to ratify the WIPO Copy Right Treaty and the WIPO Performance and Phonograms Treaty. However the ratification has been delayed because Botswana is still finalising the regulations for implementation of the Copyright Act of 2000. It is regrettable that while the country would like to comply with some of this international treaties, there is inadequate capacity to handle some of these complex technical issues.

SOUTH AFRICA

Question 4

Under the National Industrial Participation Programme (NIPP), the seller must invest in a South African Business to the value of at least 30% of the value of the imported content of the tender. This system imposes excessive burden in terms of cost on the companies, which make contracts covered by

the NIPP. Japan requests South Africa to abolish this Programme, or to at least limit the scope of contracts covered by this Programme.

Answer

South Africa's National Industrial Participation Programme has limited scope as it only applies to State and parastatal purchases in excess of US\$10 million. Ninety-five percent of the programme arises from defence contracts and this is consistent with international practice.

Question 5

Japan welcomes that the Minister of Trade and Industry formally announced the intention to extend the MIDP for light commercial vehicles from 2008 to 2012. On the other hand, a review of the MIDP for medium and heavy vehicles is expected to be completed by June 2003. Taking advantage of the MIDP, Japanese companies actively invest in their subsidiaries based in South Africa, which serve as export bases for the Australian and European markets. In order to improve the investment environment, Japan hopes that South Africa will decide to extend the MIDP for medium and heavy vehicles, and that it will consider further extensions of the MIDP for light vehicles.

Answer

It is expected that the preliminary report on medium and heavy vehicles will be submitted in June 2003. The final report will be available by September 2003. The issue of the extension of the Medium and Heavy MIDP being extended beyond 2007, is receiving careful consideration and will be decided within the next few months. As far as light vehicles are concerned the MIDP has been extended from 2007 up to 2012.

Question 6

According to Japan's understanding, South Africa is actively tackling the liberalisation of telecommunication services, which seems to be successful judging from the rapid increase of subscribers. On the other hand, according to the Report, Telkom still enjoys monopoly powers over basic public switched telecommunication services. Japan considers it indispensable for the development of telecommunication services to establish a sound competitive environment by, for example, allowing a second network operator (SNO) to do business. Japan hopes for further efforts by South Africa in this regard.

Answer

South Africa is at an advanced stage in the process to appoint a second fixed line operator. Once the tender process has been concluded, Telkom's monopoly will end and a duopoly will be in place.

Question 7

In paragraph 63, equity interests from foreign investors in the SNO will be limited to 51%. On the other hand, in the Schedule of Commitments of South Africa, the limitation on foreign ownership is 30%. Japan hopes that South Africa will improve its commitments during the on-going services negotiation.

Answer

Noted.

Question 8

According to the Report, one of the Amendment Acts to the 1993 tourism act, i.e. Act No.70, emphasises the training and registration of tourist guides. Doesn't this amendment affect to the Commitments of South Africa on tour guide services?

Answer

The Tourism Amendment Act of 2000, details procedures for the training, registration, and conduct of tourist guides. In terms of South Africa's existing commitments in tourist guide services, there are no limitations to the provision of tourist guide services under market access and national treatment in Modes 2 and 3. (Mode 1 is unbound due to lack of technical feasibility.) Since the Amendment Act prescribes domestic measures necessary for the regulation of tourist guides, and, moreover, does not discriminate between South African tourist guides and foreign tourist guides, the Amendment does not affect our existing commitments on tourist guide services nor is there any need to review our existing commitments in light of the amendments to the Act.

Question 9

Although the smuggling in of Japanese electric household appliances has been on the decrease due to strengthening the controls by the Government of South Africa, it has not yet been exterminated. Japan hopes for further efforts by South Africa in this respect.

Answer

South Africa introduced the Counterfeit Goods Act in 1997 and the law is rigorously enforced through co-operation with the private sector, South African Revenue Service and the South African Police Service. South Africa is continuously exploring means to enhance its enforcement capacity with regard to intellectual property rights.

SWAZILAND

Question 10

Please provide the reasons why the number of registrations of intellectual property rights decreased after the peaks in 1994 and 1995?

Answer

Prior to 1994, trade services were registered regionally, that is anywhere in the SACU region in accordance with the Trade Marks Act of 1981. However, in 1994 that Act was amended to establish the registrar of trade marks within the Ministry of Justice. Consequently, all the services that were registered in other SACU countries had to be registered in Swaziland hence the increase in number of patents.

Questions from Kenya

SACU

Question 1

We note that increased HIV/AIDS related budget expenditure and continued depreciation of the South African rand presents a major challenge to SACU countries particularly with respect to their efforts to bring down inflationary situation. We would like to know what steps SACU countries are taking to address this scenario in order to contain inflationary pressures.

Answer

The South African rand has appreciated considerably recently. In response to this challenge each of SACU's members has strategies and programmes to counter the HIV/AIDS pandemic, focusing on awareness and prevention and treatment.

Clearly, SACU members need the support of development partners in addressing the challenge of HIV/AIDS. In this regard, SACU attaches great importance to the Doha Declaration on TRIPS and Public Health, which will strengthen SACU's efforts against HIV/AIDS. For this reason, SACU calls for the speedy resolution of the impasse on TRIPS and Public Health, as part of overall efforts to advance the Doha Development Agenda.

Question 2

Why is it that none of the SACU members is a signatory to the Agreement on the Global System of Trade Preferences among developing countries (GSTP)?

Answer

An answer to this question will be provided in due course.

Question 3

*We would like to know the steps SACU countries are taking to address the following:
To further simplify its tariff regimes and ensure its compliance with their obligations under the WTO Agreement on implementation of Article VII of the GATT 1994 (Customs Valuation)
To harmonize internal taxes between SACU Members that distort trade flows, and somewhat undermine the utility of the common external tariff.*

Answer

- (i) The simplification of the tariff structure is currently underway. The process includes the conversion of non ad valorem duties into ad valorem duties, and the reduction of the number of tariff bands.
- (ii) Both the 1969 and 2002 SACU Agreements make provision for harmonised excise duties rates to be applied by all customs administrations within the common customs area

Question 4

We note that customs procedures are not completely harmonised throughout SACU, and some differences exist at the borders. We would like to know the measures being undertaken by SACU members to facilitate the simplification and harmonisation of trade documentation and procedures as this will contribute to the reduction of transaction costs.

Answer

In terms of the customs co-operation provisions of the 1969 and 2002 SACU Agreements, the institutions responsible for the administration of customs are actively working towards the harmonisation of their respective customs procedures. This has resulted in a large degree of harmonisation of their customs documentation and operational procedures. The SACU Member States are, however, continuously engaged in initiatives to simplify their customs documentation, through the introduction of a single administrative document, and to further simplify transit procedures.

SOUTH AFRICA

Question 5

We note that a wide variety of incentives are available to local producers in general, and exporters in particular, some incentives are subject to local – content requirement. We would like to know whether these incentives are consistent with South Africa's obligations under the SCM and TRIMS Agreements.

Answer

The South African incentives fall within the ambit of the provisions of the SCM and TRIMS Agreements

SACU

Question 6

It is stated that "the new SACU Agreement is focused on the creation of a new institutional framework that would establish the SACU as an international organisation with legal personality" Does this imply that once SACU is ratified, it will take over the role of trade and economic relations of its member states with the rest of the world? How will SACU relate to other bilateral and regional trading arrangements in which some of the SACU member states are currently members?

Answer

The new SACU Agreement sets rules and procedures governing trade relations with Third parties. It provides, inter alia, that Members may maintain preferential trade and other related arrangements existing at the time of entry into force of the Agreement. It provides further that in the case of negotiating trade agreements with Third parties, Members shall establish a common negotiating mechanism that will facilitate negotiations with third countries. The Agreement further provides that no member shall negotiate and enter into new preferential trade agreements with third parties, or amend existing agreements without the consent of other members.

NAMIBIA

Question 7

Namibia states that it endorsed South Africa's offer to the WTO which reflects the latter's adopted schedules of commitments as a developed country. Why did Namibia have to undertake such commitments, yet South Africa is classified as a developing country under para 7 of the Report by the Government of the Republic of South Africa?

Answer

The endorsement of the Schedule of commitments of South Africa had to do with the fact South Africa was solely responsible for the setting of the external tariffs for the Customs Union in accordance with the provisions of the 1969 SACU Agreement. This situation has now been attend to through the 2000 SACU agreement.

SACU

Question 8

In the spirit of promoting intra-Africa trade, when does SACU envisage converting its non- ad valorem tariffs into ad valorem including the simplification of its tariff regime and elimination of quantitative restrictions?

Could SACU countries explain why they charge higher specific duties on imported beverages than those collected on locally produced beverages?

Answer

(i) The simplification of the tariff structure is currently under way. The process includes the conversion of non ad valorem duties into ad valorem duties, and the reduction of the number of tariff bands.

ii) It should be noted, as a point of correction, that the SACU countries do not impose specific excise duties on imported goods but a customs duty that is identical to the equivalent excise duty. These duty rates are contained in Part 2 to Schedule 1 of the Customs and Excise Act of 1964. The customs and excise duties that are imposed on imported and locally produced excisable goods are identical. The only exception is in the case of certain spirits where the imported goods actually attract a lower rate of duty. No excise or customs duties are imposed, in terms of Part 2 to Schedule 1, on "certain imported beverages such as mineral water, lemonade, and flavoured mineral water".

Questions from the Republic of Korea

SACU

Question 1

As explained in the Secretariat Report, there remain some differences in the key trade policies such as customs procedures, and standards and technical regulations among the members of the SACU.

Does the SACU have any plan to create a single cohesive regional market in order to build a more solid basis towards greater integration into the world economy?

Answer

It is important to note that SACU members have already been co-ordinating and co-operating on many of the above policies, within the framework of the 1969 SACU agreement, and in the framework of the Common Monetary Area between Lesotho, Namibia, South Africa, and Swaziland. For example, a Liaison Committees on Customs and Trade and Industry has been established,.

The 2002 SACU agreement seeks to deepen and expand this co-ordination and co-operation by strengthening the institutional arrangements, so as to lay the basis for the harmonisation of policies, as and when conditions allow, and ultimately for the creation of a more cohesive regional market.

In the wake of the signature of the new SACU agreement by all member countries, work is currently proceeding on a multi-pronged basis to conclude as soon as possible during 2003 the ratification of the agreement; the establishment of the new SACU Secretariat, and the development of SACU procedures for tariffs-setting and trade remedies.

Question 2

It is stated by the Secretariat that South Africa reported initiating 157 anti-dumping investigations and applying 106 anti-dumping measures during the period 1 January 1995 through 30 June 2002. As a result, South Africa is reportedly the fifth largest user of anti-dumping measures during the period. The EU, China, India and the Republic of Korea have been the main countries or entities affected by the measures.

The initiation of an anti-dumping investigation itself can damage the affected foreign exporters. What is the view of the SACU on the notion that its members need to be more cautious about the initiation of anti-dumping measures?

Answer

Anti-dumping measures are fair trade remedies applied internationally in cases of unfair trade practices. Each case is dealt with on its merits and duties are only applied after rigorous investigations of facts. Although there was a substantial increase in anti-dumping activity in the period 1995 to 1998, it should be viewed in the light of the extraordinary circumstances which prevailed then:

South African increased its bindings from about 17% of tariff lines to 99% in the Uruguay Round. The applied tariff cut was substantially more than the agreed 33%. Following this liberalisation, and the democratisation of South Africa in 1994, a large number of foreign companies started to explore the Southern African market. In such circumstances, it is not unusual to have an increase in anti-dumping investigations.

Since 2000, the number of initiations has decreased significantly:

2000	21
2001	6
2002	4

All investigation initiated by South Africa have been conducted in full compliance with its WTO obligations. The absence of challenges through the DSB attests to our compliance with WTO commitments.

The regulations on anti-dumping are currently published for public comments in the government gazette of 28 March 2003. A copy of the draft regulations is available on the dti website (www.thedti.gov.za). Once the regulations have been finalised the WTO will be notified.

Questions from Mexico

BOTSWANA

Question 1

In the Secretariat report it is stated that the Botswana Standards Commission has recently introduced a Standards Mark for the certification of products. In this respect, Mexico would like to know whether certification for the use of this mark is open to foreign firms not established in the territory of Botswana and, if so, what procedures exist for applying it.

Answer

Answer will be provided in due course.

Question 2

The Secretariat Report stated that Botswana recognises tests carried out abroad as well as foreign standards, using laboratories accredited abroad. In this connexion, could Botswana indicate the procedure to be followed for such recognition of tests and standards, and for the accreditation of foreign laboratories?

Answer

Answer will be provided in due course.

Question 3

In the Secretariat report, the manner is described in which provisions relating to sanitary and phytosanitary measures are applied to imports of agricultural products. Mexico would like to know the way in which such provisions apply to domestic products.

Answer

Answer will be provided in due course.

Question 4

Finally, Mexico would like to know if Botswana is taking part in the present negotiations on services and, in this case, when it will present its initial offer of specific commitments in this area.

Answer

Answer will be provided in due course.

LESOTHO

Question 5

In the Secretariat report it is stated that Lesotho has recourse to the South African Standards Bureau for its needs in this area. Could the Kingdom of Lesotho clarify how it verifies that the process of adoption of standards conforms to the provisions of the Agreement on Technical Barriers to Trade?

Answer

Answer will be provided in due course.

Question 6

In the Secretariat Report it is described, in a very general way, the actions that the Government of Lesotho has taken in relation to technical barriers to trade and sanitary and phyto-sanitary measures. In this respect, Mexico would like to obtain greater information on the concrete measures that Lesotho has taken to give effect to its obligations under the TBT and SPS Agreements, both in regard to the elaboration of technical regulations, standards and sanitary or phyto-sanitary measures, and with respect to the evaluation of the conformity of products with these standards and measures.

Answer

Answer will be provided in due course.

Question 7

Finally, Mexico would like to know if Lesotho is taking part in the present negotiations on services and, if so, when it will present its initial offer of specific concessions in this area.

Answer

Answer will be provided in due course.

NAMIBIA

Question 8

Mexico would like to know if Namibia considers South Africa's standards as international standards, and if so, the rationale behind it. In addition, Mexico would like to know if Namibia recognises other international standards, and if so, the procedures to be followed.

Answer

Namibia adheres to the standards as set by the South African Bureau of Standards and its relevant statutory framework. This recognition does not obviate the fact that there is an recognition of other internationally recognised standard setting authorities and bodies. In appreciating this reality, Namibia is a signatory to a number of international setting bodies amongst many, the International Standards Organisation (ISO). Thus ISO procedures are followed.

Question 9

Mexico would like to know if Namibia will take part in the ongoing WTO negotiations on services, and if so, when will it table its initial offer on specific commitments.

Answer

Namibia is a member of the WTO and it fully participates in the current negotiations under the Doha Development Agenda. In as far as trade in services is concerned, Namibia is studying the general implications of services trade liberalisation to her economy. This assessment would inform the extent to which Namibia will make commitments in the current negotiations.

SOUTH AFRICA

Question 10

Mexico would like to know when is South Africa going to update its Tariff to incorporate the latest developments made in the context of the World Customs Organisation.

Answer

South Africa's Customs Tariff incorporates all the current amendments (developments) proposed by the World Customs Organisation (WCO). The only outstanding amendments are those which were released by the WCO in April 2003 and which will be incorporated upon receipt thereof.

Question 11

On import licensing, on top of the information on Table II.2 of Annex import controls that South Africa applies to its imports, and what are they.

Answer

The list containing goods subject to import control measures is available on request at the following e-mail address mpsnyman@dti.pwv.gov.za. The list will be posted on the Department of Trade and Industries web page by the end of May 2003 (www.thedti.gov.za).

Question 12

On SPS measures, Mexico would like to ask the following:

Are there annual or periodical programmes where the issues to be subject to regulations are listed and, if so, where are they published?

If not, can South Africa indicate when is South Africa going to adopt such programmes, or the rationale for not doing it?

Can South Africa indicate if developing a technical regulations or SPS measures implies elaborating an analysis of its impact as prior requisite, and if so, can it be consulted by nationals of WTO Members?

Can South Africa indicate if there is a legal provision which obliges to periodically review the content of its norms, technical regulations and SPS measures. If so, how long does it take to update them? Is this subject to public scrutiny?

(i) Can South Africa describe the procedure to elaborate, technical regulations and SPS measures?

(ii) Can South Africa indicate the procedure followed with the observations made by nationals from WTO Members?

(iii) How are the responses to such observations made known? (iv) What is the normal time frame for the entry into force of a regulation or technical standard, and what are the exceptions to this rule?

Answer

All regulatory issues are published in the Government Gazette and the website of the Department of Agriculture.

South Africa has adopted this transparency procedure. Other methods for improving the system are currently under investigation.

In developing technical regulations analyses of implications are conducted internally and all scientifically justified comments are incorporated in the Acts or regulations.

Acts are reviewed within the period of three to five years and the regulations are reviewed annually. In certain circumstances, Acts are amended regularly. This is communicated to the public through workshops, publication in the Government Gazette and web site of the Department of Agriculture.

For South Africa it is important to differentiate acts from technical regulations. All Acts passed in the country have to pass through the Cabinet for approval. Prior to Cabinet approval Acts are published in the government gazette and the website of the Department of Agriculture (www.nda.agric.za) for public comments. In the Cabinet submission one has to indicate all the implications the Act will have to the public in general; human health; and animal and plant health. The implementation process also needs to be spelled out. The Minister of Agriculture approves technical regulations. Regulations which have human health implications, are discussed first between the Departments of Agriculture and Health and then published in the government gazette and web site for comments. Following that, all inputs are evaluated and the Act or regulation finalised for the Cabinet and Minister's approval.

All observations made by nationals from WTO members are discussed first internally and in the case where South Africa needs to respond or follow up on some of the inputs from WTO members this is done on a bilateral basis. In the case where South Africa needs to discuss and debate that with a particular WTO member, the member is contacted directly and South Africa considers those that are scientifically justifiable.

After collation of all comments and finalisation of the regulation South Africa notifies to the WTO.

The normal timeframe for entry into force of a regulation or technical standard varies from six months up to two years. This mainly depends on the kind of inputs made or issues raised. The exceptions to the rule are only during emergency measures like outbreaks of diseases e.g. Food and Mouth Disease where an area has to be declared as a control area to avoid movement of animals. In this situation a government notice is issued.

Finally the Promotion of Administrative Justice Act of 2000 sets out the procedures to be followed in making decisions affecting the public.

Question 13

Could South Africa confirm that nationals from WTO Members can participate in the elaboration, modification, or cancellation of norms, technical regulations and SPS measures and the procedure to do so, and if not, the rationale for not doing it?

Answer

Yes, the nationals from WTO members can make contact through the SPS national contact point in terms of the transparency principle.

Question 14

Is there a catalogue of norms, technical regulations and SPS measures currently in force in South Africa? If not, can South Africa indicate what actions it is taking to solve the transparency problems exports face in trying to identify what are the relevant norms that apply to their products?

Answer

All norms, technical regulations and SPS measures are published regularly on the website of the Department of Agriculture and the Government Gazette. In addition, there is interaction with industry in this regard.

Based on the import requirements of the country South Africa will negotiate an export certificate, which is modelled on international standards and guidelines. Relevant norms are based on the international standards of the OIE, IPPC and Codex Alimentarius.

Question 15

Can South Africa indicate the percentage of total HS tariff lines that are regulated through norms, technical regulations and SPS measures: (i) Are the conformity assessment procedures general or are they established in relation to each regulation? (ii) Can South Africa indicate how many conformity assessment procedures are currently in force, how many products they cover and their legal basis? (iii) Are they subject to public scrutiny? (iv) Can South Africa indicate if companies outside its country can have access to the certifications that are needed for the importation of products? (v) Can South Africa indicate the procedure to recognise a foreign norm or a conformity assessment as equivalent, and how many conformity assessment procedures have been recognised? And finally, can South Africa describe the procedure for having mutual recognition agreements and the list of those already in place?

Answer

Answer will be provided in due course.

Question 16

Is it possible for accreditation bodies that are outside South Africa to be authorised to carry out inspections or conformity assessments in South Africa?

Answer

There is currently no accreditation body authorised to carry out inspections in South Africa.

Question 17

On international norms (i) Can South Africa indicate the percentage of norms technical regulations and SPS measures that are equivalent to international norms? (ii) Can South Africa indicate the procedure followed to justify deviation of national norms from international norms, and where this information can be consulted? (iii) Of the total number of norms, technical regulations and SPS measures can South Africa indicate how many have been adopted in areas where there are no international norms? (iv) Can South Africa explain its definition of international norm and international body?

Answer

Answer will be provided in due course.

Question 18

Mexico would like to know the measures taken by South Africa to protect intellectual property rights regarding originating products or with geographical indication of other countries, particularly with respect to Tequila and Mezcal, both from Mexico.

Answer

South Africa has a well developed intellectual property regime that covers geographical indications in accordance with the TRIPS Agreement under the WTO. Regarding Tequila and Mezcal, no products bearing these names are produced in South Africa, as the government intervened in resolving this matter.

However, it needs to be borne in mind that the WTO register of specific wines and spirits' names that need to be protected is not yet agreed.

SWAZILAND

Question 19

Mexico would like Swaziland to explain in more detail the procedures followed to elaborate norms, technical regulations and SPS measures, as well as the respective inspection or conformity assessment procedures.

Answer

Plant SPS – Phytosanitary conditions are governed by the Plant Control Act of 1981 which lays down a series of schedules for the importation of plants, plant portions and certain seeds. The schedules generally define the list of plants; living materials that require an import permit etc.

Animal SPS – Veterinary and animal health are governed by the Animal Diseases Act of 1965 as amended by the regulations issued up to 2001. The most recent regulations deal with the prohibition

of movement of animals and animal products sanitary measures, presentation of susceptible animals for examination, testing and destruction of infected animals.

Question 20

Mexico would like to know if Swaziland will take part in the ongoing WTO negotiations on services, and if so, when will it table its initial offer on specific commitments.

Answer

Swaziland will take part in the ongoing negotiations and a national consultative meeting with stakeholders will be held in preparation of the offer on specific commitments. Technical assistance is being sought to assist in the preparations of the initial offer on specific commitments.

Question 21

Mexico would like to get more information on the nine components of EMIA, particularly on the incentives and concrete measures used.

Answer

Information on the Export Marketing and Investment assistance programme can be obtained from the Department of Trade and Industry web site: (www.thedti.gov.za).

Questions from New Zealand

SACU

Question 1

When do SACU members expect to be able to ratify the 2002 Agreement?

Answer

After domestic constitutional proceedings by respective Member states are completed, the Agreement will come into force.

Question 2

Is the least developing country status of Lesotho taken into consideration in its SACU obligations?

Answer

The new SACU Agreement makes provision for a new revenue sharing formula. In this regard, agreement on the new formula was reached on the basis that it will ensure a fair distribution of the common revenue pool. In addition, the new 'development component' of the revenue sharing formula ensures that countries with smaller per capita GDP, such as Lesotho, receive a greater share of this part of the revenue.

Question 3

Are there plans for SACU to negotiate as a bloc within the WTO?

Answer

The new SACU Agreement provides for SACU members to negotiate with third parties on a collective basis. Pursuant to this, SACU members are co-ordinating their positions on the DDA and will continue to do so as the DDA unfolds.

Similarly, SACU is preparing to undertake the negotiations of preferential agreements with the US and Mercosur as a bloc. For this purpose, a SACU common negotiating mechanism will be established, as provided for in the new SACU Agreement.

Question 4

What will be the next stage of development for SACU (e.g. harmonisation of fiscal or monetary policies)?

Answer

It is important to note that SACU members have already been co-ordinating and co-operating in many policy areas within the framework of the 1969 SACU Agreement, and in the framework of the Common Monetary Area between Lesotho, Namibia, South Africa, and Swaziland. For example, a Liaison Committees on Customs and Trade and Industry has been established..

The 2002 SACU Agreement seeks to deepen and expand this co-ordination and co-operation by strengthening the institutional arrangements, it also forms the basis for the harmonisation of policies, as and when conditions allow, and ultimately for the creation of a more cohesive regional market.

Question 5

Have SACU members examined the impact of HIV/AIDS on their economic and trade policies? If so, what plans are in place to deal with the problems identified?

Answer

SACU members recognise that HIV/AIDS poses a serious challenge to the individual and collective efforts of SACU of promoting economic growth.

In response to this challenge each of SACU's members has strategies and programmes to counter the HIV/AIDS pandemic, focusing on awareness and prevention as well as treatment.

Clearly, SACU members need the support of development partners in addressing the challenge of HIV/AIDS. In this regard, SACU attaches great importance to the Doha Declaration on TRIPS and Public Health which will strengthen SACU's efforts against HIV/AIDS. For these reasons, SACU calls for the speedy resolution of the impasse on TRIPS and Public Health, as part of overall efforts to advance the Doha Development Agenda.

Question 6

The SACU tariff remains complex. Are there plans to simplify the tariff and move away from a combination of ad valorem, specific, mixed, compound and formula duties that is not transparent and difficult to administer?

Answer

The simplification of the tariff structure is currently under way. The process includes the conversion of non ad valorem duties into ad valorem duties, and the reduction of the number of tariff bands.

Question 7

Are there any plans to revise the tariff quota scheme for agricultural products as suggested in paragraph 16 of the Secretariat's report?

Answer

Tariff quotas are part of South Africa's WTO commitments relating to market access and there is no intention to change the current quota system. These quota commitments do not apply to the other SACU countries. However, these quotas are subject of the current WTO agricultural negotiations and South Africa has made certain proposals in this regard.

Question 8

Are steps being taken towards greater customs cooperation among SACU members as envisaged in Article 23 of the 2002 Agreement?

Answer

The current Agreement that was concluded in 1969 also contains customs co-operation provisions that are similar to those in the 2002 Agreement. These provisions were used by the SACU customs administrations to strengthen and intensify co-operation. This has resulted in a large degree of harmonisation of customs legislation and operational procedures applied by SACU Member States. A recent initiative that the SACU customs administrations have embarked on, following the signing of the 2002 Agreement, is the development of an annex to the Agreement that will clearly identify additional measures to promote an even greater degree of harmonisation and co-operation.

Question 9

What measures are in place to protect SACU members from outbreaks of foot and mouth disease in the region?

Answer

There is a SADC foot and mouth disease policy, which is currently being debated to ensure that there is harmonisation on the foot and mouth prevention control and risk management in the region.

Questions 10 and 11

How does SACU relate to other regional trade initiatives, such as the SADC Protocol on Trade Cooperation and COMESA?

How are the bilateral agreements of individual members (e.g. the South Africa- European Union Trade, Development and Cooperation Agreement) incorporated within SACU?

Answer

As a regional integration initiative itself, SACU is fully committed to the advancement of integration in both southern Africa (under the aegis of SADC and COMESA) and in the rest of the African continent. Further, SACU believes that regional integration efforts are compatible with multilateral trade liberalisation under the WTO.

SACU considers that SADC and COMESA share the common objective of promoting regional integration in Southern Africa, albeit through different modalities and schedules. While it is not practically possible for SACU to be part of both SADC and COMESA, SACU supports co-operation and co-ordination between SADC and COMESA while each organisation consolidates on its integration programme.

Question 12

Could SACU members provide an update on negotiations with the US for a free trade agreement?

Answer

The negotiations with the US are scheduled to commence in May 2003, and to conclude by the end 2004 at the earliest.

SWAZILAND

Question 13

What efforts are being taken by the Government of Swaziland in order to diversify its exports and to lessen the reliance on market access preferences for sugar?

Answer

The Government of Swaziland through the establishment of the Swaziland Investment Promotion Authority established in 1999 has formulated an investment promotion strategy which seeks to attract investment in other industries including sugar-based industries, textile and garment, pulp and paper industries. The implementation of the AGOA has resulted in increased FDI inflows in the clothing industry. The Government is also implementing programmes aimed at accelerating growth of the small and medium enterprise sector. Furthermore, the Government has established the Swaziland Tourism Authority whose mandated responsibility is to develop the tourism sector.

SOUTH AFRICA

Question 14

Can South Africa explain what role the new Immigration Act will play in addressing skills deficiencies?

Answer

South Africa has a skills shortage. One way of addressing the skills shortage is to encourage immigration of skilled persons. The intention of the Immigration Act is therefore to facilitate the entry of skilled immigrants.

Question 15

What progress has South Africa made in its review of tariff categorisation with the aim of rationalizing the number of tariff lines?

Answer

The simplification of the tariff structure is currently under way. The process includes the conversion of non ad valorem duties into ad valorem duties, and the reduction of the number of tariff bands.

Question 16

Has South Africa issued long-term rights for all its fisheries? If not, how far progressed is the process of allocation?

Answer

Fishing rights are issued in terms of the Marine and Living Resources Act of 1998 (MLRA). Medium-term fishing rights are issued for all fisheries. These rights are allocated for a period of four years. Two long-term rights of 15 years each have been issued in mariculture and fish processing. Currently the MRLA does not allow for long-term fishing rights for fisheries, and Marine and Coastal Management has not yet taken a decisions on increasing the allocation term.

NAMIBIA

Question 17

What steps is Namibia taking to ensure the long-term sustainability of its fisheries, particularly the severely depleted stocks of pilchards and mackerel?

Answer

The government of Namibia has a policy on sustainable management of marine resources and as such has put sufficient investment in monitoring and surveillance and development of our marine resources. The fluctuations in the contribution of fisheries to the GDP is not due to the absence of management and utilisation policy, but due to oceanographic and environmental changes. There has been a change in oceanic climatic conditions and as such pilchards and mackerel have migrated to the

South African territorial waters. There is a co-operation agreement between South Africa, Angola and Namibia to share the marine resources in event of such adverse climatic conditions.

Mindful of that, the Government of Namibia has just recently enacted a legislation on aquaculture and arrangements are underway to promote and develop inland fish farming to complement marine fisheries and to prevent any undue pressure on the marine resources.

Questions from Norway

SACU

Question 1

Since the last Trade Policy Review in 1998, SACU has been among the most frequent users of anti-dumping measures in the WTO. As it is stated in the Secretariat's report SACU intends to develop "contingency trade legislation" at SACU level to "lock in the increasing liberalisation of their markets". We would like to know whether this means that SACU views anti-dumping and other contingency measures as increasingly important measures to protect domestic markets from imports?

Answer

Anti-dumping measures are fair trade remedies applied internationally in cases of unfair trade practices. Each case is dealt with on its merits and duties are only applied after rigorous investigations of facts. Although there was a substantial increase in anti-dumping activity in the period 1995 to 1998, it should be viewed in the light of the extraordinary circumstances which prevailed then:

- (I) South African increased its bindings from about 17% of tariff lines to 99% in the Uruguay Round
- (II) The applied tariff cut was substantially more than the agreed 33%
- (III) As a result of this liberalisation and the democratisation of South Africa in 1994, a large number of foreign companies started to explore the Southern African market. In such circumstances, it is not unusual to have an increase in anti-dumping investigations

Since 2000, the number of initiations has decreased significantly.

All investigation initiated by South Africa have been conducted in full compliance with its WTO obligations. The absence of challenges through the DSB attests to our compliance with WTO commitments.

The regulations on anti-dumping are currently published for public comments in the Government Gazette of 28 March 2003. A copy of the draft regulations is available on the dti website (www.thedti.gov.za). Once the regulations have been finalised, the WTO will be notified.

Question 2

What steps have Botswana, Lesotho, Namibia and Swaziland taken in order to compensate for the reduced custom revenues following South Africa's free trade agreement with the EU. Moreover, what

kind of transitional agreements have been established and how do they protect each country's interests?

Answer

The BLNS countries have undertaken fiscal reforms to address revenue loss as a result of trade liberalisation in general. In as far as the EU-SA FTA is concerned, the BLNS countries expect to address the possible negative impact in the context of the Cotonou negotiations.

Questions from Switzerland

South Africa

Question 1

Please explain the meat, milk and wool import mechanisms and statutory levies affecting the importation of these products. How are prices (of these products) determined?

Answer

The levies reflected in Table III.1 in the secretariat report are listed in South Africa's Uruguay Round schedule. These levies, however, have been discontinued. Statutory levies are currently only applicable on the following products: wine, deciduous fruit, winter cereals, cotton and sorghum. These levies are for information gathering by industry, research and development and in some cases for generic export promotion.

Market forces determine prices of these products.

Question 2

What is the impact of statutory levies applicable to the marketing of wine on the production of white and red wine since December 2001, and how are these prices determined?

Answer

The levies applicable to wine and grape products are the following:

Information levy: Collection of relevant market information for the use of the wine industry

Research and Development levy: to finance research and development relevant to wine industry

Export Promotion levy: to finance the generic promotion of wine exports

The relevant Act stipulates that the levies should not exceed 5% of the price of a product. A levy is only paid once for a specific product. It is generally accepted that the levies do have a positive influence on the wine and grape sector. The levies are set by the National Agricultural Marketing Council at the request of the relevant industry. Government does not set prices in this sector.

Question 3

Please explain the functioning of the Reference Price Mechanism on Maize and its influence on both produced and imported quantities.

Answer

In South Africa, the maize market was regulated from 1944 until 1995 via a single channel marketing system in which the Maize Board was the only buyer and seller of South African maize. This system was finally terminated on 1 May 1997 when all non-tariff measures applied in this sector was abolished in favour of tariff protection based on a tariff band formula which delivers a tariff only when world prices fell below US \$110/ton basis free-on-board US Gulf ports.

The formula incorporates various costs items as well as the impact of the exchange rate. Currently, the tariff for maize, calculated according to the tariff band formula, is zero. The formula ensures maize prices and quantities produced are closely aligned to the world supply and demand situation. This is a very transparent system and functions with a minimum of Government intervention.

Question 4

Please explain the manner in which your legislation ensures that undisclosed test or other data submitted by an applicant to the responsible State agency in the procedure for market authorisation of a pharmaceutical or of an agricultural chemical product is protected against disclosure and against unfair commercial use by a competitor, for example by prohibiting a second applicant from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorisation for a similar product. Does your legislation set a specific term of protection for undisclosed test or other data of the first applicant?

Answer

The intellectual property legislation does not deal directly with undisclosed test or other data protection measures concerning pharmaceutical products or other protected agricultural chemicals. The Medicines Control Council in SA deals with pharmaceutical products in detail.

Questions 5 and 6

In your report you mention the high rate of pirated audiovisual and software products in South Africa. What specific measures does the newly adopted legislation provide in order to improve this situation? Have similar measures been introduced into the legal framework to ensure effective enforcement of other intellectual property rights such as patents, trademarks or designs?

Please describe any new initiatives that are planned to improve the enforcement of intellectual property rights in your country, particularly initiatives to combat counterfeiting and piracy. Is there a particular action plan in place?

Answer

South Africa introduced the Counterfeit Goods Act in 1997 and the law is rigorously enforced through co-operation with the private sector, the South African Revenue Service and the South African Police Service. South Africa is continuously exploring means to enhance its enforcement capacity with regards to intellectual property rights.

BOTSWANA

Question 7

In your report you mention that the Government intends to amend the legislation in order to subject the granting of compulsory licences to all the conditions enumerated in Article 31 of the TRIPS Agreement. Please explain what the draft Act provides in this regard and when the new regulation will enter into force?

Answer

While Botswana is committed to ensuring that it fully executes its obligations under the WTO Agreements including TRIPS, it has to be appreciated that its ability to enact new legislation or amend existing legislation is question of capacity. Therefore Botswana does not have the draft legislation yet. Neither can we categorically state when such legislation will be in place. In addition, given the current on-going negotiations concerning the TRIPS Agreement more specifically Article 31, it would seem prudent to await the conclusion of this negotiations before any further review of the legislation.

Question 8

In your report you mention that the current legislation does not cover geographical indications, layout designs (topographies) of integrated circuits or protection of undisclosed information, including trade secrets, and that amendments to the Industrial Property Act introducing these rights are expected this or next year. Please explain how the Government plans to protect the mentioned intellectual property domains. When are the regulations expected to enter in to force and achieve compliance with the TRIPS Agreement?

Answer

Botswana is committed to fully meeting its commitments under the TRIPS Agreement. However, the speed with which legislation, including legislation on geographical indications can be developed is constrained by lack of in-house capacity. Like other developing countries, Botswana has previously reported on the onerous implementation commitments from the Uruguay Round Agreements. Therefore at this point given the capacity constraint, Botswana cannot make a commitment regarding when the outstanding legislation under the TRIPS Agreement will be developed.

Question 9

In your report you mention that no case of infringement of intellectual property rights have been reported in Botswana. Are there any initiatives planned to implement awareness-building programs explaining the concept and importance of IPR and the consequences of counterfeiting and piracy?

Answer

As a matter of policy and principle, Botswana is committed to continuous education and information dissemination to the stakeholders, including the public on matters affecting them. With regard to intellectual property rights issues, the major constraint has been lack of in-house capacity and technical expertise. Botswana is planning to engage in awareness building programmes during the course of 2003 to 2004. More specifically, a sensitisation Seminar is planned for Saturday, April 26, 2003, which happens to be World Intellectual Property Day. This Seminar, organised in cooperation with the Botswana Technology Centre and the University of Botswana, will bring together all stakeholders, including inventors, writers, producers and musicians.

In September 2003, another awareness Seminar will be organised, this time to demonstrate to stakeholders that intellectual property such as patents, trademarks and designs can benefit creators, if protected. Awards will be given to the best inventors to encourage innovation.

NAMIBIA

Question 10

In your report you mention that the proposed legislation on industrial property does not allow for reversal of burden of proof in civil proceedings on infringements of process patents. Please explain how your legislation complies with the provision of Article 34.4 of the TRIPS Agreement?

Answer

Namibia is in the process of promulgating a new law that would address industrial property related issues in order to ensure conformity with Article 34.4 of the TRIPS Agreement.

Question 11

You mention in your report that the draft legislation on industrial property does not address the issue of undisclosed information. Please explain how this complies with the obligations of Article 39.3 of the TRIPS Agreement, which requires undisclosed test or other data to be protected against unfair commercial use?

Answer

Same as above.

Question 12

In your report you mention that the police can act ex officio under the Copyright Act and the proposed industrial property legislation. Does the draft legislation on industrial property introduce any other measures to combat counterfeiting and piracy in Namibia?

Answer

Same as above.

Question 13

Switzerland would be interested to know whether there are initiatives planned to implement awareness-building programs explaining the concept and importance of intellectual property rights and the consequences of counterfeiting and piracy in Namibia?

Answer

We have recently held regional seminars on intellectual property rights and we had national electronic media information debates. We have also produced simplified booklets on intellectual property rights process and its importance and soon these information booklets will be translated in local languages.

SWAZILAND

Question 14

Switzerland highly welcomes the efforts made by the Kingdom of Swaziland to comply with the TRIPS Agreement and would like to encourage notification of the relevant intellectual property laws in order to allow for the Review to take place. Furthermore, Switzerland would be interested to know what measures the Kingdom plans to introduce in order to combat counterfeiting and piracy.

Answer

Swaziland has introduced draft legislation to address counterfeiting and piracy.

Questions from the Territory of Taiwa, Penghu, Kinmen and Matsu

SACU

Question 1

As indicated in paragraph 16 on page 8 of the Secretariat report, under the 2002 SACU Agreement, trading arrangements would only be possible with SACU as a whole and not with individual SACU members. SACU is currently negotiating trading arrangements with MERCOSUR and the United States, and is considering the possibility of negotiating other agreements. Would SACU please provide us with an update on the status of these negotiations and the timetable expected for future progress to be made.

Answer

The negotiations with Mercosur are underway and at a stage where requests for tariff concessions have been exchanged. It is expected that the negotiations will be concluded by mid-2004. The negotiations with the US are scheduled to commence in May 2003, and to conclude by the end 2004 at the earliest.

Question 2

According to the Secretariat report, a decline of customs and excise revenues is expected as a result of further tariff liberalization initiatives, both at the multilateral and preferential levels, particularly from the free-trade agreement between South Africa and the EU. Indeed, if SACU proceeds down the path of liberalization as it makes new trade arrangements with other trade partners, its revenues from tariffs could be cut drastically. We have noted also that SACU countries attach great importance to the SACU revenue pool in reforming their economic structures and the restructuring and expansion of the SACU mechanisms themselves will increase fiscal expenditures. We would appreciate knowing whether SACU has already developed concrete fiscal policies to deal with the possible imbalance between revenues and expenditures and, if so, what they are.

Answer

The new SACU Agreement makes provision for a new revenue sharing formula. In this regard, agreement on the new formula was reached on the basis that it will ensure a fair distribution of the common revenue pool. In addition, the new 'development component' of the revenue sharing formula

ensures that countries with smaller per capita GDP, such as Lesotho, receive a greater share of this part of the revenue.

The BLNS countries have undertaken fiscal reforms to address revenue loss as a result of trade liberalisation in general. In as far as the EU-SA FTA is concerned the BLNS countries expect to address the possible negative impact in the context of the Cotonou negotiations.

Question 3

The tariff structure of SACU has been simplified somewhat and, since its last trade policy review in 1998, the simple average MFN duty rate has come down from 15% in 1997 to 11.4% in 2002. However, as indicated in the Secretariat report, the tariff remains complex, still comprising ad valorem, specific, mixed, compound, and formula duties. For example, the application of formula duties based on reference prices does not ensure compliance by SACU members with their obligations under the WTO Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation). This is also the case with the application of non-ad valorem tariff rates when SACU members have made their binding commitments at ad valorem rates. We would like to know whether SACU intends to further simplify and streamline its tariff structure in order to ensure conformity with the relevant WTO rules.

Answer

A process to simplify the tariff structure is currently underway. This process includes the conversion of non ad valorem duties into ad valorem duties, and the reduction of the number of tariff bands.

Question 4

As indicated in the Secretariat report, South Africa is the fifth largest user in the world of anti-dumping actions, after the United States, the EU, India and Argentina. In 1996, South Africa undertook to amend related regulations on anti-dumping practices and countervailing measures to ensure its compliance with the requirements of the WTO Agreements. After that, South Africa's competent authority, the Board on Tariffs and Trade (BTT), investigated the restructuring of the anti-dumping and countervailing system. The recommendations and the proposed regulations of the BTT will be published in the second half of 2003. Bearing in mind the WTO's transparency principle, we would appreciate being provided in advance with an outline of the recommendations so that members of SACU and the WTO may have the opportunity to express their views on the newly proposed regulations.

Answer

The regulations on anti-dumping are currently published for public comments in the government gazette of 28 March 2003. A copy of the draft regulations is available on the dti website (www.thedti.gov.za). Once the process in South Africa is complete the WTO will be notified.

Question 5

As indicated in the Secretariat report, Article 28 of the 2002 SACU Agreement provides that members shall harmonise product standards and technical regulations within the common customs area, and apply product standards and technical regulations in accordance with the WTO Agreement on Technical Barriers to Trade. We would appreciate knowing the provisions of the agreement related to the harmonization of product standards and technical regulations. Also, would SACU please explain

whether there is a supervisory mechanism to ensure the harmonization of customs regulations among the member countries, which could prevent trade distortion caused by differences in standards and technical regulations.

Answer

The harmonisation of technical regulations within SACU is done under the auspices of the SADC (Southern African Development Community) trade protocol. There are certain technical regulations which have been harmonised but the process is not complete as the harmonisation is done on a commodity basis.

Question 6

According to the Secretariat report, SACU countries do not yet have a common policy on standards and technical regulations. Article 30 of the 2002 SACU Agreement indicates that members reserve the right to apply sanitary and phytosanitary (SPS) measures in accordance with their national SPS laws and international standards. We have noted that the unique natural environment and wildlife of the Southern African region requires special attention with respect to the SPS measures of the member countries. We would like to know, therefore, whether SACU intends to establish a supervisory mechanism to reduce the trade distortion that could potentially be caused by differences between the SPS measures applied by its member countries.

Answer

As mentioned above, standards and technical regulations are harmonised within SADC of which SACU is an integral part. The existing SADC Livestock Sector Technical Committee is responsible for establishing supervisory mechanisms to reduce the trade distortion that could potentially be caused by differences between SPS measures applied by member countries. The SADC Plant Health Committee is responsible for dealing with phytosanitary issues. All SACU and SADC member states use international guidelines provided by the OIE, IPPC, and Codex.

BOTSWANA

Question 7

According to Paragraph 11, during the years 2000 and 2001, Botswana's international competitiveness, as measured by the real effective exchange rate, deteriorated by about 4% and 7% respectively, thereby making domestic producers, on balance, less competitive against imports and in export markets. On the one hand, the sharp real appreciation of the Pula against the Rand makes its non-mineral products, such as textiles, less competitive against South African products. On the other hand, its real depreciation against the US dollar creates a diamond-led exchange rate appreciation (the so-called "Dutch disease"), thereby hampering the economic restructuring needed to diversify production and exports. Will the Botswana government be making concrete changes to its exchange rate policy in its early-2003 National Development Plan 9 to ensure that the real exchange rate of the Pula remains relatively stable?

Answer

Year	BWPvs ZAR	BWP vs USD	BWP vs SDR	REER
2000	6.0%	-9.4%	-3.5%	2.6%
2001	21.8%	-20.0%	-17.3%	6.4%
2002	-9.0%	38.5%	29.1%	2.9%

It should be noted that changes in bilateral real exchange rates (vs the ZAR, USD and SDR) have been much greater than changes in the overall REER, thus reinforcing the point that real exchange rate changes have largely been due to volatility in the exchange rates of the SA rand (ZAR) against major international currencies, not changes in the value of the Pula itself. Botswana's policy has been, and remains, the maintenance of stability in the nominal and real effective exchange rates in the face of fluctuations in other countries' exchange rates.

The main reason for the appreciation of the real effective exchange rate (REER) in 2000-2002 is Botswana's higher level of inflation relative to (the weighted average of) inflation rates of trading partners. The policy focus is therefore to bring inflation down so that inflation is no higher than that of trading partners; hence the Bank of Botswana's objective, as stated in the 2002 and 2003 Monetary Policy Statements, of bringing inflation down to within a range of 4 to 6 percent.

Exchange rate policy is based on a stable nominal effective exchange rate (NEER), i.e. the Pula has fixed peg to a weighted currency basket. There are no plans to change this. Maintaining the real effective exchange rate at a level that will support the competitiveness of the country's producers will focus on bringing inflation down to internationally comparable levels rather than devaluing the nominal exchange rate.

Question 8

Paragraph 11 states that Botswana has used slightly different bases between SACU and non-SACU countries for levying value-added tax (VAT) on imports. For SACU countries, for example, VAT is levied on either the landed duty-free price or the fair market price of the imports, whichever is the greater. We would appreciate knowing how the fair market price is determined. Could SACU please also clarify how this practice complies with the WTO Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation).

Answer

For valuing imports, Botswana uses the GATT Valuation rules as prescribed in the GATT Customs Valuation Agreement 1994.

In valuing imports for VAT purposes, there is no discrimination as between imports from SACU and the non-SACU area. VAT is levied on the FOB cost plus the duty payable plus the cost of insurance and freight. Where no cost is indicated for insurance and freight, a 5% uplift is applied to the FOB cost plus duties payable.

Duty would be applicable only in respect of imports from outside the SACU area. For imports from other SACU countries, no duty is applicable and so the VAT is charged only on the FOB value plus the cost of insurance and freight.

The fair market value of imports is used only for personal imports or goods of no commercial value such as gifts. In determining fair market value, Botswana follows the procedures set out in the GATT valuation rules referred to above.

Question 9

According to the Secretariat report, banks in Botswana are not allowed to provide non-bank financial activities, either directly or indirectly. We would like to know whether Botswana is considering removing this restriction. Moreover, paragraph 60 states that foreign banks must operate as locally incorporated subsidiaries and that foreign bank branches are not allowed. We would also appreciate knowing whether the Botswana authorities have any plans to remove these restrictions.

Answer

Banks in Botswana are prohibited by law from engaging in wholesale or retail trade, including import and export trade or in any business for which they are not licensed under the Banking Act, 1995. However, the Bank is empowered under Section 17(9) of the Act to approve or disapprove any such proposals. The Bank has never had to consider a proposal of that nature. Section 17(10) of the Act further allows banks to hold shares in companies approved by the Central Bank, set up for the purpose of insuring deposits, or promoting the development of a money market or securities market in Botswana, or of improving the financial mechanism for the financing of economic development. In the spirit of this provision, the Bank has allowed banks in Botswana to provide services that are traditionally not related to banking business, like insurance agency services. In consideration of such proposals the Bank is first and foremost guided by the prudential requirements it has set for banks, and the impact of any such proposal, if approved, on the capital adequacy requirements. Foreign Banks are allowed to operate provided they establish locally incorporated branches.

SOUTH AFRICA

Question 10

It is noted that the larger district customs offices in South Africa accept electronic documentation in order to expedite clearance procedures. It would be appreciated if South Africa would please provide up-to-date information regarding its progress on electronic customs procedures.

Answer

The electronic submission of import declarations is currently undertaken at the larger customs branch offices but this programme will be rolled-out to all customs branch offices in May 2003.

Question 11

As indicated in the Secretariat report, South Africa imposes a VAT that is levied on the added-tax value (i.e. the sum of the customs value, plus 10% of the customs value, plus any non-rebated customs duty). According to the South African authorities, the additional 10% of the customs value is added to correct for the use of f.o.b. rather than c.i.f. prices for customs duty purposes. Please clarify whether this 10% of the customs value is a sort of arbitrary or fictitious value as referred to in the WTO Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation). At the same time, please also explain whether these measures comply with this WTO Agreement.

Answer

For customs value purposes, South Africa applies and complies with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade. This means that the primary basis for customs value is the transaction value. For the purpose of imposing Value-added Tax (VAT), which is a local fiscal tax, and not for calculating the customs duty payable, the 10% factor was introduced as South Africa uses FOB instead of CIF prices for customs value purposes. The purpose of the 10% factor is to ensure that local products and imported products compete on an equal footing insofar as VAT is concerned. The 10% factor is therefore aimed at compensating for the use of FOB instead of CIF as the FOB price excludes costs related to the transportation and insurance of the goods. The factor is based on research undertaken that indicated that the insurance and transportation costs for goods imported from major trading partners account for approximately 11%. This figure was then rounded off to 10%.

Question 12

Paragraph 49 states that several types of incentive scheme are available to South African exporters for the promotion and development of exports and export markets. In this regard, we have observed that the Industrial Development Corporation (IDC) continues to provide credit facilities to South African exporters. Aimed at enabling them to offer competitive terms to foreign purchasers, the credit facilities are subject to a South African local-content requirement of at least 70%. Could South Africa please provide details of these credit facilities, including how many companies are benefiting from these credit facilities, the amount offered to these credit facilities, and the earnings' status of the IDC. Please also clarify whether these credit facilities are consistent with the WTO SCM Agreement.

Answer

To assist local importers, credit facilities have been established with banks and other financial institutions in virtually all South Africa's major trading partner countries. Repayment normally ranges from two to five years but dedicated credit lines can be concluded for larger projects requiring tailor-made solutions and longer credit periods of up to ten years. The International Finance division of the IDC assists exporters of capital goods by structuring finance – extended in rand or US dollars at guaranteed rates of exchange – to ensure that exporters receive payment of full contract price of delivery. The division also offers short-term working capital finance to exporters for the execution of export orders

Question 13

According to paragraph 66, the Competition Commission (CC) must balance issues related to compliance with the broader social and economic goals outlined in the Act, such as employment, international competitiveness, efficiency and technological gains, as well as the ability of small, medium and micro enterprises owned or controlled by historically disadvantaged persons to compete. We would appreciate having South Africa's answers to the following questions:

- (1) Is any sector or industry exempted from application of the Competition Act approved by the CC? If so, please provide details.
- (2) Is any export/import cartel exempted from the Act approved by the CC? If so, please provide justification and describe the criteria for such exemptions.

Answer

The Competition Act, 1998, provides for exemptions from the Act under certain conditions. A prohibited practice or agreement may be allowed if it meets one or more of the following objectives:

- (a) provide an industry or sector with the opportunity to adjust its productive capacity;
- (b) promote exports;
- (c) promote the ability of small businesses and businesses owned by historically disadvantaged individuals to become competitive;
- (d) be necessary for the economic stability of an industry designated by the Minister of Trade and Industry in consultation with the relevant Minister. More detailed information can be obtained from the Competition Commission's website at www.compcom.co.za.

Apart from these limited conditions for exemption, the Competition Act applies indiscriminately to all activities that have an economic effect within SA. However, activities sanctioned by law are excluded from the purview of the Act.

The Competition Commission granted South African Airways (SAA) a short term exemption on a code share agreement with Qantas Air on the South Africa-Australia route. The basis for the exemption was that the practice promoted exports and the exemption was granted on strict conditions requiring price information to be submitted to the Competition Commission on a regular basis. With this exception, no exemptions for any import or export cartel have been granted.

Question 14

We welcome South Africa's further commitments during the 1997 WTO financial services negotiations. With respect to insurance services, commitments on market access and national treatment were made for consumption abroad and commercial presence. However, we note that a foreign insurer may only operate in South Africa in the form of a subsidiary; a branch is not yet allowed. While we question the consistency with the national treatment commitments of this particular restriction, we would also appreciate having an explanation of the reasons for the restrictions in this area and would be interested in knowing whether there is any plan to remove them.

Answer

The restriction is in place to ensure that the home supervisor (the Financial Services Board) has jurisdiction over the insurer. In the case of a branch office there is no such jurisdiction. It is unlikely that this restriction will be removed in the near future.

Question 15

As indicated in the report by the governments of SACU members, SACU countries attach great importance to the outcomes of the Doha Ministerial Conference of 2001, which put development at the centre of the WTO agenda. At the same time, SACU countries think that broadening the scope of negotiations to include "new issues" will severely test the human and institutional capacity of SACU countries. Pursuant to the mandate of the Doha Development Agenda, future negotiations on the "Singapore issues" would take place after the Fifth Ministerial Conference on the basis of a decision to be taken at that Session, by explicit consensus, on modalities of the negotiations. We would like to know SACU's position on or expectations for the Singapore issues.

Answer

SACU countries are fully committed to implementing the Doha development Agenda (DDA). The DDA is a comprehensive negotiating mandate which includes the Singapore Issues, and a range of other market access and development issues. It is our view that there has to be a balance both in the substance of the negotiating agenda and the process of the negotiations. It is for this reason that we have been concerned about the failure to meet the important deadlines that have been established in the negotiating process. These include special and differential treatment, implementation issues and TRIPS and public health. Critical to the process has been the need to agree on the modalities for agriculture, which as is well known is another missed deadline. Positive and constructive progress in the next few months in resolving the above issues will provide the necessary impetus and political will of all SACU countries to ensure that the comprehensiveness of the negotiating mandate is complied with. It is with this perspective that SACU countries have been participating in the study and research phase of the Singapore Issues. Notwithstanding the capacity constraints of SACU members, we remain willing to engage fully on all the issues of the DDA in line with the commitments made in Doha.

Questions from the USA**SACU****Questions 1 and 2**

Non-tariff trade policy measures such as standards, technical regulations, SPS and others are not harmonised. The new SACU agreement envisages harmonisation in these areas. What are the plans for harmonizing these non-tariff trade policy measures to alleviate the distortion of trade flows?

The report notes that the SACU countries do not have a common policy on standards and technical regulations, yet Article 28 of the 2002 SACU Agreement provides that members shall harmonise such requirements and apply them in accordance with the WTO Agreement on Technical Barriers to Trade (TBT). How do SACU members interpret their commitment to harmonisation – will this be on the basis of relevant international standards, where effective and appropriate? What plans, if any, does SACU have to develop a common policy on standards and technical regulations?

Answer

It is important to note that SACU members have already been co-ordinating and co-operating on many of the above policies, within the framework of the 1969 SACU agreement, and in the framework of the Common Monetary Area between Lesotho, Namibia, South Africa, and Swaziland, and the Liaison Committees on Customs and Trade and Industry, for example.

The 2002 SACU agreement seeks to deepen and expand this co-ordination and co-operation by strengthening the institutional arrangements for it, so as to lay the basis for the harmonisation of policies, as and when conditions allow, and ultimately for the creation of a more cohesive regional market.

Work is currently proceeding on a multi-pronged basis to conclude during 2003 the ratification of the agreement; the establishment of the new SACU Secretariat, and the development of SACU procedures for tariffs-setting and trade remedies.

BOTSWANA

Question 3

There is mention that an impediment to investment in Botswana is “increasing difficulties in employing expatriates through hindrances in obtaining work permits.” Does the Botswana government have any plans to address this issue?

Answer

All expatriates who are engaged in Botswana for reward or profit, other than those who have been exempted from this requirement, are required to apply for work permits. In processing the applications for work permits consideration is given to:

the effect of issuing a work permit or renewing the existing work permit on the opportunities for employment or for reward or profit in the occupation in question, as the case may be, open to citizens of Botswana; and

where the application relates to employment, the arrangements made or to be made by the employer to train a citizen of Botswana to replace the person in respect of whom the application is made in the event of a work permit being issued to him or his existing work permit being renewed.

Due to increase in the number of work permit applications received there has been some delay in the processing of these applications. However, the government is addressing this situation. Measures that have been put in place or are being put in place to streamline the processing of work permits include:

the adoption of a list of scarce skills for the purpose of fast tracking the applications of expatriates who possess the listed skills.

the exemption from the requirement of applying for work permits by the Minister of Labour and Home Affairs of expatriates employed by companies operating under the International Financial Service Center who possess skills that are deemed crucial to the operation of these companies. Discussion is underway with BEDIA to explore the possibility of extending this facility to investors who are approved by the Agency.

Government will continue to look at ways of improving ways of facilitating the granting of work permits.

Question 4

Botswana’s Bureau of Standards is non-governmental. The report indicates it is headed by a 12-member Standards Council. Are government agencies represented on the Council? If so, which ones? Do representatives of interested government agencies participate in the technical committees? What is the government’s relationship to the Bureau? The report also indicates that “in principle, all product standards that affect health, safety, and the environment are mandatory.” How is this accomplished? Do government agencies publish regulations or other documents that reference the standards or otherwise make them legally binding? Please explain.

Answer

The Botswana Bureau of Standards is a parastatal organisation wholly owned by the Botswana Government. The Standards Council has government representation through the Ministries of Trade and Industry, Agriculture, Health and Works and Transport.

Government agencies participate in the technical committees of the Bureau of Standards. So far 33 Technical Committees have been established.

The Botswana Government provides full funding for the Botswana Bureau of Standards and in turn sets annual targets for the performance of the Organisation. The main objective of setting up this organisation was to ensure quality and standardisation for Botswana produced goods.

Before a Standard is made compulsory, the Botswana Bureau of Standards publishes a notice in the Government Gazette notifying the public of the Bureau's intention to advise the Minister of Trade and Industry to make standards compulsory. The public is given two months during which time any person is allowed to object the Bureau's intention. If no complaint is received, the Minister declares in the Gazette such standards to be compulsory.

In addition, some Government Ministries set technical regulations and standards which are mandatory. For example, the Ministry of Health (through National Food Control Board) sets regulations and standards for food and drugs in order to ensure health and safety of consumers.

Question 5

Are the new "Standards Mark" and "Batch Certification Scheme" voluntary, i.e., to be used at a manufacturer's request? Will government agencies rely on these programs to ensure product conformity to their regulations? Information in the report indicates that Botswana currently recognises foreign conformity assessment results, including foreign accredited labs. It also notes that SADC countries are developing a regional body for accreditation. Will this new body also accredit bodies from non-SADC countries? What implications does this have for Botswana's current practice of recognising foreign conformity assessment results?

Answer

Certification Schemes are voluntary and the Government will rely on these to ensure product conformity. The new SADC Accreditation Body to be known as SADCAS will also accredit bodies from non-SADC countries and there will be no negative implication on Botswana's current practice of recognising foreign assessment results.

Question 6

A basic obligation of the TBT Agreement (Article 15.2) is to submit a Statement to the TBT Committee on actions that have been taken to implement the Agreement domestically. Neither Botswana nor Lesotho have submitted such statements. Are there plans to do so? Are there obstacles to doing so? Please explain.

Answer

Botswana has already submitted a Statement both to International Standards Organisation (ISO) and WTO that it accepts to follow all WTO/TBT obligations particularly those related to Annex 3: Code of Good Practice for the Preparation, adoption and application of Standards.

Question 7

The report says that government tendering procedures are being revised. What is the time-line for passing and implementing the revisions?

Answer

The Government of Botswana has already passed the Public Procurement and Asset Disposal Act of 2001 which establishes an independent Board to deal public procurement. The Board is already operational and has started introducing revised tendering procedures which are meant to improve transparency.

The Government has also introduced the Standard Bidding Documents for mandatory use by procuring and disposing entities. The Board is required to adopt, circulate and amend, where necessary, standardised bidding packages and public assets disposal contracts which shall be used on a mandatory basis by all procuring and disposing entities in their respective bidding packages. These standard bidding packages have been proposed and are awaiting formal adoption by the Board before their introduction.

Detailed regulations covering all aspects of the tendering system are currently being drafted to complement the Act and provide particular guidance on the procedural aspects of bid submission, evaluation and adjudication.

In addition, there has also been decentralisation and devolution of the procurement function to Ministerial and District Administration Tender Committees within specified financial thresholds to speed up the procurement process and reduce bureaucracy.

Question 8

What is the current status of Botswana's privatisation policy? Are there parastatals, which the government is preparing for privatisation?

Answer

As stated elsewhere in this response document, the implementation of the Privatisation Policy has had to be preceded by the creation of the necessary capacity through setting up an institutional structure for implementation. The Public Enterprise Evaluation and Privatisation Agency (PEEPA) has now been established. A Privatisation Masterplan is being developed and will be ready for implementation during the course of 2003. The privatisation programme is already in progress with the imminent privatisation of Air Botswana in the pipeline, as well as the accelerated contracting out of public services.

Question 9

When does the government of Botswana plan to finish the termination of its direct lending facility to parastatals, the Public Debt Service Fund?

Answer

Lending to parastatals by the Public Debt Service Fund has been discontinued. However, existing loans to parastatals will be allowed to run their course until fully repaid.

Question 10

Does the government of Botswana's encouragement of local ownership in each financial institution prevent foreign companies from establishing wholly owned subsidiaries?

Answer

The Botswana Government believes in the operation of a free market economy. Since independence in 1966, the Government policy has been to promote private sector development as a key engine of growth. Both foreign owned companies and citizen companies are welcome to invest in Botswana.

While efforts are made to encourage local participation in the ownership of financial institutions, this does not mean that foreign companies are prevented from establishing wholly-owned subsidiaries. Already most of the major financial institutions in the country are wholly owned subsidiaries of foreign companies.

Question 11

Do the government of Botswana's limitations on foreign share purchases prevent foreign companies from establishing a subsidiary via merger and acquisition?

Answer

Currently foreign companies are allowed to participate in the Botswana economy through either wholly owned foreign companies, mergers and acquisitions.

LESOTHO

Question 12

The report mentions that the "whole government procurement system is undergoing review." What changes, if any, is the government planning for the procurement system and what is the time-line?

Answer

The Government of Lesotho has a procurement system, which allows for advertisement through notice boards, radios and newspapers that command wide readership. Prospective foreign bidders access information pertaining to tenders through the above means, while bidding procedures are available for familiarisation. It is important to note that the outcome of the evaluation process, as stipulated in the bidding procedures is communicated to all bidders individually, whether successful or otherwise. It is also important to note that the current government procurement process is also

under review by a task force comprising of members from both the private and public sector. Among other objectives, the review aims to minimise government involvement.

Question 13

The report indicates a draft law exists to establish a “standards” bureau. Under the law, is compliance with the standards to be voluntary or mandatory, or both? Will the standards bureau be a government agency? Please clarify the relationship between voluntary standards and technical regulations as envisioned with implementation of the new law.

Answer

SACU envisages having a common standards authority. However, Lesotho would like to have some capacity to monitor and evaluate standards related issues.

Question 14

The report discusses liberalisation and deregulation in agricultural marketing, but on a case-by-case basis. Is there an overall government plan, with a time frame in mind, for liberalisation in agricultural marketing?

Answer

There is a proposed liberalisation schedule, which is derived from consultation with stakeholders and recommendations from a series of studies. According to the proposed schedule, the process of liberalisation is expected to be completed before 2010. It is envisaged that all measures that curb unfair trade practices will be in place.

NAMIBIA

Question 15

The report state that legislation creating the Namibian Standards Board is expected to pass in 2003. Is it still on track? If so, when would the Board actually start its work?

Answer

The process is still on track and Namibia is at the moment putting the institutional mechanism in place. Upon the finalisation of institutional consolidation and frame work, it is expected that the Board will assume its operational and functional life.

Question 16

In Namibia, is compliance with South African and ISO standards voluntary or mandatory? Do these standards serve as a basis for technical regulations? Will the Namibian Standards Board be governmental, or non-governmental? What will the relationship of these standards be to technical regulations? To other relevant international standards (other than ISO and South African)?

Answer

The relationship with respect to both the South African Bureau of Standards and the ISO is mandated by law. These standards serve as the basis for technical regulations and the Standards Board is an autonomous commercial entity. To the extent that Namibia is a signatory to other international standard setting bodies, this relationship will be appreciated by the Namibian standard setting authority.

Question 17

Is the Government of Namibia doing anything to address possible economic inefficiencies (mentioned in the report) in the "Namibianisation" program with regards to the fisheries industry?

Answer

The Namibianisation program and policy is targeted at the previously disadvantaged sector of the Namibian population. This is to ensure that this sector is meaningfully mainstreamed into the economic life of the country in order to ensure that poverty alleviation is addressed and marginalisation is thereby mitigated against. To the extent that this policy and programme encourages genuine partnership between foreign investors and Namibians, the issue of inefficiencies is addressed.

Question 18

Is Namibia Telecom still slated for deregulation by 2004?

Answer

It is a consistent policy of the Namibian government to liberalise trade in services in view of the potential significant contribution of services trade to the national economic growth and development. In this context, Namibia has started to systematically open up the Post and Telecommunication sector. The extent to which this process will continue, will be dependent on the meaningful contribution and capacity of Namibia to deal with the resultant outcomes of these liberalisation efforts.

Question 19

When approving mergers between financial institutions in Namibia, are foreign financial institutions provided national treatment?

Answer

Namibia accords the foreign suppliers national treatment.

SOUTH AFRICA

Question 20

The South African Bureau of Standards (SABS) notification of its acceptance of the code of good practice indicates it is a non-governmental body, yet its standards are published in the Government Gazette. Are these standards mandatory or voluntary? Is SABS governmental, or non-governmental? Do government representatives participate in the development of SABS standards?

The report notes that in some cases, where public health and safety are concerned, the Ministry of Trade and Industry declares their use obligatory. Does the Ministry publish a notice proposing to make mandatory the SABS standard and invite comment? Are all regulatory needs met by referencing SABS standards as obligatory?

Does the SABS mark indicate compliance with voluntary standards? Is it relied upon for regulatory compliance (i.e., in cases where the technical regulation is the same as or references a SABS standard)? Have any non-South African conformity assessment bodies requested accreditation by SABS?

Answer

The South African Bureau of Standards (SABS) is a Statutory Body formally recognised and enabled through the Standards Act, Act 29 of 1993. In terms of the Standards Act, SABS is currently responsible for roughly 6000 voluntary South African National Standards

The SABS Regulatory Division is an appointed regulator for the Department of Trade and Industry and is responsible for the administration of 70 technical regulations (known in SA as compulsory specifications), which are mandatory. These compulsory specifications cover the following areas: Automotive, Human Health and Environment, Fishery and Food, Electro- Technical and Gambling

It should be noted that various other Government Departments, such as the Department of Health; Agriculture; Labour; Transport; Water Affairs and Forestry; Environmental Affairs and Tourism; and Minerals and Energy, are also primary originators of technical regulations. These departments use designated regulatory bodies to administer technical regulations. These Departments have drawn up about 200 standards in their regulations and can also use the SABS directly.

In terms of the Standards Act, SABS publishes voluntary standards in the Government Gazette. In terms of the Act, the Minister of Trade and Industry however has to approve the publication of draft and final compulsory specifications in the government gazette. A comment period of two months is also prescribed in the Standards Act for compulsory specifications.

The Department of Trade and Industry has delegated the responsibility for the South African WTO enquiry point in terms of the TBT agreement to the SABS.

The mark scheme of the SABS is voluntary. SABS is not responsible for the accreditation of conformity assessment bodies. A separate agency, the South African National Accreditation System (SANAS) is responsible for the accreditation of local and international conformity assessment bodies.

SWAZILAND

Question 21

What is the time-line for passing and implementing the new investment legislation? What sorts of revisions are being made?

Answer

Swaziland does not have a specific legislation on investment. The investment conditions are incorporated in different legislation such as the Income Tax Act which provides tax-based incentives, free repatriation of profits and dividends and other investment incentives. In addition the Investment Development Order was introduced in order to promote investment in strategic industries and

locations by offering special tax concessions. The Government is also in the process of preparing an investment code that will outline the conditions for investing in the country.

Question 22

When considering license applications for a financial institutions, does the government of Swaziland still examine the needs of the community before granting a license as stated in the 1998 WTO TPR? Does this apply equally to both foreign and domestic applicants?

Answer

The existing banking legislation contained in the Financial Institutions Order 1975 requires banks to apply for and obtain a license from the Central Bank of Swaziland before they start operations. This applies to both foreign and domestic applicants.
