

NEDLAC trade discussions take place within the Trade and Industry Chamber (TIC) and the Technical Sectoral Liaison Committee (Teselico). The Manufacturing Circle holds a seat on both the TIC and Teselico as part of the Business delegation. This report provides an overview from our perspective of current trade negotiations according to the various agreements and agenda items, in addition to latest discussion updates; and is circulated for information purposes.

## CURRENT TRADE NEGOTIATIONS

### World Trade Organisation (WTO)

SA is a founding member of the WTO and an active participant. SA is opposed to plurilateral negotiations under the Joint Statement Initiative (JSI) and wants to see the concerns of developing countries reflected in new rules. Business position is for SA to join JSIs on e-commerce, women in trade etc. Labour aligns with Government in not supporting JSIs. SA aligns with India on many issues but is also active in the Africa Group.

#### Current agenda:

- Completion of outstanding items from the 12th WTO Ministerial Conference (MC12), particularly on the work programme for **agriculture**.
- Work will begin on **reform of the WTO**, including a decision on the dispute settlement system by 2024.
- Efforts to reinvigorate the work programme on **E-commerce** are expected, with a focus on improving the participation of developing markets, however details are still outstanding.

#### Teselico Discussion:

Little progress has been made at the WTO since the 12th Ministerial Conference (MC12) in June 2022, although technical work continues on the major outcomes of the conference.

On WTO reform, an upcoming retreat is being arranged by the WTO Secretariat to discuss approaches to reform. Government will report on the discussions at the next meeting. The reform process has been deadlocked for many years and there is limited reason to expect much to come out of the session.

On fisheries, a partial agreement on illegal and unregulated fishing was reached at MC12, but the core issues of overfishing and fishing subsidies remain on the agenda. An initial conference on the subject was held on 10 October, with little progress, however a further engagement is expected on 23 November. Government's negotiating priorities are to protect the rights of coastal states, safeguard food security, and to preserve policy space in the development of the blue economy.

On agricultural goods trade, work is being held-up by some procedural issues, including the failure to appoint a chair for a key Agricultural Committee. Given these problems, the WTO Secretariat is trying to advance discussions by, among other issues, exploring an approach proposed by the Cairns Group (a group of large agricultural exporters to which South Africa is a member). This approach broadly tries to link debates on agricultural subsidies to debates on sustainability, arguing that subsidies distort food systems in ways that are unsustainable. Greater clarity on this approach is expected to be available at the next Teselico meeting.

Work continues to target progress prior to the next Ministerial Conference in 2023, with a special session on WTO reform and fisheries expected to be held prior to the conference.

### Tripartite Free Trade Area (TFTA)

An FTA between members of COMESA, the East African Community (EAC) and the Southern Africa Development Community (SADC). Eleven countries have ratified the agreement with three more needed to attain the ratification threshold and for the agreement to enter into force.

#### Current agenda:

- There is some confusion as to how the TFTA relates to the AfCFTA. The two agreements have different rules of origin for some products and there is also likely to be different tariff rates applied if the TFTA enters into force.
- The main trading partnership impacted by the TFTA is between SACU and the EAC.

#### Teselico Discussion:

No progress to report.

### SACU-India Preferential Trade Agreement (PTA)

Five rounds of negotiations have been held. The first one in 2007, the last one in 2010. Negotiations stalled for the next decade until India revived talks in July 2020. India's strategic interest in SACU reportedly lies in promoting closer investment ties in Namibia's manufacturing and industrial sector as well as sourcing commodities from the customs union. SA is also a relatively large market for India's vehicles and auto components, transport equipment, pharmaceuticals, footwear, chemicals and textiles.

#### Current agenda:

- Not clear if negotiations will resume. Waiting to see the revised scope that is proposed by India.

#### Teselico Discussion:

No progress to report.



# CURRENT TRADE NEGOTIATIONS

## African Continental Free Trade Area (AfCFTA)

A comprehensive trade agreement among AU member states, covering trade in goods and services, investment, intellectual property rights, competition policy and e-commerce. Entered into force on 30 May 2019, the operational phase was launched on 7 July 2019 and the AU Assembly approved the start of trading under the AfCFTA 1 January 2021. However there has not yet been any trade under the AfCFTA as negotiations are still ongoing on rules of origin and the tariff schedules.

### Current agenda:

- Phase 1 negotiations not yet completed: outstanding rules of origin for automobiles, clothing and textiles, sugar and some other agricultural products.
- SACU is yet to finalise its tariff offer that covers 90% of all goods traded. Botswana has not ratified the Agreement.
- Services trade and phase 2 negotiations (investment, intellectual property rights, competition policy and e-commerce) are underway but likely to be complex and slow.
- Dispute settlement process agreed but only open to governments to use.

### Teselico Discussion:

Significant work has taken place on the AfCFTA, with much of this work expected to feed into the next Extraordinary Summit on the AfCFTA, which will take place on 25 November.

Despite this, little progress has been made on Trade in Goods. The number of members that are ready for provisional implementation of the agreement has increased from 36 to 37; while Guinea-Bissau became the 44th of 54 member states to have deposited their instruments of ratification. SACU is yet to finalise their 90% offer, with 17 outstanding tariff lines yet to be agreed. This means South Africa can not yet take part in preferential trade under the agreement. This is increasingly a concern, as seven states have already started trade under the AfCFTA, as part of a pilot programme known as the Guided Trade Initiative.

Much of the focus of negotiations have instead been on next-generation issues, notably Trade in Services. Negotiations appear close to completion, although there is an ongoing conflict over Egypt's continued demand for the inclusion of an Economic Needs Test for companies hoping to obtain a license to participate in the market's telecommunication sector. Including Egypt's offer, 22 services offers are being considered for adoption at the next Summit. In general, the Trade in Services agreement is expected to be of limited benefit to most African states, given that it often institutionalizes existing restrictions on investment or cross-border participation, rather than reducing them. However, it may limit future restrictions, and offer some long-term benefits.

Agreements on Competition Policy, Investment and Intellectual Property Rights were expected to be completed in draft form by September 2022; but this deadline has not been met. It has been proposed that the proposals be submitted in February 2023, particularly to allow time for national and regional consultations. Areas of debate on these protocols include discussions on Investor-State Dispute Settlement (ISDS) in the Investment Protocol, which South Africa opposes.



## United States (AGOA)

SA is a beneficiary of market access preferences provided unilaterally by the US under the Africa Growth and Opportunities Act (AGOA), the US GSP, and qualifies for textile and apparel benefits. South Africa is also a signatory to trade and investment cooperation agreements (TIDCA and TIFA) as a member of SACU.

### Current agenda:

- Current AGOA provisions are due to expire in 2025. SA may not qualify for the replacement regime as a more developed African market.
- Options post AGOA include a bilateral free trade agreement between SACU and the US. USA-Africa model FTA with Kenya is currently being negotiated.
- US-SA trade has been declining. US sees its relative competitive position versus the EU eroded due to SADC-EU EPA.
- Bilateral tensions in a number of areas:
  - SA's use of tariffs and anti-dumping duties, particularly on imports of frozen bone-in chicken.
  - SA's overdue submission on the WTO Trade Facilitation Agreement transparency notifications.
  - Certification for Electromagnetic Interference/Compatibility (EMC) Goods.
  - Intellectual property right protection - Copyright Amendment Bill (CB) and the Performers' Protection Amendment Bill (PPA).
  - Sanitary and Phytosanitary Barriers - Certification and Sealing of Containers for U.S. Meat and Poultry Exports.
  - Service trade regulations that impose local content requirements (specifically audiovisual services).

### Teselico Discussion:

Engagements with the US remain focused on the pending expiration of the African Growth and Opportunity Act (AGOA), and efforts to renew or replace the agreement. AGOA preferences are scheduled to expire in 2025, and there is broad belief that the US will attempt to transition African markets to a bilateral trade agreement, rather than simply extending AGOA preferences. These bilateral agreements may only apply to more developed African markets, of which South Africa would be top of the list.

Sub-Saharan African markets have a common position that calls for the extension of AGOA beyond 2025, and oppose any countries graduating from the agreement. The government delegation indicated they are seeking a 20-year extension, along with improved product and country coverage, and the removal of non-tariff barriers. All of these objectives seem very challenging to achieve.

The US will host an AGOA Ministerial conference in Washington, DC in December 2022, however no information has yet been released on the agenda or approach to the conference. It is expected that the Ministerial will provide the clearest signal to date on whether AGOA is likely to be renewed or replaced with a bilateral agreement.

Cabinet has approved South Africa's hosting of the next AGOA Forum. However the forum, which was initially scheduled for 2022, has been delayed to August 2023. South Africa's hosting of the forum will be co-led by the dtic and DIRCO, and will include government, private sector (likely in the form of a Business Forum) and civil society tracks.

## EXISTING TRADE AGREEMENTS

### SACU-EFTA<sup>1</sup> Free Trade Agreement (FTA)

The Agreement covers trade in goods and lays the foundation for further engagement on intellectual property, investment, trade in services and public procurement.

#### Current agenda:

- Review and negotiation of an updated and expanded FTA- focus on trade in goods, rules of origin, trade facilitation and trade and sustainable development.

#### Teselico Discussion:

No progress to report.

<sup>1</sup>EFTA countries: Iceland, Liechtenstein, Norway, Switzerland.

### SADC-EU Economic Partnership Agreement (EPA)

An agreement between the SADC EPA states (SACU and Mozambique) and the European Union. Negotiated as a development-oriented agreement, the EPA gives market access preferences for a wide range of traded products.

#### Current agenda:

- Enhance cooperation on sanitary and phytosanitary measures and other aspects, includes safeguard measures relating to the implementation of the EPA.
- Development of a common methodology aimed at finalising a monitoring and evaluation framework for the EPA.
- Review of the EPA underway in 2022.
- Angola's ascension request to join the EPA is under consideration.
- EU is moving ahead with climate border adjustment measures, which may impact some SA exports.
- First dispute under the EPA is on SACU safeguard duties on chicken products.

#### Teselico Discussion:

Teselico Discussion:

A series of Trade and Development Committee (TDC) meetings are scheduled to take place from 14 to 18 November in Brussels. Discussions are reportedly expected to focus on the EU's plans regarding safeguard measures against South African steel exporters, and on the potential for Angola to accede to the EPA.

Much of the focus remains, however, on the upcoming five-year review of the agreement. Government provided a list of issues they will include for discussion in the review, which includes:

- First Come- First Served requirement for wheat and meslin quota;
- Review of wine quota split ratio;
- Review of market access such as the wine and sugar tariff rate quotas;
- Article on Export Taxes;
- Cumulation with the United Kingdom,
- Rules of Origin for Autos.

The EU's agenda for the review includes:

- Negotiations on Services – including digital protection;
- Competition;
- Intellectual Property Rights;
- Green transition – circular economy and renewable energy;
- Gender and trade issues.

Government notes that there is still scope to raise additional issues for inclusion in the review, and the business caucus may need to consider if there are additional issues that should be included.

### SADC Trade Protocol

An agreement between SADC Member States to reduce customs duties and other barriers to trade on imported products. First step in larger economic integration ambitions, like becoming a Customs Union, Common Market and eventually a Monetary Union.

#### Current agenda:

- Implementation of the Trade Facilitation Programme (TFP).
- Address illicit trade in excisable products (alcohol and tobacco products) within the region.
- Negotiations for Angola to join the SADC Free Trade Area.

#### Teselico Discussion:

No progress to report.

### SACU and Mozambique-UK Economic Partnership Agreement

An agreement to maintain continuity in the trade relationship between the UK and the SACUM countries post the British exit of the EU. Duty-free, quota-free access for goods exported from the SACUM Member States, except for South Africa, to the UK. SACUM commits to gradual tariff liberalisation, with some exception for sensitive products. Covers trade in goods and intellectual property, including geographical indications. Terms of EPA largely mirror SADC-EU EPA.

#### Current agenda:

- Development of the Rules of Procedure for the institutions established under the SACUM-UK EPA.
- Arrangement for SACUM-UK EPA tariff rate quotas to be carried out by SARS on a first-come first-served basis (applicable to some agricultural products).

#### Teselico Discussion:

No significant developments were reported.

Two technical meetings under the UK-EPA took place in August and September, focusing on geographic indicators (the rules governing place-specific product names like Champagne or Karoo Lamb) and trade in wine & spirits, and on sanitary and phytosanitary measures and technical barriers to trade. In both cases, discussions seem to have been primarily focused on information sharing, however one notable initiative emerging from the engagement is the potential electronic certification of wine exports. Electronic clearance is currently the status quo for EU exports, and does appear to facilitate trade.

A state visit is planned for the 23/24th of November, and constituencies have been asked to raise any bilateral issues that may be of concern.



## EXISTING TRADE AGREEMENTS

### Southern African Customs Union (SACU)

The Customs Union links Botswana, Eswatini, Lesotho, Namibia and South Africa by a single tariff schedule and no customs duties between the members. Other barriers are eliminated on substantially all the trade between the Member States for products originating in SACU countries. Includes a common negotiating mechanism, meaning South Africa cannot negotiate and enter into new preferential trade agreements with third parties without the consent of other SACU members. Trade revenues are collected by SARS and shared between the Members on the basis of an agreed formula.

#### Current agenda:

- Trade agreement reviews and negotiations: EU-SADC EPA, SACU-EFTA FTA, SACU-Mercosur PTA, TFTA, AfCFTA, SACU-India PTA
- The use of reserved business activities and import restrictions by member states.
- Adoption of HS2022 tariff schedule.
- Cooperation on customs, including electronic exchange of data.
- Development of a joint industrial policy that will provide guidance for trade policy in the region.

#### Teselico Discussion:

A proposed review of the 2002 SACU agreement has been put on hold, largely because of significant disagreements among member states what issues to include in the review.

No other progress to report.

### SACU-Mercosur PTA

A limited-scope Preferential Trade Agreement between SACU, Argentina, Brazil, Paraguay, and Uruguay (Mercosur countries). Sets out preference margins of 10%, 25%, 50% and 100% on 1,050 tariff lines on both sides. The main SA sector to benefit under the PTA has been edible oils. Limited application to current trade.

#### Current agenda:

- Promote utilisation and full implementation of the PTA.

#### Teselico Discussion:

Nothing new to report.

