

SACU Roundtable

17 September 2015

The Trade Law Centre (tralac) hosted a roundtable discussion on the Southern African Customs Union (SACU) at the University of Cape Town Graduate School of Business on 17 September 2015.

The meeting was held to reflect on the current status of SACU and to consider future scenarios for SACU's development.

The meeting was opened with two presentations that set the context of the discussion. The first reviewed the history of SACU and its key features in terms of aspects covered in the Agreement. It highlighted the current impasse in SACU and the fragmented approaches and discussions at national and regional levels.

The second presentation highlighted how SACU has operated more as an organisation for intergovernmental cooperation than a regional arrangement with supranational authority. This has mainly been due to the lack of implementation of institutions provided for in the SACU Agreement, which has in turn contributed to some problems in the integration and development process of the region. In spite of these challenges, SACU has contributed to the maintenance of a stable region.

The revenue sharing arrangement was noted as the unique feature of SACU that has ensured such stability. However, this arrangement is now at risk, as evidenced by some public pronouncements by South Africa that it would like this arrangement to be reviewed. This is most likely as a result of economic and fiscal pressures that its economy is currently facing, further exacerbated by a slowdown of the global economy. At the same time, there seems to be growing discontent by the BLNS countries that their industrialisation prospects are circumscribed by the current SACU framework, which favours South African industrial development. It was noted that there is regrettably a lack of movement from any of the SACU member states to resolve this impasse, the continuation of which is risky given the threat that it poses to stability of the region. This would particularly be the case if the fiscal constraints that South Africa is facing force it to unilaterally push for the review of the revenue sharing arrangement in isolation of a broader reconsideration of the SACU Agreement so as to make it one that effectively delivers on regional industrialisation and development.

In view of the foregoing, three possible future scenarios were presented for deliberation by participants as follows:

- Business as usual: the status quo prevails with South Africa continuing to face growing trade, investment and fiscal challenges.
- SACU Agreement is renegotiated; with a redesign of its institutions, negotiated revenue sharing changes, and regional and domestic reforms that set SACU on course to meet 21st century challenges of production and trade.
- A third scenario where SACU is dissolved into the Southern African Development Community (SADC) which has institutional challenges of its own, but could provide individual SACU countries with trade policy space for engagement with third parties.

Some of the main issues discussed in plenary were as follows:

- There is a noted lack of leadership among members in charting a common vision on where SACU should be heading. This is vital for any meaningful engagement in resolving SACU's challenges and attaining the promise of effective integration and development that it holds.
- The failure by SACU to set up a regional Tariff Board as required by the SACU Agreement is posing a challenge. The function of the Tariff Board is carried out by the International Trade Administration Commission of South Africa (ITAC). This is an institution that is established under South African law. However, the tariffs set by the Commission have sometimes adversely affected industrialisation efforts in the BLNS countries.
- The failure by SACU to set up a Tribunal has also negatively affected the settlement of disputes. Meanwhile, there has been an increase in litigation before national courts in some BLNS countries. This trend is likely to continue although not all private traders have the financial muscle to challenge measures that affect them before these courts.
- There is a noted lack of transparency in access to information on decisions taken within SACU and other relevant information of interest to SACU citizens. The Secretariat's website provides little up-to-date information.
- Dependence on the revenue sharing arrangement is high among BLNS countries, sometimes going up to 60% of their national budgets. This has seemingly contributed to their lack of initiative to start a debate to resolve the challenges that they are facing within the current status of SACU. Meanwhile, South Africa is facing significant economic and fiscal challenges, reflected in part by a decreasing size of the common revenue pool. This is a precarious situation that cannot be ignored.

- There is an inter-organisational dynamic at the national level within SACU countries that seems to be reinforcing the maintenance of the current status quo. In South Africa, it seems that authorities responsible for the country's fiscus would like to resolve the current challenges by revising the revenue sharing formula, whereas those responsible for industry and trade would like to protect the current production and trade structure. The opposite seems to prevail in the BLNS countries, where it seems the aim is to protect the revenue received under the current formula, whereas those responsible for industry and trade would like changes that will enhance their respective production and trade structures.
- There is a feeling that the BLNS countries have already given up much of their policy space to effectively drive their national industrial policy efforts. However, it was noted that there are risks in using tariffs to protect against foreign imports and in selecting sectors to receive such protection. This can be counterproductive as some imports are also vital for the domestic production process. It was noted that the discussion on the trade and industrial policy nexus must go beyond a fixation on the import tariff and on manufacturing as the sole avenue for diversification of economies. Services (including regulatory) issues and infrastructural development are important prerequisites for competitiveness and must necessarily be part of an agenda to attain industrial development on a regional level. Issues such as these have so far not been included in the SACU Agreement.

The following were suggested as a way forward:

1. There is need for technical experts to motivate increased political engagement on SACU issues as a matter of urgency, both within countries and among partner countries.
2. It is necessary to take stock of the decisions that have been taken since the entry into force of the 2002 Agreement and to shape a common vision on SACU's future. This should then inform the approach to resolving the current challenges. As the current Chair of SACU, South Africa must – in conjunction with the SACU Secretariat – take the initiative to move this process forward. Meanwhile, tralac could assist the process through research and analysis that can form inputs into the formulation of such a common vision and resolution of the challenges.
3. Consideration should be given to hosting a retreat to deliberate and agree on the way forward. This must be done taking advantage of the new political leadership that is currently in place in most SACU countries.
