



7 January 2016

(16-0151)

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**Trade Policy Review Body  
4 and 6 November 2015**

Original: English/Spanish  
anglais/espagnol  
inglés/español

## TRADE POLICY REVIEW

SOUTHERN AFRICAN CUSTOMS UNION

MINUTES OF THE MEETING

*Addendum*

*Chairperson: H.E. Mr. Atanas Paparizov (Bulgaria)*

This document contains the advance written questions and additional questions by WTO Members, and replies provided by the Southern African Customs Union members.<sup>1</sup>

**Organe d'examen des politiques commerciales  
4 et 6 novembre 2015**

## EXAMEN DES POLITIQUES COMMERCIALES

UNION DOUANIÈRE DE L'AFRIQUE AUSTRALE

COMPTE RENDU DE LA RÉUNION

*Addendum*

*Président: S.E. M. Atanas Paparizov (Bulgarie)*

Le présent document contient les questions écrites communiquées à l'avance par les Membres de l'OMC, leurs questions additionnelles, et les réponses fournies par les membres de l'Union douanière de l'Afrique australe.<sup>1</sup>

**Órgano de Examen de las Políticas Comerciales  
4 y 6 de noviembre de 2015**

## EXAMEN DE LAS POLÍTICAS COMERCIALES

UNIÓN ADUANERA DEL ÁFRICA MERIDIONAL

ACTA DE LA REUNIÓN

*Addendum*

*Presidente: Excmo. Sr. Atanas Paparizov (Bulgaria)*

En el presente documento figuran las preguntas presentadas anticipadamente por escrito y las preguntas adicionales de los Miembros de la OMC, así como las respuestas facilitadas por los miembros de la Unión aduanera del África meridional.<sup>1</sup>

<sup>1</sup> In English and Spanish only./En anglais et espagnol seulement./En inglés y español solamente.

## **AUSTRALIA**

### **2 THE COMMON REGIME**

#### **2.2.1 Institutional structure**

**Page 13, Paragraphs 2.7-2.11**

##### Question 1

When does SACU forecast the establishment of a Tariff Board as provided for in the 2002 SACU Agreement?

##### Answer 1

**Currently, work on the establishment of the SACU Tariff Board is ongoing. There is no timeline as to when this process will be concluded. In the absence of the SACU Tariff Board, the SACU Council has mandated South Africa's International Trade Administration Commission (ITAC), to take responsibility for the administration of the customs tariff and trade remedies, as an Interim Measure.**

#### **2.2.1 Institutional structure**

**Page 13, Paragraph 2.13**

##### Question 2

How are preparations proceeding to establish an ad hoc Tribunal provided by Article 7 of the 2002 SACU Agreement which will settle disputes consistent with Article 13 of the same Agreement?

##### Answer 2

***The SACU Member States are engaged in discussions to clarify the jurisdiction of the Tribunal, with a view to ensure that the implementation of the Annex to operationalise the provisions of Article 13 of the SACU Agreement, 2002, will be consistent with the international and Constitutional obligations of the respective Member States.***

#### **2.2.2 Common revenue pool and revenue-sharing formula**

**Page 14, Paragraph 2.20**

##### Question 3

How are deliberations proceeding to review the revenue-sharing arrangement of the SACU Common revenue pool?

##### Answer 3

***Member States have developed their respective proposals on a revenue sharing arrangement and these are still being considered. The process is on-going.***

#### **2.3.4 Relations with the European Union**

**Page 16, Paragraph 2.42**

##### Question 4

When will the Economic Partnership Agreement with the European Union initialled in July 2014 enter into force?

##### Answer 4

***Entry into force of the Agreement will to a large extent depend on the ratification processes of the Member States of both parties. In light of the end date of the EU Market Access Regulation (1528/2007), the SACU Member States will work towards finalising the signing and ratification processes by October 2016.***

## **ANNEX 1 BOTSWANA**

### **3.1.6 Anti-dumping, countervailing, and safeguard measures**

**Page 76, Paragraph 3.39**

##### Question 5

Has Botswana's Minister of Trade and Industry taken action against any countries under this legislation in response to the occurrence of (a) or (b)? Does this legislation apply only in situations where a country has undertaken an anti-dumping or countervailing investigation of goods

originating in Botswana? What is the WTO basis that enables Botswana's Minister for Trade and Industry to take such action?

**Answer 5**

***Botswana has not taken action against any country using Botswana Trade Commission Act since the legislation is not yet fully operationalized. The institution is still being established.***

***No, the Legislation also applies to all unfair trade practices examined in the country.***

***Agreement on Implementation of Article VI of the GATT, Agreement on Subsidies and countervailing Measures and Agreement on Safeguards.***

**3.3.5 Intellectual Property Rights**

**Pages 92-93, Paragraph 3.120**

**Question 6**

Australia notes that Botswana has recently installed a new IP Authority, and has increased its IP rights applications. What promotion/education has the Botswana IP authority undertaken, and has this contributed to this increase in IP rights applications?

**Answer 6**

***The new Companies and Intellectual Property Authority (CIPA) became only operational in November 2014. However, Government has conducted many awareness activities including participation in trade fairs, presentations to stakeholders (including SMMEs) and lastly the commemoration of World IP day which has a lot of media coverage.***

**3.3.5.1 Copyright**

**Page 95, Paragraph 3.129**

**Question 7**

Does Botswana's intellectual property rights system allow for rights holders to report suspected infringements?

**Answer 7**

***Yes; it is provided for under Part V on Enforcement of Rights in the Copyright and Neighboring Rights Act.***

**3.3.5.2 Industrial Property Rights**

**Pages 98-99, Paragraphs 3.143-3.148**

**Question 8**

Australia notes the substantial increase in trademark registrations as a proportion of filings in 2014. Are there any factors or initiatives that have led to the improved registration rate?

**Answer 8**

***Increase in trademark registrations can be attributed to the increase in awareness campaigns that were undertaken by the IP Office. This awareness was more in the towns and cities targeting small and medium enterprises.***

**3.3.5.2 Industrial Property Rights**

**Pages 99-100, Paragraphs 3.150-3.15**

**Question 9**

Australia acknowledges the Botswana initiative to implement an exclusive traditional knowledge rights registration system. Understanding the nascent stage of its implementation: How does this traditional knowledge rights registration system relate to the existing IP arrangements? How frequently is it used?

**Answer 9**

*The registration of traditional knowledge is still at infancy stage and is implemented by the IP Office. The registration process is simplified and less costly to allow use by Traditional Knowledge holders. Few applications have been received due to lack of awareness by rural communities who possess most of the knowledge. More efforts will be made by the new IP Authority to reach out to the rural communities to educate them about the registration of traditional knowledge.*

What has been the response of traditional knowledge holders to the system?

**Answer**

*Traditional knowledge holders are still being capacitated to create awareness of this law and more efforts are being made to educate them more especially the rural communities in order to increase utilisation of registration system.*

What has been the experience of the other industrial rights holders and the consent of traditional knowledge holders?

**Answer**

*The response of other industrial rights is minimal at this stage as we have not experienced a large response to register traditional knowledge.*

**4.2.1 Mining**

Pages 105, 106, Paragraphs 4.27-4.28

**4.2.2 Energy**

Pages 111,112, Paragraphs 4.49-4.50

**4.3.3 Transport Services**

Page 120, Paragraph 4.97

Questions 10, 11,12,13 and 19

To what extent do SACU priorities and initiatives influence or support a SACU mining equipment, technology and services sector? What are the types of equipment, technologies and services that the SACU resources sectors need for the future? *How can SACU nations and Australia, through Australian Government and the mining equipment, technology and services growth centre, work together to support the SACU resources sector through the utilisation of Australian businesses?*

**Answer to Questions 10, 11, 12, 13, and 19**

*SACU has identified Six Priority Areas for development with industrialisation as an overarching objective, focusing on the development of cross border value chains. This process is still at an early stage. Details of the areas of cooperation with Australia will be considered as part of this strategy.*

**2.2 Trade Agreements and Arrangements**

Page 293, Paragraph 2.8

Question 14

Can South Africa give an indication of the likely provisions it will make, once ratified?

**Answer 14**

*Section 231(2) of the South African Constitution states that all international Agreements shall bind the Republic only after it has been approved by resolution of both Houses of Parliament. The only exceptions to this rule are in Section 231(3): Agreements of a technical, administrative or executive nature, or Agreements which do not require accession or ratification. Consequently Parliament is only required to approve international agreements which require ratification or accession, and which are not of a technical, administrative or executive nature.*

*The umbrella Agreement creating the WTO (the Marrakesh Agreement Establishing the WTO) is a major multilateral instrument. Furthermore Article 3 of the Protocol demands that the amendment thereof has to be accepted by members. Consequently this Protocol plus its Annex the TFA fall under Section 231(2) of the Constitution and Parliamentary approval is required. The domestic process is still ongoing and it would be difficult to provide an indicative date when it will be concluded.*

Is South Africa planning to form a domestic committee for the TFA once implemented?

**Answer**

Yes

**3.1.4 Sanitary and phytosanitary requirements**

**Page 306, Paragraph 3.34**

**Question 15**

South Africa has mentioned that several pieces of SPS legislation are under review. Can South Africa please advise what parts of its legislation are under review and if these may impact on trading partners?

**Answer 15:**

*Any proposed changes to SPS legislation will be notified to the WTO and time for the submission of comments on these proposed changes will be provided to our trading partners.*

**3.3.5 Intellectual Property Rights**

**Page 322, Paragraph 3.119**

**Question 16**

Australia notes South Africa's domestic initiatives including several relating to traditional knowledge, such as providing for protection and commercialisation of various forms of tk/tce/folklore in performers' protection, copyright, trademarks and designs legislation, as well as a requirement to disclose provenance of traditional knowledge and genetic resources in patent applications. Acknowledging the early stages of the system, could South Africa provide further information on use of the national record system/database by the Companies and Intellectual Property Commission (CIPC), role of the relevant departments and commercialization initiatives, and the usage of the system?

**Answer 16**

*South Africa is still in the process of developing its IP policy and once finalized the implementation thereof will be addressed.*

**3.3.5 Intellectual Property Rights**

**Page 322, Paragraph 3.120**

**Question 17**

Can South Africa please provide an update on its draft IP policy?

**Answer 17**

*South Africa is still in the process of developing its IP policy.*

## **ANNEX 5 SWAZILAND**

### **3.3.5 Intellectual Property Rights Page 398, Paragraph 3.117**

#### Question 18

When complete, does Swaziland anticipate its National Intellectual Property Strategy will support further implementation of elements of TRIPS?

#### Answer 18

*The strategy will also support the implementation of some of the elements of TRIPS.*

### **4.2.2 Mining and Quarrying**

Page 410, Paragraphs 4.62-4.65

*Report by the Southern African Customs Union – WT/TPR/G/324*

#### **3 TRADE POLICES AND PRACTICES BY MEASURE**

##### **3.4.7.1 Anti-dumping and countervailing measures**

Page 29, Paragraph 3.39

#### Question 20

In order to receive an exemption from paying duty, do new exporters also need to prove that their exports to the SACU are not dumped, or is proof of non-export during the investigation period and non-relation to parties subject to duties, sufficient to receive an exemption?

#### Answer 20

*Yes, exporters are required to provide a listing of all invoiced ex-factory sales into its domestic market since the initiation of the original investigation or the last review, as well as its exports to the South African Customs Union for the corresponding period. A transaction-by-transaction listing of all export sales to South Africa and all other foreign markets for the investigation period has to be provided. This is then used to prove that the exporter is not dumping.*

## BRAZIL

### **PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT**

#### **2.3: TRADE AGREEMENTS AND ARRANGEMENTS**

(Page 14, para 2.25)

"SACU is currently negotiating a PTA with India. In addition, it is participating in the negotiations on the Tripartite Free Trade Agreement between COMESA, the EAC and SADC."

#### **Questions:**

1. In which stage of negotiation is currently the PTA with India?

#### **Answer**

*The Parties to the PTA have exchanged their respective preference request lists. These have been subjected to national consultations which are still ongoing.*

2. Is there a deadline for the negotiations to be concluded

#### **Answer**

*There is no agreed deadline.*

3. Which are the sectors deemed to take the best advantage of the tariffs reduction regime?

#### **Answer**

*Tariff negotiations are yet to commence and it is after this process that sectors that would be most favoured would be confirmed.*

4. How does the PTA with India compare with the PTA signed with MERCOSUR?

#### **Answer**

*The SACU-INDIA PTA is still at the negotiations stage while the SACU-MERCOSUR PTA is currently in the final stages of ratification. It is therefore difficult to compare the two Agreements as the outcome of the other is not yet known.*

#### **2.3.7 PREFERENTIAL TRADE AGREEMENT BETWEEN SACU AND MERCOSUR**

(Page 18, para 2.55)

"In 2008, SACU and MERCOSUR member States concluded negotiations on a preferential trade agreement (PTA). The agreement was signed by the MERCOSUR member States on 15 December 2008, and by SACU member States on 4 April 2009. The PTA has not yet been notified to the WTO and has not yet entered into force".

#### **Questions:**

1. Taking into account the forthcoming entering into force of the PTA SACU- MERCOSUR, what are the expectations of the Governments and private sectors from SACU members regarding the agreement?

#### **Answer**

*To promote and increase trade between the two regions through the provision of mutual tariff preferences and to strengthen economic cooperation ties between the two regions.*

2. Which sectors are expected to take immediate advantage of the PTA with MERCOSUR?

#### **Answer**

*All sectors covered by the Agreement where there is export potential.*

### 3.4.7 CONTINGENCY TRADE REMEDIES

#### 3.4.7.1 ANTI-DUMPING AND COUNTERVAILING MEASURES

(Page 30, para 3.45)

"In determining serious injury or threat thereof to the SACU industry, the ITAC must consider: the rate and volume of the increase in imports of the product concerned (in absolute terms or relative to the production and demand in SACU); and whether there have been significant changes in the performance of the SACU industry in respect of sales volume, profit and loss, output, market share, productivity, capacity utilization, and employment".

Question:

In order to determine injury or threat of injury, what is the interpretation of the phrase "significant changes in the performance of the SACU industry"? What would the ITAC consider a "significant change" able to justify the application of a safeguard measure?

Answer

***There is no set standard to determine what ITAC would consider to be serious injury or significant changes in the performance of the SACU industry. An analysis is done on a case by case basis and on its merits.***

(Page 28, para 3.37)

"All SACU members apply anti-dumping, countervailing or safeguard measures imposed by South Africa upon recommendation by ITAC and approval by the South African Minister of Trade and Industry. The 2002 SACU Agreement provides for the creation of national bodies in each of the BLNS countries to enable them to conduct their own investigations. In the interim, the ITAC of South Africa has been given a mandate to handle SACU customs tariff applications, in terms of the relevant legislation, and in consultation with SACU member States, until the national bodies and the SACU Tariff Board are operational".

Question:

A South African Agency (ITAC) is responsible for recommending the imposition of trade remedy measures on behalf of BLNS countries:

a) What is the procedure for ITAC to conduct an investigation on their behalf? In this case, for instance, a BLNS country or company must lodge a formal petition at ITAC? Has this ever happened? If yes, in which cases and on behalf of which countries? Finally, is the duty applied for the SACU countries as a whole or only to the territory of the BLNS country concerned?

Answer

***The SACU Council of Ministers mandated ITAC to process tariff applications on behalf of SACU.***

***SACU is a customs union and the duties levied are applicable on all the Member States. ITAC does investigations on behalf of the SACU industry, provided that the industry meets the requirements for industry standing and major proportion.***

***For example, there was one investigation where the Government of Botswana submitted an application on behalf of Botswana Ash (Pty) Ltd (the only manufacturer of Soda ash in SACU) to the Minister of Trade and Industry, and requested that the Commission be instructed to consider this application. An instruction was received by ITAC from the Minister of Economic Development to consider the application by Botswana Ash.***

b) Is there any technical cooperation for developing national bodies in each of the BLNS countries? Is there any kind of participation from BLNS officials in cases conducted by ITAC?

Answer

***There was technical cooperation provided for developing National Bodies in BLNS countries. BLNS countries provide inputs to ITAC investigations. During the investigation referred to above, officials from Botswana took part in the investigation with the investigators from ITAC.***

**PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT**

Question:

What are the prospects for trade in agricultural products within the block in the coming years?

**Answer**

*Trade in agricultural products is expected to grow in the coming years though Members still continue to experience agrometeorological challenges, supply side constraints and other production related challenges. There is, however, a likelihood of increased trade among Members owing to increased collaborations on issues related to livestock, agricultural research and diseases control, among others.*

**PART III: OTHER QUESTIONS**

**REVIEWS AND APPEALS**

"According to art. 46 of the Act 71 of 2002, a person affected by a determination of the Commission may apply to a High Court for a review of the decision".

Question:

Is there any rule that enable interested parties to make an administrative appeal, or the claimant can only appeal to a High Court, according to paragraph 46 of Act 71 of 2002?

**Answer**

***All appeals must be made to the High Court.***

**CANADA****Report by the Government (WT/TPR/G/324)****Part V. International Arrangements and Trade Negotiations: 5.4 Trade Facilitation Agreement: Paragraph 5.13, page 41****Question**

The report mentions that African countries will need to schedule their TF commitments in a manner that ensures coherence with regional and continental integration objectives. Could South Africa please provide a tentative date for notifying its Category A commitments to the WTO?

**Answer**

*Section 231(2) of the South African Constitution states that all international Agreements shall bind the Republic only after it has been approved by resolution of both Houses of Parliament. The only exceptions to this rule are in Section 231(3): Agreements of a technical, administrative or executive nature, or Agreements which do not require accession or ratification. Consequently Parliament is only required to approve international agreements which require ratification or accession, and which are not of a technical, administrative or executive nature.*

*The umbrella Agreement creating the WTO (the Marrakesh Agreement Establishing the WTO) is a major multilateral instrument. Furthermore Article 3 of the Protocol demands that the amendment thereof has to be accepted by members. Consequently this Protocol plus its Annex the TFA fall under Section 231(2) of the Constitution and Parliamentary approval is required. The domestic process is still ongoing and it would be difficult to provide an indicative date when it will be concluded.*

**Report by the Secretariat (WT/TPR/S/324)****Part II. The Common Regime: 2.1 Overview: Paragraph 2.6, page 12:****Question**

It is noted that the SACU member States have initiated work to develop the regional industrial development policy as well as the Annexes on Competition Policy and Unfair Trade Practices. When do SACU member states anticipate completing the work on developing their common policies and strategies?

**Answer**

*Work on this area remains on-going and progress is being made.*

**Part II. The Common Regime:****2.2 Southern African Customs Union (SACU): 2.2.1 Institutional structure: Paragraph 2.11, page 13:****Question**

It is noted that efforts are under way to establish the Tariff Board and its national bodies. While South Africa already has a fully functional National Body, Canada has noted that Botswana, Lesotho, Namibia and Swaziland are still developing legislation that would establish theirs. When does the SACU anticipate establishing the Tariff Board?

**Answer**

*1. Currently, work on the establishment of the SACU Tariff Board is ongoing. There is no timeline as to when this process will be concluded. In the absence of the SACU Tariff Board, the SACU Council has mandated South Africa's International Trade Administration Commission (ITAC), to take responsibility for the administration of the customs tariff and trade remedies, as an Interim Measure.*

*Botswana, Lesotho, Namibia, and Swaziland (BLNS) are at different stages of establishing the national bodies and the process is ongoing.*

- *Botswana - Legislation establishing the National Body is completed. The setting up of the institution is at its initial stage.*
- *Lesotho- Draft bill is completed and undergoing internal approval processes.*
- *Namibia- Legislation has been developed and awaits submission to Cabinet and thereafter Parliament.*
- *Swaziland - Legislation has been developed and awaits submission to Cabinet then Parliament.*

**Part II. The Common Regime: 2.3 Trade Agreements and Arrangements:**

**2.3.3 Southern African Development Community (SADC): Paragraph 2.38, page 16:**

1.1.1.1.1 It has been documented that SADC's roadmap in respect to its regional integration was originally to establish a customs union in 2010, a common market in 2015, a monetary union in 2016, and an economic union in 2018. To date, except for the progress made towards the free trade area, other integration stages have yet to be brought into operation. In 2007, SACU countries completed their tariff liberalization process in the framework of the SADC free trade area.

1.1.1.1.2 Have members developed new anticipatory dates for when these unions and common market may be established? If so, when?

**Answer**

*SADC Member States have revised the RISDP and have identified new activities and timelines of 2015 to 2020.*

**Part II. The Common Regime: 2.3 Trade Agreements and Arrangements:**

**2.3.7 Preferential trade agreement between SACU and MERCOSUR: Paragraph 2.55, page 18:**

**Question**

In 2008, SACU and MERCOSUR member States concluded negotiations on a preferential trade agreement (PTA). The agreement was signed by the MERCOSUR member States on 15 December 2008, and by SACU member States on 4 April 2009. The PTA has not yet been notified to the WTO and has not yet entered into force. When do you plan to notify the WTO of the PTA?

**Answer**

*The Agreement will be notified to the WTO upon entry into force/implementation and for this to happen, all the parties to the Agreement first have to finalise their ratification procedures.*

**Question**

2. When do SACU members plan to finalize this ratification procedure and bring the PTA into force?

**Answer**

*All five SACU Member States have ratified the Agreement.*

**Part III. Trade Policies and Practices by Measure:**

**3.2 Customs Procedures and Valuation: Paragraph 3.3, page 19:**

**Question**

It is noted that Article 23 of the 2002 SACU Agreement calls for appropriate measures, including customs cooperation, to ensure that the provisions of the agreement are applied effectively and harmoniously. Article 22 calls for similar legislation on customs and excise duties. Each member actually has its own legislation modelled on South Africa's Customs and Excise Act. However, customs procedures have not yet been fully harmonized, and some differences remain in the regulations and administrative procedures; documentation requirements also differ. Would you please identify which customs procedures have not been fully harmonized and when you anticipate this occurring?

**Answer**

*Import and export regulations and requirements are not fully harmonized. The transit procedures (domestic and external) and securities (bond/guarantee) requirements*

*differ within the five Member States. Procedures related to management of customs warehouses (bonded warehouses, manufacturing warehouses and storage warehouses) are also not fully harmonized.*

Question

Also, would you please explain the differences that remain in the regulations and administrative procedures?

Answer

*The regional work towards harmonization of customs procedures is ongoing. Thus far, progress recorded include introduction of the Single Administrative Declaration (SAD) form and it is used as a common customs declaration in SACU. With the advent of modernization of customs systems, processes and procedures, an electronic version is implemented respectively at a national level as part of automation process. Work is underway to harmonize procedures for import and export data exchange with the objective of strengthening cooperation and improving trade data matching process.*

Question

What are the differences in documentation requirements?

Answer

*SACU Member States are using the SAD 500 document for import and export procedures. There is no requirement to have identical documentation.*

Botswana:

**Part III. TRADE POLICIES AND PRACTICES BY MEASURE:**

**Government procurement: Paragraph 3.108**

Question

The Secretariat Report noted that "Botswana is not an observer to the Committee on Government Procurement". Does Botswana plan to become a member of, or observer to, the WTO Agreement on Government Procurement?

Answer

*Issues of Government Procurement are of great importance to Botswana hence the need to critically consider the costs and benefits of being a member of the WTO Agreement on Government Procurement.*

**Part III. TRADE AND TRADE RELATED POLICY DEVELOPMENTS**

**Government procurement: Paragraph 3.14, page 8**

Question

The Secretariat Report noted that "Government procurement in Botswana is open to all local and foreign owned investors". Do local and foreign companies stand on equal footing when pursuing opportunities on the Botswana government procurement market?

Answer

*The Citizen Economic Empowerment Policy makes it mandatory that certain opportunities within a defined threshold in works, supplies and services are reserved for 100% citizen owned companies. Beyond the reserved threshold were local companies competing with foreign owned companies, local companies are given a price preference margin, which varies according to the level of citizen shareholding.*

Question

Are there exceptions whereby government procurement is reserved to local companies?

Answer

*Yes, there are certain procurement activities that are reserved for 100% citizen owned companies.*

Lesotho:

**Part II: TRADE AND INVESTMENT REGIME**

Trade Agreements and Arrangements: paragraphs 2.6 and 2.7, page 151.

Question

The Secretariat Report noted that "Lesotho is an original Member of the WTO. However, Lesotho is not party to the Plurilateral Agreement on Government Procurement". Does Lesotho plan to become a member of, or observer to, the WTO Agreement on Government Procurement (GPA)?

Answer

*Lesotho does not plan to either become a member of or an observer to the Agreement on Government Procurement at this stage due to her level of development and human resources capacity constraints.*

Namibia:

**Part III: TRADE POLICIES AND PRACTICES BY MEASURE**

Government procurement paragraph 3.98, page 237

Question

The Secretariat Report noted that "Namibia is neither a member of, nor observer to, the WTO Agreement on Government Procurement". Does Namibia plan to become a member of, or observer to, the WTO Agreement on Government Procurement (GPA)?

Answer

*No. There is no intention to do so at this stage.*

South Africa:

**Part III: TRADE POLICIES AND PRACTICES BY MEASURE: Government procurement, paragraph 3.102, page 315.**

The Secretariat Report noted that "Foreign firms may only bid through a local agent".

Question

Can South Africa explain why foreign companies must bid through a local agent? Doesn't this have the effect of reducing competition for government tenders?

Answer

*The goal of SA procurement is, firstly, to advance economic transformation and enhance the economic participation of black people in the SA economy. Procurement is therefore used as an enabler for socio-economic transformation. It is for this reason that the Preferential Procurement Policy Framework Act and Preferential Procurement Regulations of 2011 makes provision for the preference point system. This system rates the bidders in terms of their ability to perform the task and the socio economic standing. The regulations also makes provision for those bidders who do not have a scorecard to be rated against.*

*SA also wants to boost their manufacturing sector hence the need for designated sectors. Preference will be given to manufacturers within SA. If products are imported, there are certain mandatory requirements that a foreign bidder must abide by, in the interest of SA.*

**Part III: TRADE POLICIES AND PRACTICES BY MEASURE:**

Government procurement, paragraph 3.114, page 318.

Question

The Secretariat Report noted that "South Africa is neither a signatory nor an observer to the WTO Plurilateral Agreement on Government Procurement." Does South Africa plan to become a member

of the WTO Agreement on Government Procurement on Government Procurement (GPA) in the near future?

**Answer**

***There are no plans by South Africa at this stage to become a member of the WTO Agreement on Government Procurement.***

Swaziland:

**Part III: TRADE POLICIES AND PRACTICES BY MEASURE:**

**Government procurement: paragraph 3.100, page 395.**

**Question**

The Secretariat Report noted that "Swaziland is neither a signatory nor an observer to the WTO Government Procurement Agreement (GPA)." Does Swaziland plan to become a member of, or observer to, the WTO Agreement on Government Procurement (GPA)?

**Answer**

***Currently Swaziland is engaged on Government procurement reforms and any consideration of the WTO Agreement on Government Procurement either as a member or observer will be done once the national process have been completed.***

## EUROPEAN UNION

### Summary

**Page 5 para 8 customs issues.** SACU has responsibilities on custom issues. *"Efforts are ongoing within SACU to facilitate trade by further streamlining customs procedures and documentation".*

### EU Questions N°1 to 5

- 1- Could SACU explain what has been done to coordinate its Member States' positions and activities related to the implementation of the WTO Trade Facilitation Agreement?

#### Answer 1

**Member States are undertaking parallel processes to prepare, respectively, schedules of commitments for Categories A, B, and C and ratification of the Agreement.**

- 2- Does SACU intend to ensure coherence between the respective Member States' lists of Category B and C commitments?

#### Answer 2

**Yes. SACU Member States will coordinate implementation of the Agreement at a regional level.**

- 3- Could SACU outline the main developments that took place regarding Trade Facilitation across the customs union?

#### Answer 3

**The main developments include work towards conclusion and implementation of the SACU Preferred Trader Programme (a step towards Authorised Economic Operator (AEO), conclusion of the draft SACU Regional Customs Risk Management Strategy, and IT connectivity between SACU Member States (encompassing electronic data and information sharing mechanisms) and review of legislative reforms to incorporate international best practices. These developments cover largely article 7 of the WTO TFA.**

4- What is the situation of the ratification of the TFA by the individual member States of SACU?

#### Answer 4

**Member States are at different stages of ratification of the Agreement. Botswana has ratified the Agreement and notified Category A. Lesotho, Namibia, South Africa and Swaziland commenced the process of ratification and scheduling commitments under Category A, B, and C.**

- 5- What are the perspectives for the notification of the category A commitments of the individual Member States of SACU?

#### Answer 5

**The SACU Member States will notify Category A as individual Member States.**

**para 11** states that *"The tariff bindings are ad valorem exclusively. Therefore the imposition of non-ad valorem duties under the SACU CET does not ensure compliance with the binding commitments"*. Paragraph 3.25 refers to bound commitments.

### EU Questions N°6 to 8

-6- Are the SACU member States planning to bring the tariff lines for which the applied MFN rate is higher than the bound rate in line with their WTO commitments and by when can this alignment be expected?

#### Answer 6

**Yes. Where there is agreement that the WTO agreed bound rate is exceeded, the plan is to align the applied MFN with the bound rates, following the normal process of tariff amendments.**

- 7- What are the intentions of the SACU member States regarding the binding of their non-ad valorem tariffs?

**Answer 7**

*In consideration of applications for increase in the duty where the bound rate is an ad valorem duty whilst the applied rate is a formula or specific duty, the Commission calculates the ad valorem equivalent of the proposed applied duty to ensure that it does not exceed the ad valorem bound rate*

- 8- What is the timeframe for the establishment of the SACU Tariff Board?

**Answer 8**

*Currently, work on the establishment of the SACU Tariff Board is ongoing. There is no timeline as to when this process will be concluded.*

Page 5 para 15 on procurement and competition policy

**EU Questions N°9 to 11**

- 9- South Africa's competition regime is well established. Article 2 of the SACU Agreement states that SACU aims to promote fair competition in the Common Customs Area and Article 40 requires all Members to have a competition policy in order to establish a SACU wide cooperation mechanism. This leads the EU to ask the following question: what is the current situation regarding the individual competition regimes of Botswana, Namibia and Swaziland? What are the perspectives regarding a SACU wide cooperation mechanism?

**Answer 9**

- *Competition related issues in Botswana are governed by the Botswana Competition Authority and the Competition Commission which were established in terms of the Competition Act of 2009 as two independent but accountable bodies in the enforcement and advocacy functions under the Act. Botswana also has a National Competition Policy which was passed by Parliament in 2005. Further information and documentation can be accessed on the following official website: [www.competitionauthority.co.bw/](http://www.competitionauthority.co.bw/)*
- *Namibia also has a competition authority, namely the Namibian Competition Commission. It was established in terms of the Competition Act of 2003 (Act No. 2 of 2003). Further information and documentation can be accessed on the following official website: <http://www.nacc.com.na/>*
- *Swaziland's Competition Commission was established in 2007 through the Competition Act, 2007 to foster competition within Swaziland's economy. Further information and documentation can be accessed on the following official website: <http://www.compco.co.sz/>.*

*A draft Annex on possible Cooperation Mechanism on Competition Policy (Article 40) has been developed and work is still ongoing to finalize this Annex.*

- 10- What is the perspective for a regional competition body to enforce competition legislation when there is a cross border impact of anticompetitive behaviours originating in one of the SACU members?

**Answer 10**

*The SACU Agreement does not provide for the establishment of a regional competition authority, but there has been sharing of information through collaborative research projects amongst Member States. In addition collaboration is extended to assist individual authorities to initiate cases on similar conduct by the same companies operating in the region.*

-11- Does the South African Government foresee any mechanism to improve the flexibility within the Broad Based Black Economic Empowerment law for the companies willing to invest in South Africa and participate in public tenders but have difficulties to achieve the minimum points to reach a required level of BEE.

**Answer 11**

*The South African government has mechanisms in place to assist potential investors in addressing the difficulties in meeting the requirement in BBBEE.*

Page 9 para 1.2 Recent Economic Developments

EU Question N°12

How are the SACU individual member States dealing with falling sugar prices? Is a regional response foreseen? If not, what other responses are SACU members considering?

Answer 12

***Sugar is an important sector in SACU and is sensitive to changes in international prices. In response to the falling prices, SACU countries individually and collectively are pursuing strategies to address this challenge.***

**Page 13 section 2.2.2 Common revenue pool and revenue-sharing formula**EU Questions N°13 to 15

- 13- Could SACU elaborate on its individual Member State's revenue projections in the short, medium and long term?

Answer 13

***The revenue shares are based on economic variables such as GDP, population and GDP per capita, thus projections can only be at an aggregate level due to the fact that one cannot project long-term economic performance of the Member States with certainty. However, the CRP is projected to grow moderately in the medium term. In line with the projected economic slowdown in the economies of the SACU major trading partners and also the weak economic activity in the region, in particular, in South Africa.***

***The increase in the level of the Common Revenue Pool (CRP) is underpinned by favourable global economic growth, both in improvements in consumer demand and increase in imports used as inputs in the productive capacity of the region. Therefore, with the current global economic growth projected at 3.1 percent in 2015 and increasing moderately over time. It is anticipated that the level of the CRP will also increase moderately in the long-term in line with economic activity. The current estimates for the short and medium term are that the outturn for the 2014/15 financial year is R75 975 billion, resulting in a shortfall of R7.4 billion compared with the level of the CRP used to determine Member States revenue shares.***

Question 14

14- Can SACU elaborate on what would be the plan to mitigate declining revenues; in particular for countries where the Common Revenue Pool is budgetary important?

- 15- The current system which is based on the 2002 agreement does not enable to compensate important variations and volatility in revenues despite recent progresses due to more regular statistics provided on imports. There have been discussions on a review of the formula but no decision taken yet. The EU would be interested to know what are the ongoing reflections within SACU and in each individual SACU Member state in particular for those members (most except South Africa) for which these revenues represent a large share (more than 50%) of their total budget revenues.

Answer 14 and 15

***The revenue received from CRP has a significant contribution to the BLNS Member States respective national budgets. The uncertain external shocks from the global economic growth has led to volatile and decline in revenue shares. Member States have individually started to put in place buffers and contingency funds in order to cushion against the effect of the decline. Further at the regional level, SACU is considering the feasibility of mitigating factors as part of the review of the Revenue Sharing Arrangement.***

**Page 14 para 2.23** states that "*In accordance with Article 31 of the 2002 SACU Agreement, no SACU member State can negotiate or amend a trade agreement without consent from the others. SACU members currently have a unified approach towards negotiations with third parties on an ad hoc basis*".

EU Question N°16

Can SACU explain on what grounds have some SACU individual members signed up to the Tripartite Free Trade Agreement between COMESA, EAC and SADC and other SACU members did not?

**Answer 16**

***SACU negotiated the Agreement as a bloc. However the signature and ratification will depend on the individual national processes of the Member States.***

Page 17 para 2.50 states that SACU exports to the US under preferential regime have decreased.

EU Question N°17

What explanations can be given to this situation?

**Answer 17**

***The global downturn has resulted in the decline of exports to traditional trading partners such as the US, and AGOA is no exception.***

Page 21 para 3.18 regarding South African tariff quotas. South Africa notified 53 agricultural tariff rate quotas to the WTO in 2014.

EU Question N°18

On what ground can South Africa apply an in-rate quota that is lower than SACU's common external tariff, when SACU would normally have to abide by SACU's applied tariff?

**Answer**

***The agricultural market access TRQs are South Africa's commitments to the WTO and not SACU commitments. These commitments pre-date the current SACU Agreement of 2002. The TRQs thus form an exception to the common SACU external tariff.***

Page 25 para 3.26." During the Uruguay Round, Namibia bound *other duties and charges* (ODCs) at zero".

EU Question N°19

How does this commitment relate to the Amendment of Government Notice NO. 147 OF 30 AUGUST 2002, relating to the imposition of general levies on certain controlled products: Agronomic Industry Act, 1992 (MINISTRY OF AGRICULTURE, WATER AND FORESTRY, No. 268 2014) which states that "*any person who imports into Namibia any controlled product set out in the Annexure to this Schedule, must pay a general levy of five percent (5%) on the landed cost of the controlled product so imported.*"

**Answer 19**

***The general levy was introduced to stimulate domestic production in the agriculture sector in Namibia. These products were declared critical for food security and development, to reduce dependence on imports and reduce the deficit of the balance of payments***

Page 28 para 3.37 "The SACU Agreement provides for the creation of national bodies in each of the BLNS countries to enable them to conduct their anti-dumping and countervailing investigations".

EU Questions N° 20 to 22

-20- Are there any intentions to strengthen the capacities of the Secretariat of SACU (FR)?

**Answer 20**

***Yes the necessary administrative structure will be put in place to support the Tariff Board once it is operational.***

-21- Do the SACU members States have any intention to change the methodology currently used to determine anti-dumping tariffs with the view to take more into account the situation of competitiveness of domestic industries?

**Answer 21**

***ITAC conducts anti-dumping investigations in terms of South African domestic law, which is consistent with the WTO Anti-Dumping Agreement. ITAC does not intend changing this methodology.***

- 22- How far has this process of establishing national bodies to deal with antidumping and countervailing investigations proceeded? Are Botswana, Lesotho, Namibia and Swaziland planning to initiate trade remedies themselves?

**Answer 22**

***Currently, work on the establishment of the SACU Tariff Board is ongoing. There is no timeline as to when this process will be concluded. In the absence of the SACU Tariff Board, the SACU Council has mandated South Africa's International Trade Administration Commission (ITAC), to take responsibility for the administration of the customs tariff and trade remedies, as an Interim Measure.***

***Botswana, Lesotho, Namibia, and Swaziland (BLNS) are at different stages of establishing the national bodies and the process is ongoing.***

- ***Botswana - Legislation establishing the National Body is completed. The setting up of the institution is at its initial stage.***
- ***Lesotho- Draft bill is completed and undergoing internal approval processes.***
- ***Namibia- Legislation has been developed and awaits submission to Cabinet and thereafter Parliament.***
- ***Swaziland - Legislation has been developed and awaits submission to Cabinet then Parliament.***

## WT/TPR/S 284 Annex I Botswana

**Pages 62-67, Botswana investment regime****EU Question N°23**

Could more details be provided on how Botswana does ensure synergy between the Economic Diversification Drive Strategy and the Citizen Economic Empowerment Policy and how these strategies are compatible with Botswana's WTO obligations regarding Local Content Requirements?

**Answer 23**

***The Economic Diversification Drive Strategy aims to achieve industrial development, economic diversification and employment creation, which are in sync with the Citizen Economic Empowerment Policy objectives. These measures are not obligatory to doing trade nor serve to discriminate against foreign business enterprises in Botswana.***

**Page 73-76 Section 3.1.5 on import prohibitions, restrictions and licensing****EU Question N°24**

Could Botswana clarify and provide details regarding the circumstances under which the country applied the import restrictions to promote local production, as mentioned in paragraph 3.32 of the report?

**Answer 24**

***Imports of certain products (grains and their products, horticultural products) are regulated when there is sufficient domestic supply.***

**Pages 90-92 Section 3.3.4 Procurement policy****EU Question N° 25**

Does Botswana have any plans to offer e-procurement services to facilitate access to tenders especially to foreign investors?

**Answer 25**

*Botswana recognizes the importance of e-procurement services in facilitating access to tenders. Botswana is in the process of automating its procurement services through e-Gov. This will benefit both domestic and foreign investors.*

*Botswana is currently piloting module 2 of the Integrated Procurement Management System (IPMS). The Module comprise of the following activities: Capacity Building, ITT vetting, E- Bidding and dispute resolution. The IPMS will ensure that foreign investors can have access to information bidding opportunities in Botswana.*

**Page 74 Table 3.2 Import restrictions and fishery policy.** The import restrictions described in Table 3.2 of the Secretariat's report mention import permits for security reasons for boats (stipulated by the Fish Protection Act).

**EU Question N° 26**

Would it be possible to get acquaintance of this legal instrument, of the types of boats and of the reasons underpinning the need for the permit?

**Answer 26**

*The Fish Protection Act is available and the permit is issued to control fishing in the country with a view to guard against extinction of the fish.*

**Page 81 section 3.2.2 on Export taxes.**

**EU Questions N° 27 and 28**

-Could Botswana clarify to what extent export taxes, charges and levies are used in practise?

**Answers 27 and 28**

*Export taxes, charges and levies are used to encourage beneficiation of locally produced raw materials. i.e. Cattle export levy is applied on all cattle exported from Botswana irrespective of destination. The levy is collected into Cattle Export Levy Fund as specified under Section 25 (1) the Control of Livestock Industry Act. The levy is used for development of livestock industry.*

-Could Botswana clarify whether the "levy of P30 per head of cattle" is collected on cattle slaughtered for export towards preferential markets such as the EU?

*Cattle slaughter levy is collected on all cattle slaughtered at BMC for either local market or export. It is applicable at all local abattoirs and butcheries.*

**Pages 109-112 Section 4.4.2 Energy policy**

**EU Question N° 29**

Could Botswana provide information on its plans to finalise its Renewable Energy Strategy?

**Answer 29**

*The Government of Botswana in collaboration with the World Bank is developing a Renewable Energy Strategy for Botswana which is aimed at unlocking the country's renewable energy potential and providing a firm basis for the scaling-up of the deployment of renewable energy technologies in the country.*

**Page 124 para 4.113 and 4.117.** "Tourism operators must be licensed by the Tourism Industry Licensing Committee, a six-member committee appointed by MEWT from the public and private sectors. Under the Tourism Act of 2009, there are ten tourism-related activities subject to licensing (six more than under the repealed act)".

**EU Questions N° 30 to 32**

-30- Can Botswana explain further its licencing system?

**Answer 30**

*Requirements for the licensing of tourists enterprises include: Business plan, Title deed or lease, Environmental management Plan, approved Building Plans, Road worthy vehicles, occupation permit and the building inspection, identity documents and registered business trading name.*

-31- What are the conditions of treatment of foreign services providers compared to national ones?

**Answer 31**

*Foreign and local service providers are treated equally without any discrimination.*

-32- Are there specific requirements for foreign operators?

**Answer 32**

*The specific requirements for all operators (including foreign and locals) are spelt out on Page 123 para 4.112*

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| WT/TPR/S 284 Annex II Lesotho |
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**Section 3.1.6 on import prohibitions, restrictions and licensing  
Page 164 para 3.34**

**EU Questions N°33-34**

- Could Lesotho clarify and provide details on the import procedures applicable to the case of agricultural products for which the Secretariat report indicates that permits are granted depending on the supply of locally produced goods?

**Answers 33 - 34**

- *The import permits are issued by the Department of Marketing. Products such as milk, sugar, bread, meat, fresh fruit, fresh vegetables, pulses, beans, peas, red meat, poultry and eggs require valid import permits. Permits for these products are granted depending on the local supply. If there is enough supply locally, permits will not be granted until the time when there is need to import such goods. Permits may be valid for one shipment (milk, dairy products and livestock) and one month for sugar, fresh fruit and vegetables. In most cases importers must hold a trading license to apply for an import permit.*

**Validity of Permits**

- *For agricultural commodities (sugar, bread, meat, fresh fruits, fresh vegetables, pulses, beans, peas, red meat, poultry and eggs), import permits are valid for a period of one month with an exception of dairy / milk whereby single entry consignment applies. For other commodities, it depends on an individual importer to spread his / her shipment within the specific validity of an import permit issued.*

**Details on import procedures and requirements**

*In consultation with production departments of the Ministry of Agriculture (Crops and livestock) as well as with individual farmers and farmers associations, the Department of Marketing (DoM) obtains information regarding supply of various commodities. DoM assesses the balance between supply and demand and quality for a specific time period, usually a month, prior to issuance of import permits based on the available information provided during consultation process. This assessment enables the Department to determine and decide as to which specific commodities could be allowed for importation based on quantities and quality. The information is then widely publicised to all stakeholders, especially trading and farming communities.*

- *All importers are obliged to apply for import permits upon expiry of their valid permits. However, this is not the case with decentralized import permits whereby traders in the districts are always in consultation with Marketing Officers through producer-trader meetings held frequently, usually on a monthly basis. For general requirements relating to specific commodities, reference can be made to the attached overview of agricultural marketing import control regulations.*
- *As far as import licensing procedures are concerned, no updates and modifications are envisaged therefore the status quo will be maintained. (Additional information on Appendix A)*

- Considering that the most recent annual notification of its import licensing procedures was submitted only in 2010, does Lesotho envisage to submit an updated notification?

**Answer**

*Lesotho will submit her notifications on import licensing once updates have been verified with relevant institutions.*

Page 191 para 4.86 on postal and courier services.

**EU Question N° 35**

For which services has the Lesotho Post Office been granted exclusive rights? Can foreign operators provide postal and courier services in Lesotho and under which conditions? (B1)

**Answer 35**

*Lesotho Postal Office has exclusive rights for all postal services (e.g. sale of stamps, financial services, postal orders etc) except for courier services. This is pursuant to Lesotho Postal Services A Ct of 1979. Foreign operators are allowed to provide courier services, there are no conditions, however, they have to comply with rules and regulations governing trade in Lesotho e.g. Licensing, tax obligations, company registration etc.*

**WT/TPR/S 284 Annex III Namibia**

Pages 217-219 Section 2.3 on the investment regime, Paras 2.18 and 2.26

**Namibia is currently reviewing its Foreign Investment Act.**

**EU Question N° 36**

It has been reported to the EU that a new investment bill has been approved by the Cabinet. Can the authorities explain how will the revisions impact the currently existing Bilateral Investment Treaties mentioned in paragraph 2.26? Could the bill be shared or, if it is only a draft, could the intentions of the government be shared?

**Answer 36**

*The new investment promotion bill has been presented to Cabinet and is still under discussion and therefore cannot be shared. Under the new bill, existing investments are obliged to register with the investment promotion agency, which is the Namibia Investment Centre. The draft bill makes provision for the establishment of the Integrated Client Service Centre or a One-Stop-Shop, which will smoothen procedures regarding entry requirements for investors. The Government's position that once the new law is in place the existing bilateral investment treaties including those in force, should be phased out. The new investment promotion bill will include many of the attributes needed to attract FDI flows, as well as provide more transparency in relation to decision-making by Government and rights and obligations for investors.*

Page 222 para 3.22 on the protection of Infant industry

**EU Question N° 37**

If infant industry measures can be applied for a maximum of eight years, on which grounds was the infant industry levy on pasta in place for 12 years (from 2002-2014)?

**Answer 37**

*The SACU Agreement provides for the SACU Council to extend IIP measures beyond 8 years, and as such, the IIP for pasta was in place for 12 years.*

Page 222 para 3.25 on general duties and charges

**EU Question N° 38**

On what grounds does Namibia impose general levies on products such as agricultural products when it has bound *other duties and charges* (ODCs) at zero?

**Answer 38**

*General levies are introduced to stimulate domestic production in the agriculture sector in Namibia. These products have been declared critical for poverty eradication, national*

***food security and sustainable development as well to reduce dependence on imports and balance of payment deficit.***

**Page 223 para 3.31 on horticulture infant industry protection and related import permits policy. According to the report, permits are needed** for the importation of controlled agronomic crops - white maize, wheat, pearl millet, and horticultural products-. Permits for white maize and pearl millet are only granted during the open border period once domestic production has been marketed to millers. Furthermore, the Namibian Market Share Promotion (MSP) Programme run by the Namibia Agronomic Board requires all importers of horticultural fresh produce to buy a certain minimum percentage of fresh produce cultivated in Namibia before a permit is granted for imports.

EU Questions N° 39 to 41

-39- Could Namibia clarify how the system in place can guarantee the non-discrimination between local products and importations?

**Answer 39**

***Namibia has limited arable land and thus capacity to produce as such imports will always enjoy market access. Importers are guaranteed an import permit once they have purchased a certain percentage from locally produced crops at any time during the year, thus imports are allowed in unlimited quantities to supplement domestic production. This measure is intended to encourage the development of the horticulture industry in the country, encourage food security and self-sufficiency.***

- 40-In particular, with reference to the white maize and pearl millet, could Namibia explain the rationale for allowing imported goods only once domestic production has been marketed to millers?

**Answer 40**

***The rationale for the measure is to secure and promote the nascent national production base. White maize and pearl millet have been declared as strategic products for Namibia and are vital crops for food security and nutrition. The WTO Agreement recognises that countries may need to take protective measures and policies to promote economic development.***

-41-Considering that the most recent annual import licensing notification submitted by Namibia dates back to 2010, does Namibia envisage to submit a new updated notification?

**Answer 41**

***Namibia is developing the requisite capacity for notifications and will update its notifications once that has been achieved. A National Seminar on WTO Notifications was held in October 2015 to assist in this respect.***

**Page 237 section 3.4.4 Government Procurement**

A new Public Procurement Bill has been tabled in Parliament on 25 September 2015. **Para 3.99** indicates that local content requirements have significantly increased (60% instead of 10%) **Para 3.100** refers to a new law under elaboration. **Para 3.102** reports the following " *A recent study by the Institute for Public Policy Research has identified a number of shortcomings of the legislative framework and institutional weaknesses of the public procurement process. These include the lack of an oversight body to monitor the assets, incomes and spending habits of Tender Board members and Secretariat staff; exemptions from official procurement procedures for major public procurement projects; and a growing lack of public trust in Namibia's procurement agencies evidenced by numerous legal challenges to Tender Board decisions.*"<sup>25</sup>

EU Question N° 42

What is the current state of play and intentions of the government regarding the legislation on public procurement given the above shortcomings identified by the IPPRN?

**Answer 42**

***The envisaged public procurement bill is much more appropriately structured than the dispensation which was instated by the Tender Board Act of 1996 and will apply to all public entities. The levels of oversight have been improved and increased substantially***

*and the checks in the procurement pipeline are in line with many aspects of international procurement best practice and general principles of good governance. The proposed Bill specifically articulates anti-corruption considerations as having informed its design. In this regard, the Bill comes with measures and standards that speak to the maintenance of ethical conduct by both procuring entities and officials as well as bidders.*

**Pages 247 - 251 Section 4.3 fishing and aquaculture, Para 4.52**

Fisheries is an important asset for Namibia's economy. The strategic plan of 2009-14 is now terminated. Para 4.52. states that " *Fishery legislation in Namibia is unchanged since the last TPR report. The MFMR is in the process of reviewing and updating policies, the Marine Resources Act and its regulations, as well as the Inland Fisheries Act and Regulation.* "

EU Question N°43

What are the lessons drawn from the plan's implementation and what are the main objectives of the authorities as regards fisheries?

**Answer 43**

***Namibia will provide responses to this question at a later stage.***

*Namibia*

**Page 21 para 1.13 on fisheries** states the following" *The poor performance of this sector can be attributed to demersal fisheries processed on board that recorded a decline of 21.9% in 2014 compared to a growth of 7.7% in output of the previous year.*"

EU Question N°44

What could be the reasons for the "decline in 2014 by 21.9% of demersal fisheries"?

**Answer 44**

***Namibia will provide responses to this question at a later stage***

**Page 28 para 2.12.** *"The current policy includes equal treatment of domestic and foreign investors but this will be changed in new act, (for example with regard to Government policy issues or, sector restrictions, as well as performance requirements for investors); openness of almost all the sectors to foreigners with few exceptions such as the extractive mining and fish sectors (to be changed in new act). The aim is that the new act will facilitate Foreign Direct Investment (FDI) into Namibia, in that it has more clear guidelines for foreign investors (e.g. with regard to thresholds, obligations of investors, sector openness and what is defined as investment)".*

EU Questions N°45 and 46

-What are the changes to be introduced regarding foreign investors in the fish sector, particularly in terms of restrictions, performance requirements, obligations, thresholds, etc ?

Will the new act itself contain the above mentioned "clear guidelines for foreign investors" in that sector?

**Answers 45 and 46**

***Namibia will provide responses to this question at a later stage.***

**Page 254-56 section 4.5.2.1 Petroleum and Gas**

The Finance Minister has questioned the viability of the Kudu Gas Power Plant. The potential for renewable energy is underutilized while only a few foreign companies have been granted licenses for PV power plants.

EU Question N°47

Clarification of the foreign investment regime in energy, particularly renewable energy, would be welcomed.

**Answer 47**

***Namibia is conducting feasibility studies to determine the most sustainable measures.***

**Page 272 on tourism, Para 4.185 states that** "Tour guides must be registered with the NTB. Registrations are valid for two years or another period to be determined by the Board. A tourism levy equivalent to 2% of accommodation and breakfast (or 1% on a full-board basis) is payable to the Namibia Tourism Board. Tourist activity operators must pay an application fee of N\$1,000 plus N\$250 for each vehicle, vessel or aircraft used, up to a maximum of N\$10,000 (foreign tour operators pay N\$10,000 plus N\$500 for each vehicle registered to operate in Namibia). Registration fees are N\$50 for each vehicle, vessel or aircraft used, to a maximum of N\$2,000 for domestic operators (for foreign tour operators N\$2,000 plus N\$100 for each vehicle registered for conveying clients in Namibia)."

**EU Question N°48**

Can Namibia inform whether the tourist activity operators' allocation fee is paid by all operators or only by foreign services provider?

**Answer 48**

***Both foreign and local tour operators pay allocation fees.***

**Trade Policy Review Report by Secretariat Annex IV South Africa**

**Page 294-95 on notifications to the WTO**

It appears that notifications are sometimes late and do not enable proper consultations on SPS or TBT. The Secretariat report indicates that reforms are considered on SPS given the current level of complexity and overlap.

**EU Question N°49**

What are the intentions of the government regarding the reform of SPS legislation and the notification processes of SPS and TBT legislation to the WTO?

**Answer**

***It is unclear to South Africa what clarification is sought by the EU given the information contained in table 2.1; selected notifications, 2009 - 15 with regard to SPS and TBT.***

**Page 295 para 2.15** on Bilateral Investment Treaties. Whereas table 2.2 depicts a picture where only BITs with some EU Member States have been terminated, the EU would appreciate receiving confirmation that the MS will continue being treated as well if not better than when those BITs were in force.

**Answer**

***EU members will be treated the same way as they have been treated when the BITs were in force. EU investors and their investments are currently receiving protection in terms of the Constitution as well survival clauses of the BITs. The Investment Bill also will provide an extra layer of protection once it comes into force.***

**EU Questions N°50 and 51**

-What will be the treatment of foreign investors of the EU under the new Bill on Promotion and Protection of Investment for those MS that will no longer be covered by BITs?

**Answers 50 and 51**

***While South Africa is currently finalising its Investment Bill the investments of Member States whose BITs have been terminated will continue to receive the same type of treatment as when the BITs were in force. South Africa is currently taking the Investment Bill through the parliamentary process. The Bill incorporates some of the substantive provisions found in BITs which will serve to further strengthen the protection to foreign investors and their investments once the Bill becomes law.***

-How does South Africa see the compatibility of the draft Bill on Private security companies and its GATS commitments?

**Answer**

***The Bill is still under consideration and South Africa's international commitments will be taken into account in this process.***

**Page 298 para 3.4. on excise duties.**

The EU notes that the Ministry of finance published in 2014 a report on excise duties on alcoholic beverages.

**EU Question N°52**

What are the intentions of the government regarding the follow up to this report?

**Answer 52**

***The intention of the paper was to analyse South Africa's experience with the current excise duty structure since its implementation in 2002 and the recent developments in excise policy formulation both locally and internationally. This was done with a view of looking at the scope of using the excise duty system to internalise the social external costs arising from alcohol abuse. Following consultations with different stakeholders, incremental changes are being made to the excise tax structure and rates in successive budgets.***

**Page 310 section 3.2.3 on export control.**

The EU notes that the report does not cover export controls of dual use items thought through Resolution 1540 and through its membership of export control regimes like the Nuclear Supplier's Group, South Africa implements export controls of dual use items.

**EU Questions N°53 to 55**

- 53- Given the role of South Africa in implementing certain obligations of the SACU members that do not have the institutions or capacity, what is the role (if any) of South Africa regarding export control obligations of the SACU members in light of the UN Resolution 1540?

**Answer 53**

***Export control is not covered within the mandate given to South Africa by SACU Council of Ministers.***

- 54- Regarding scrap metal, can the government provide a state of play of the situation regarding export licensing measures as introduced in 2012/13 on scrap metal?

**Answer 54**

***The policy directive on the exportation of ferrous and non-ferrous waste and scrap metal has only recently been implemented and an impact assessment will be conducted during the 2017 calendar year. We are at this stage unable to comment on the consequences, state of play or effectiveness of the policy directive.***

- 55- What is the Government's assessment of the effectiveness of these measures of export control of scrap metal compared to their initial objectives?

**Answer 55**

***See response provided above.***

Export control measures seem to also apply on other metals listed in Schedule 1 of ITAC Notice 92 of 10 February 2012 including: lead ores and concentrates; tungsten ores and concentrates; molybdenum ores and concentrates; tantalum ores and concentrates; refined copper and copper based alloys; lead bars, rods, profiles and wire (for construction); lead plates, sheets, strip & foil used in the area of radiation shielding and construction; lead powders & flakes, lead tubes and pipes and related fittings, and Other articles of lead; tungsten and articles thereof; molybdenum and articles thereof and tantalum and articles thereof.

- 56- Could the government explain the consequences of the Policy Directive on the Exportation of Ferrous and Non-Ferrous waste and scrap metal in the trade flows of this commodity?

**Answer 56**

***The policy directive on the exportation of ferrous and non-ferrous waste and scrap metal has only recently been implemented and an impact assessment will be conducted during the 2017 calendar year. We are at this stage unable to comment on the consequences, state of play or effectiveness of the policy directive.***

- 57-Can the government provide a state of play of the situation regarding these measures?

**Answer 57**

***See response provided above.***

- 58-Has an assessment been made of the effectiveness of the measures compared to their initial objectives?

**Answer 58**

***See response provided above.***

Page 310 section 3.1.4.4 Marking, labelling, and packaging

The EU notes that the current labelling requirements in place in South Africa, which requires packaging to be designed especially for the South African market, has cost implications and acts as an effective barrier to entry.

**EU Questions N° 59 and 60**

- Does the Government have any intention to examine the possibility of recognising labels which offer an equivalent level of information?

**Answer 59 and 60**

***Not at this stage.***

- Based on the current labelling, bottle volume and minimum strength by volume requirements in South Africa mean that whisky bottled for South Africa is treated in a manner different from other like spirits. Instead of three messages, seven messages rotating during a year will be required. The labels may cover both box and bottle. Does the Government of South Africa have any intention of examining its current requirements to ensure that imported whiskey is treated as a like-product as other domestic and imported spirits?

**Answer**

***The labelling requirements are the same for both domestically produced and imported whisky. The Liquor Products Act 60 of 1989 is under review.***

Page 312 section 3.3.2.1 on competition policy, Para 3.81 reports that the "Competition Commission has the right to exempt firms from the application of the Competition act. Exemptions are granted by the Commission if an agreement or practice contributes to the following objectives: export promotion, assisting SMEs..."

**EU Questions N°61 and 62**

-Regarding the above and exemptions on ground of export promotion, can the Government indicate if any exemption has been granted for such objective and if so give some details about the case? Are the exemptions made public together with the motivation for the exemption?

**Answers 61 and 62**

- ***Firms may apply to the Commission to be granted exemption if such a firm aims to participate in prohibited practices as set out by Chapter 2 of the Act (Restrictive practices and Abuse of Dominance). Firms may be granted exemption by the Commission if the prohibited practices which they intend on engaging in, contributes to the following objectives:***
- ***The maintenance and promotion of exports;***
- ***The promotion of the ability of small firms controlled or owned by historically disadvantaged persons to become competitive;***
- ***The improvement of productive capacity which is necessary to stop the decline of an industry; and***

- *The improvement of an economic industry designated by the Minister, after consulting the Minister responsible for the industry.*
- *Furthermore, a firm may apply for and be granted an exemption from prosecution that relates to intellectual property rights and the following acts for a specified period:*
  - *Performers' Protection Act no. 11 of 1967;*
  - *Plant Breeder's Rights Act no. 15 of 1976;*
  - *Patents Act no. 57 of 1978;*
  - *Copyright Act no. 98 of 1978;*
  - *Trade Marks Act no. 194 of 1993; and*
  - *Designs Act no. 195 of 1993.*

*The Commission has granted a number of exemptions for purposes of export promotion in terms of section 10(3)(b)(i) of the Act. Some of the exemptions were granted for more than one objective e.g. promotion of small business to be more competitive (section 10(3)(b)(ii); stop decline in a particular industry (section 10(3)(b)(iii)). The table below provides a summary of the exemptions granted since 2009 where export promotion was considered as part of the exemption.*

**Table 1: Exemptions granted by The Competition Commission in terms of section 10(3)(b)(i) of the Act – Maintenance and Promotion of Exports**

| Date of Decision | Parties involved   | Industry | Reason for granting exemption   |
|------------------|--|----------|---|
| 2010/03/12       | South African Airways / Star Alliance  | Airlines | <ul style="list-style-type: none"> <li>• Maintenance and promotion of exports</li> </ul>  |
| 2011/05/31       | South African Airways / Star Alliance  | Airlines | <ul style="list-style-type: none"> <li>• Maintenance and promotion of exports</li> <li>• Stop decline in an industry</li> </ul>       |
| 2011/07/05       | South African Airways / Qantas   | Airlines | <ul style="list-style-type: none"> <li>• Maintenance and promotion of exports</li> </ul>  |
| 2014/06/11       | South African Squid Exporters Association (SASEA)  | Fishing  | <ul style="list-style-type: none"> <li>• Maintenance and promotion of exports</li> <li>• Promote small business to compete</li> </ul> |
| 2014/07/15       | African Marine Products (Pty) Ltd / Oceana Lobster (Ltd) / Overstone Agencies (Pty) Ltd / Premier Fishing SA (Pty) Ltd / Ruwekus Fishing (Pty) Ltd | Fishing  | <ul style="list-style-type: none"> <li>• Maintenance and promotion of exports</li> </ul>  |
| 2014/10/28       | Etihad Airways PJSC / South African Airways  | Airlines | <ul style="list-style-type: none"> <li>• Maintenance and promotion of exports</li> <li>• Stop decline in an industry</li> </ul>       |

Source: The Competition Commission of South Africa Annual Reports.

The Competition Commission must give notice in the Government Gazette of South Africa of:

- Any application it has received for exemption;
- Must allow interested parties to make written representations as to why the exemption should not be granted;
- Must also give notice before exemptions are granted, refused or revoked.
- Notices in the Government Gazette are publically available for interested parties to access, with the motivations for the exemptions included in the published notices. In addition, the Commission has over the years expanded on the detail of exemptions which it has granted in its Annual Reports and also publishes information on exemptions in its Quarterly Newsletter. Before granting an exemption, the Commission contacts market participants (industry players) and government agencies during the investigation phase. All interested parties are able to provide information that will assist the Commission in making its decision.
- Page 313 para 3.88. The paragraph alludes to the situation of "complex monopoly conduct" but does not give sufficient information to really understand the situations of anticompetitive behaviour that are not covered by the current legislation.

EU Question N° 63

Could the government explicit further the situations (with examples) where the current legislation on competition does not address all competitive behaviours and what are the intentions of the government regarding the situation?

Answer 63

*There are plans underway to make certain amendments to the Competition Act to provide better clarity on some provisions and provide definitions to some of the terms which were not previously defined. The envisaged changes will only be communicated when the proposed legislative changes are made public for consultations.*

**Page 314-315 section on SOEs**EU Questions N° 64 and 65

- Can the government explicit how the competition legislation applies to SOEs and the link with the notion of competitive neutrality?

Answers 64 and 65

*The complex monopoly provisions can be compared to the current section 4(1)(a). However, whereas the aforementioned section applies to any markets, the complex monopoly provision only applies to concentrated markets in terms of section 10A(1) where at least 75% of the goods or services in that market are supplied to or by five or fewer firms. An initiating complaint in terms of section 49B is a jurisdictional requirement for an investigation of conduct that may be a contravention of section 4(1)(a) whereas sec 10A(3)(a) investigation may be conducted without an initiating complaint.*

*Section 4(1) (a) requires an agreement<sup>2</sup> or concerted practice<sup>3</sup> between firms. Section 10A(1), on the other hand, requires firms to conduct their affairs in a conscious parallel manner or co-ordinated manner, without agreement between or among themselves. The concept of a conscious parallel manner seems to have been introduced to avoid the requirement to prove direct or indirect contact. It is described in section 10A (2) as occurring when two or more firms in a concentrated market, being aware of each other's action, conduct their business affairs in a co-operative manner without discussion or agreement.*

*The Commission may apply to the Tribunal for a declaratory order against the firms engaged in a complex monopoly conduct. Declaratory order serves as a yellow card (no admin penalty for first contravention). Contravention of this order constitutes a prohibited practice.*

Question

- Regarding subsidies to SOEs in order to contribute to their fulfilling of their public mandate, what is the situation? For example has the government adopted any guidelines regarding the financing of SOEs and the management of subsidies so as to ensure that subsidies attributed to fulfil the public mandate are not excessive and do not create an artificial competitive advantage to the SOE when active in markets where private operators are also active? Has the government considered implementing certain OECD guidelines as regards the transparency of the financial management of SOEs?

Answer

- *The South African government has initiated a process to quantify the costs of the developmental (non-commercial) mandates being undertaken by SOCs with the intention of using this information to clarify the funding of such mandates in the shareholder compacts (performance agreements) of the SOCs. Funding could be through explicit transfers of fiscal funding, cross-subsidisation between customer groups, or through government as shareholder accepting lower financial returns on its equity investments.*

<sup>2</sup> Includes a contract, arrangement or understanding, whether or not legally enforceable.

<sup>3</sup> Means co-operative or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement.

- *Currently, government makes fiscal transfers to entities. These subsidies do not cover the full costs of the developmental activities undertaken by these entities.*
- *In 2014, government adopted a policy that any capitalisation of SOEs should be financed in a deficit neutral manner through the sale of non-strategic assets. Guarantees have been provided to a number of SOEs which allow them greater access to financing at a lower cost than would otherwise have been the case. This has enabled the cost of key public infrastructure projects to boost growth to be reduced, as well as an expansion in lending by development finance institutions. It has also allowed entities like South African Airways, South African Express and the South African Post Office, to finance their developmental activities.*
- *In addition, the Competition Act does not currently contain any provisions relating to state aid or state subsidies. Absent state aid provisions, the Commission has dealt with such cases on an ad hoc basis and applied the provisions of the Act accordingly. In most instances, the competition authorities have taken the view that it does not have jurisdiction and the case is accordingly dismissed. In AEC Electronics (Pty) Ltd v The Department of Minerals and Energy<sup>4</sup> the Tribunal held that: "it did not have the powers to instruct a state functionary exercising a public power to act in a particular manner, to desist from acting in a particular manner, or to remedy such actions". It concluded that state functionaries exercising public power are not susceptible to its jurisdiction and that the wrongful exercise of public power is a matter over which the Tribunal has no jurisdiction.*

**Page 326 para 4.13 on land reform.** The EU is aware that new projects seem to have a rate of failure that is quite high (about 70%). There seems to be no reform of the management of the lands that are for shared use though most of the rural black population live in these areas.

EU Question N° 66

Are there any considerations to review the land management and introduce a reform of land management?

Answer 66

*Land management policies are constantly under review in an effort to improve the effectiveness of land management and to ensure effective resource utilization within the broader policy framework of the land reform policies of the country.*

**Page 330 para 4.48 on fishing rights and para 4.52 on small scale fisheries policy adopted in 2012.**

EU Question N° 67

The fishing rights are given for a very long period of up to 20 years. What is the current situation in light of the paragraph 4.52 that refers to the need to address depletion of critical fishery stocks and the need to address imbalances of the past and ensure that small scale trade fishers are accommodated?

Answer 67

*Fishing rights are allocated in terms of a General Policy on the Allocation and Management of Fishing Rights of 2013, under authorization of the Marine Living Resources Act, (Act No. 18 of 1998). The Department of Agriculture, Forestry and Fisheries has published amendments on sector specific changes to the allocation of fishing rights in June 2015 with time for comments till 17 August 2015. The Department is in the process of finalizing these amendments.*

**Page 337 section 4.4 on services, para 4.171, 4.172 and 4.173 regarding tourism**

EU Question N° 68

Given that South Africa has full commitment for Mode 3 GATS for tourist guides, for tour operators, can South Africa explain why the following practices are to be seen as GATS compatible:

<sup>4</sup> AEC Electronics (Pty) Ltd v Department of Minerals and Energy 48/CR/Jun09.

- foreign tourist guide registration and training?

***The requirements for registration and to comply with the minimum standard of training as a tourist guide applies on a non-discriminatory basis to South Africans and foreign nationals who wish to provide tourist guide services. Registration and training requirements assist the local authorities in determining the ability and competence of the potential tourist guide.***

- granting of work permits, as residence permits are not scheduled in the GATS offer?

***As in any other jurisdiction, a tourist guide who is a foreign national must be in possession of valid authorisation to undertake such activities in South Africa.***

- registration conditions for foreign-owned travel agents, which do not seem to be similar to domestic travel agents according to para 4.173?

***Foreign travel agents (like most other businesses) are obliged to register under the South Africa Companies Act and comply with relevant regulations including those of IATA.***

#### Trade Policy Review Report by Secretariat Annex V Swaziland

##### Page 383 para 3.33

"NAMBOARD may set quantitative limits or impose levies on certain agricultural products taking into account the availability of local production".

##### EU Question N°69

Could Swaziland explain how the availability of local production is considered when deciding on setting quantitative limits or imposing a levy?

##### Answer 69

***Agricultural levies and quantitative limits are product specific and are only imposed during harvest seasons and discontinued thereafter. Determination of the levies and limits are set through assessment of local programmed farmers' production compared to local consumption of a certain agricultural product. Should there be surplus produce NAMBOARD will impose the limits or levies for that particular product and for the harvest season. But in the event there is a shortfall on production as compared to consumption, there will be no limits or levies imposed.***

##### Page 416 para 4.104 regarding courier services

##### EU Question N°70

Can foreign operators provide courier services in Lesotho. If so, which services and under which conditions?

##### Answer

***Lesotho Postal Office has exclusive rights for all postal services (e.g. sale of stamps, financial services: money orders, postal orders etc.) except for courier services. This is pursuant to Lesotho Postal Services Act of 1979. Foreign operators are allowed to provide courier services, there are no conditions, however, they have to comply with rules and regulations governing trade in Lesotho e.g Licensing, tax obligations, company registration etc.***

#### Report by SACU (WT/TPR/G/324)

##### Botswana

**Page 8 para 3.14** Currently, procurement documents are not digitalised, which makes difficult for non-resident investors the access

##### EU Question N°71

What are the Government of Botswana's plans to offer e-procurement services to facilitate access to tenders especially to foreign investors? Comment;

**Answer 71**

***Botswana is currently piloting module 2 of the Integrated Procurement Management System (IPMS). The Module comprise of the following activities: Capacity Building, ITT vetting, E- Bidding and dispute resolution. The IPMS will ensure that foreign investors can have access to information bidding opportunities in Botswana.***

**Page 11 section 5** With regard to Trade-Related Technical assistance, the areas highlighted in section 5.1 do not appear to include Trade Facilitation.

**EU Question N°72**

Could Botswana provide more detail on how the WTO Trade facilitation Agreement is being taken forward, particularly with regard to the identification and future implementation of its Category B and C commitments?

**Answer 72**

***Botswana has categorised the measures into A, B, and C depending on the status of implementation of measures. Currently Botswana is in the process of developing project proposals with the assistance of UNCTAD for Category C which requires technical assistance for implementation.***

**South Africa**

**Page 38 para 3.4:** " 3.4.

*Accordingly we have sought to strengthen our procurement system to support increasing local industrial production. In this regard, sectors already designated include:(i) Rail rolling stock (locomotives, wagons and carriages);(ii) Power pylons; (iii) Bus bodies;(iv) Textile, Clothing, Leather and Footwear;(v) Canned vegetables; (vi) Furniture;(vii) Certain Pharmaceuticals; and (viii) Set top boxes*

**EU Questions N°73 and 74**

Does the Government intend to add more products to the list? What is the basis for its decisions on sector designations?

Have there been evaluations of the impact of these measures compared to their initial objectives? Has the 75% target been met?

**Answer 73 and 74**

***Whether products should be placed on the list, is considered on a case-by-case basis. Government uses national industrial participation, competitive supplier programme as distinct procurement levers to reach expenditure aimed at developing new industrial and technological capabilities.***

**NEW ZEALAND****SOUTH AFRICA: INTERNATIONAL ARRANGEMENTS AND TRADE NEGOTIATIONS****5.4 Trade Facilitation Agreement****WT/TPR/G/324, section 5.4, page 41, para 5.13**

Section 5.4, paragraph 5.13 states that "Potential benefits notwithstanding, consideration must also be given to the impact of the TFA on regional integration processes in Africa. ... African countries will need to schedule their TF commitments in a manner that ensures coherence with regional and continental integration objectives."

Question

Can South African please explain how the Trade Facilitation Agreement's commitments conflict with "regional and continental integration objectives"?

Answer

*The Trade Facilitation Agreement will be implemented in such a way that it enhances regional and continental integration objectives.*

**REPORT BY THE WTO SECRETARIAT (WT/TPR/S/324)****3 TRADE POLICIES AND PRACTICES BY MEASURES****3.4 Tariffs and Other Charge****WT/TPR/S/324, section 3.4, page 22, para 3.21**

Section 3.4, paragraph 3.21 states: "The highest ad valorem rate (96%) applies to 14 tariff lines including mainly dairy products; and the highest *ad valorem* equivalent (624%) applies to worn clothing and worn textile articles (Table A3.1)."

Questions

a) What measures have SACU Governments taken to ensure that where a specific or mixed tariff is used the bound tariff rate is not exceeded?

Answer

*In consideration of applications for increase in the duty where the bound rate is an ad valorem duty whilst the applied rate is a formula or specific duty, the Commission calculates the ad valorem equivalent of the proposed applied duty to ensure that it does not exceed the ad valorem bound rate.*

b) What consideration have SACU Governments given to shifting to ad valorem tariffs?

Answer

*SACU Governments are not engaged in any process of changing the tariff structure. 97% of the applicable tariffs in SACU are ad valorem duties.*

**NORWAY**

Trade facilitation:

**Question**

Norway is a strong supporter of the Agreement on Trade Facilitation, and would like to see it enter into force as soon as possible. How far has the process of ratification and implementation of the Agreement on Trade Facilitation come in the SACU-countries?

**Answer**

*Member States are at different stages on implementation of the WTO TFA. Member States are undertaking parallel processes to prepare, respectively, schedules of commitments for Categories A, B, and C and ratification of the Agreement. Thus far Botswana notified Category A and ratified the WTO TFA. Other Member States are in the process of ratification including notification of Category A commitments. Member States agreed that measures that fall under Categories B & C will be agreed and implemented as a region. To this end, the WTO is supporting the Member States to arrive at a common understanding of the measures that can be implemented collectively as a region.*

Distribution of funds among SACU members

**Question**

As has been stated in the report, intra-country socio-economic inequalities within SACU are among the highest in the world, and the SACU agreement does not provide for harmonization of macroeconomic policies. As the largest economy, South Africa is the main investor in the other SACU countries and also dominates regional trade, with over 95% of commercial flows within the customs union involving it as destination or source. We would be interested in knowing more about the formula that determines how the customs and excise revenues gathered in SACU are distributed among its members, and how the review of the revenue-sharing arrangement is progressing (ref para 2.20 of the secretariat's report).

**Answer**

*Given the structure of the revenue sharing formula, the BLNS Member States get significant share of their revenue from the Customs Component whilst South Africa gets more than 90% of its share from the Excise Component. The Development Component is meant to compensate the least developed economies.*

*With regard to the review of the revenue sharing arrangement, Member States submitted their respective proposals which were considered by the Task Team on the Review of the Revenue Sharing Arrangement with the Technical Committee providing technical backstop. The proposals were condensed into the different proposals based on the agreed framework and principles guiding the review. Currently we have three working proposals which are still under further technical review.*

**UNITED STATES****WT/TPR/S/324****page 30, paragraph 3.43:**

Paragraph 3.43 refers to the "International Trade Administration Commission Safeguard Regulations of 8 July 2005." Could the Governments of the Southern African Customs Union please clarify how these regulations differ, if at all, from the "Safeguard Regulations prescribed by the Minister of Trade and Industry on 27 August 2004" which were notified to the WTO September 22, 2004? If the regulations are different, could the Governments of the Southern African Customs Union please If the regulations are different, could the Governments of the SACU please clarify when it will notify these new regulations to the WTO?

**Answer**

*ITAC Safeguard Regulations were first published in Government Gazette No. 26715 on 27 August 2004 and notified to the WTO on September 2004. On 8 July 2005 the Amended Safeguard Regulations were published in Government Gazette Notice R662 of 2005 in Government Gazette No.27762. The purpose of the amendment was to include a provision on the Special Safeguard on Agricultural products in terms of the Article 5 of the WTO Agreement on Agriculture. ITAC is in the process of reviewing the regulations. Once the new regulations are finalized, it will be notified.*

**QUESTIONS FOR BOTSWANA****Part I: Questions on the Secretariat report****WT/TPR/S/324****2.3 Trade Agreements and Arrangements**

Page 15, paragraph 2.35: The Report notes that the NEPAD promotes regional economic integration priorities, including climate change and natural resource management. Does the Governments of Botswana participate in any natural resource management projects that include wildlife conservation and combatting poaching?

**Answer**

*Botswana has and participates in the following initiatives/programmes on natural resource management projects:*

- *The Northern Botswana Human Wildlife Co-existence Project*
- *The Netherlands Forensic Capacity Project*
- *The Rhodis project for Rhino conservation*
- *Botswana spearheading the Southern African Wildlife Enforcement Network (WENSA)*
- *African Elephant Action Plan (AEAP) implementation through the African Elephant.*

Do the Governments of SACU, specifically Botswana, engage in any joint wildlife conservation programs through NEPAD? If so, please describe.

**Answer**

*Our projects are sponsored by other entities other than NEPAD.*

Do any resource management projects in Botswana include ecosystem protections?

**Answer**

*There are efforts for ecosystem protection initiatives, some of which will be realized through the National Biodiversity Strategic Action Plan (NBSAP)*

Page 20 paragraph 3.8: The Secretariats report notes that the SACU trade partnership strategy was also developed to, *inter alia*, strengthen the consultation process between customs and business, and develop an Authorized Economic Operator (AEO) program aligned with the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE), and is aimed at rewarding compliance; securing and facilitating legitimate trade; and promoting mutual recognition among member States and third parties. Does this partnership include cooperation, such as information

sharing, to stop illegal trade in flora and fauna? Can the Government of Botswana provide details on any such projects?

**Answer**

***Yes there is partnership which include cooperation between Customs and Business, on among others flora and fauna.***

**WT/TPR/S/324, Annex 2**

**2 Trade and Investment Regime**

**2.2 Trade Policy Formulation and Objectives**

Page 63 paragraph 2.9: The Secretariat report notes that the Government of Botswana views trade policy as a means to achieve its overall economic policy objectives of sustainable growth, economic and export diversification, and social inclusion. Does this policy include efforts to promote sustainable resource use? If so, please detail.

**Answer**

***Botswana's National Trade Policy promotes sustainable use of resources as stipulated under its objectives, for instance the policy emphasizes mainstreaming of environmental issues into trade policy.***

**2.4 Investment Regime**

Page 66 paragraph 2.26: The report details how land in Botswana is divided into three categories (freehold, state and tribal), and how land, no matter its category, can be put to any use. Are Botswana's natural parks categorized as state land, and still subject to commercial, industrial or agricultural use?

**Answer**

***National parks are state land and are not subjected to commercial use except for tourism***

Is ecotourism considered commercial use in Botswana?

**Answer**

***Ecotourism is commercialized and many areas have converted from consumptive natural resource (wildlife) management to eco - tourism entities. Botswana's tourism policy emphasizes "high value-low volume" which is in line with conservation of pristine and fragile ecosystems.***

Does the Government of Botswana exclude land from use for conservation purposes or to safeguard sensitive ecosystems?

**Answer**

***Yes. The Government of Botswana has a policy for reserving land for conservation purposes and safeguarding sensitive ecosystems***

p. 67, paragraph 2.28: The Report highlights that Botswana offers fiscal incentives to attract FDI, such as through IFSC certification. Of all the IFSC-certified firms, how many (by share and by number) are foreign-owned? Are financial service suppliers? Are foreign-owned financial service suppliers?

**Answer**

***There are currently 51 IFSC certified companies in Botswana. Over 95 percent of these companies are foreign owned. Some of the companies are publicly listed on the Botswana Stock Exchange and JSE. The majority of the companies certified within the IFSC framework are financial services suppliers.***

### 3 Trade Policies and Practices by Measure

#### 3.1 Measures Directly Affecting Imports

##### 3.1.5 Import prohibitions, restrictions, and licensing

Page 74 paragraph 3.31: The Secretariat report notes that the Government of Botswana applies import prohibitions to goods such as narcotic drugs, obscene material, and environmentally hazardous products, such as toxic or radioactive waste, mainly to protect health, safety and morality. The report notes that imports of semi-precious stones and certain plants are also prohibited. Is the export of wildlife trophies, and articles made out of wildlife trophies permitted?

##### Answer

***All export of wildlife trophies and articles or wildlife based products are subject to export levies, permits and licenses.***

##### Question

Does the government of Botswana regulate trade in wildlife? Please detail under what authorities, and any penalties that exist for engaging in illegal wildlife trade.

##### Answer

***Departments of Forestry and Range Resources & Wildlife and National Parks is responsible for wildlife protection and its management. A CITES Management Authority in DWNP is responsible for endangered species trade. The export of wildlife specimen are regulated under the Wildlife Conservation and National Parks Act of 1992. Penalties depend on species in question; Part X; Export, Import of Animals, Trophies and manufacture of articles of trophies***

##### Question

Does the Government of Botswana inspect exports and imports from within SACU to stop any illegal trade in wildlife? Please detail and describe any successful enforcement efforts.

##### Answer

***During joint border patrols and check point illegal wildlife articles are intercepted. Operations in Kgalagadi revealed that illegal trade in big cats was becoming rife. Cross border Syndicates of illegal cats traders were identified and a case where 2 cheetahs were confiscation is testament to the problem.***

***All exports originating in Botswana are inspected and packed and sealed for export in the presence of representatives from Customs, Wildlife and Veterinary. From the Customs perspective, all goods coming into or going out of Botswana are eligible for inspection, regardless of their origin.***

##### Question

Separately, it is also our understanding that the Government of Botswana was considering an import ban on packaged salt. Please confirm the status and provide an update.

##### Answer

***The Government of Botswana has put in place Regulations to restrict importation of pre-packed salt in quantities of 500g and 1kg. The measure is not an import ban as packaged salt can only be imported in the country in 100kg or more. The objective of the measure is to encourage packaging of salt locally for creation of employment. The Regulations effected on the 1<sup>st</sup> June 2015.***

##### 3.1.6 Anti-dumping, countervailing, and safeguard measures

Page 76, paragraph 3.38:

The Secretariat's Report states that, in 2013, Botswana enacted the Botswana Trade Commission Act, 2013, which established the Botswana Trade Commission (BTC). In carrying out its responsibilities for trade remedies, please clarify how the BTC will decide whether it or ITAC will conduct the applicable investigation. Also, Botswana's last notification to the WTO Committee on Anti-Dumping Practices indicated that Botswana had no legislation relating to anti-dumping. Therefore, in carrying out its responsibilities for trade remedies, please identify what legislation will the BTC be abiding by and when such legislation will be notified to the appropriate WTO committees.

**Answer**

***Once BOTC is operational and the relevant authority is in place the legislation will be notified to the WTO. For BOTC to carry out investigations it will apply the BOTC Act.***

**3.3 Measures Affecting Production and Trade****3.3.1 Incentives**

Page 84 paragraph 3.85: The Secretariat report details how in 2005, the Business and Economic Advisory Council (BEAC) recommended the development of Special Economic Zones (SEZs) with the objective of diversifying Botswana's economy and export base. However, the laws and regulations governing the development and operation of the SEZs have not been enacted. Are these laws and regulations expected to include environmental regulations? Will national labor laws apply in the SEZs? If not, how would a separate labor regime for the SEZs ensure the same labor rights for workers inside the zone as those outside?

**Answer**

***It is important to note that the Special Economic Zones Policy was approved by Parliament in September 2010. Further, a Special Economic Zones Bill was approved by Parliament in August 2015, and the process of setting up the Special Economic Zones Authority (SEZA) has resumed. The SEZA will be the one responsible for leading the development of Regulations governing the management and operation of the SEZs.***

***Yes, SEZs enterprises will be required to abide by all national and international environmental protection laws and regulations meant to address Botswana's environmental concerns.***

***National labour laws and ILO Core Labour Standards will form the basis on which SEZs labour laws will be developed. These SEZ labour laws will strive to strike a balance between ensuring investor friendly environment and conducive work environment and conditions that promote human rights and humane treatment of workers.***

**3.3.3 State trading, state-owned enterprises and privatization**

Page 87, paragraph 3.99 and 3.100: The Secretariat's Report states that Botswana's two major export products (beef and diamonds) are traded by state-owned or invested companies. Yet, Botswana has stated to the WTO Working Party on State Trading Enterprises that it has no state trading enterprises. Given the working definition of "state trading enterprise" in the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, please clarify how the applicable state owned or invested companies did not qualify as state trading enterprises to be notified to the WTO's Working Party.

**Answer**

***Botswana Meat Commission (BMC), Botswana Agricultural Marketing Board (BAMB) and Botswana Oil Limited are state trading enterprises and will be notified accordingly to the WTO.***

**3.3.5 Intellectual property rights**

Page 98, paragraph 3.147: Does Customs have the authority to act *ex officio* at the borders in cases of trademark counterfeiting? Page 95, section 3.129, states that such authority exists for copyrights, but does not mention trademarks.

**Answer**

***The same applies for trademarks. That is, Customs can also act in cases of trademark counterfeiting.***

## 4 Trade Policies by Sector

### 4.2 Mining and Energy

#### 4.2.1 Mining

Page 107 Paragraph 4.31: The report states that Botswana provides for a number of mineral concessions, and that the terms of any new application, renewal, transfer or amendment of a mining license for diamonds must be negotiated regarding technical, financial and commercial aspects of the proposed project including government participation.

Are any environmental aspects of the proposed project taken into account during negotiation? If so, please detail.

#### Answer

*The Mines and Minerals Act provides that minerals development projects should take heed of the need to uphold Environmental Impact Assessment, Environmental Management Plan, Rehabilitation and Mine Closure as a part to be executed in any mining project.*

#### Questions

Does the government require mining operators to conduct environmental impact assessments prior to initiating mining activities?

#### Answer

*Yes. The Mines and Minerals Act provides that minerals development projects should take heed of the need to uphold Environmental Impact Assessment, Environmental Management Plan, Rehabilitation and Mine Closure as a part to be executed in any mining project.*

#### Question

Are there any environmental laws that mining operators must comply with? Please briefly explain.

#### Answer

*Yes, there are as stipulated in the following text: The Mines and Minerals Act provides that minerals development projects should take heed of the need to uphold Environmental Impact Assessment, Environmental Management Plan, Rehabilitation and Mine Closure as a part to be executed in any mining project*

#### Question

Does the government monitor environmental impacts of both large-, and small-scale operations?

#### Answer

*Yes, the government monitors environmental impacts of all mining operations regardless of magnitude.*

## 4.3 Services

### 4.3.4 Tourism

Page 123 paragraph 4.108: The Secretariat report notes that the Department of Tourism (DoT) and the Botswana Tourism Organization (Botswana Tourism), in the Ministry of Environment, Wildlife, and Tourism (MEWT), are responsible for tourism development, and that Botswana Tourism, is responsible for marketing and promoting tourism products, promoting investment opportunities in the sector, and grading and certifying accommodation facilities. The Ministry's responsibilities as outlined above are mostly cooperative and promotional. Does MEWT have regulatory authority, and is the MEWT responsible for implementing wildlife conservation legislation?

#### Answer

*Botswana has the Wildlife Conservation Policy of 2013 and Wildlife Conservation Act of 1992, which is currently under review.*

Question

Has the Government of Botswana strengthen or put in place any new national legislation to make progress toward achieving CITES category 1, or legislation that meets the requirements for implementation of CITES to ensure that international trade in specimens of wild animals and plants does not threaten their survival?

Answer

***Under the CITES, Botswana is in the process of reviewing legislation to move it from Category 2 to Category 1.***

Page 124 paragraph 4.116: The report mentions that the Botswana Tourism introduced an Ecotourism Certification System to encourage eco-friendly tourism products and services. Is this system part of larger sustainability program or plan? Please describe what sustainability measures or standards must be met to achieve the certification.

Answer

***The system is part of the Botswana national ecotourism strategy. The system covers an array of standards that include environmental management, cultural resources protection, community development and socio-economic responsibilities.***

QUESTIONS FOR LESOTHOPart I: Questions on the Secretariat report

WT/TPR/S/324

page 6, paragraph 18: The Report states that Lesotho enacted many new laws to modernize its institutional and legal framework for financial services during the period under review. What are some of the major laws enacted that modernize financial services? What is the status of their implementation?

Answers

***Below are the major laws that have been enacted to modernise financial services:***

***Money Transfer Regulations 2014***

***Foreign Exchange Regulations of 2014***

***Credit Only and Deposit Taking Microfinance Regulations of 2014***

***Stamp Duties Act (Amendment) no. 14 of 2014***

***Capital Market Regulations of 2014***

***Treasury Regulations of 2014***

***Status: Currently being implemented: these laws/regulations have just been enacted (all in 2014) and no review has been made to measure impact***

WT/TPR/S/324, Annex 2

**3.3.3 State trading, state-owned enterprises, and privatization**

Page 170, paragraph 3.70: The Secretariat's Report states that Lesotho has never submitted a notification on state trading enterprises to the WTO. Please provide an update as to when Lesotho will make its required notification.

Answer

***Formal notification will be done as soon as possible.***

Pages 172-173, Paragraph 3.82 and Table 3.5: Paragraph 3.82 indicates that not all copyright term-lengths are in-line with TRIPS. Table 3.5 shows that the terms for photographic works, performers rights and rights of phonogram producers and shorter than prescribed in TRIPS. When does Lesotho plan to adjust the term of copyright protection for photographic works, performers, or phonograms to be in-line with the terms specified in the TRIPS agreement?

**Answer**

*Lesotho is working towards the alignment of the terms of copyright protection for photographic works, performers, or phonograms to be in line with the terms specified in the TRIPS Agreement.*

**Part II: Questions on the Government report**

WT/TPR/G/324

**5 Regional and Multilateral Trade Relations**

Page 16, Paragraph 5.2: The Government report notes that "Lesotho is committed to undertaking all national processes related to the ratification of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), and the WTO Trade Facilitation Agreement (TFA)." Could Lesotho provide an update on when it expects to formally submit its Category A notification and deposit its letter of acceptance of the WTO Trade Facilitation Agreement?

**Answer**

*The process of ratification is at its final stages and the Category A submission will be done before the MC10*

**Part III: Other Questions:**

Does Lesotho have plans to join the WIPO Internet Treaties (WCT and WPPT) or the new Beijing or Marrakesh treaties?

**Answer**

*Lesotho has plans to join the New Beijing and Marrakesh Treaties as well as the WIPO Internet Treaties*

**QUESTIONS FOR NAMIBIA**

**Part I: Questions on the Secretariat report**

WT/TPR/S/324

**2.3 Trade Agreements and Arrangements**

**African Union (AU)**

Page 15, paragraph 2.34: The Secretariat report notes the NEPAD is the African Union's program for economic and social development in Africa. This overview does not note environmental challenges or goals. Can the Government of Namibia detail any active cooperative environmental programs? If so, what do these environmental programs address?

Page 15, paragraph 2.35: The Report notes that the NEPAD promotes regional economic integration priorities, including climate change and natural resource management. Does the Government of Namibia participate in any natural resource management projects that include wildlife conservation and combatting poaching? Do the Governments of SACU, specifically Namibia, engage in any joint wildlife conservation programs through NEPAD? If so, please describe. Do any resource management projects in Namibia include ecosystem protections?

**Answer**

*Namibia's environmental management system is one of the most successful community based natural resource programmes in the world. 44 percent of the total land surface is under conservation friendly land use and includes national parks, conservancies, private nature reserves, game farms and tourist concessions. Namibia has the largest national park in Africa, the only country with the entire coast line (Namib Naukluft) in protected areas. Namibia has the largest population of black Rhinoceros in the world, largest cheetah population, and significant population of elephants and other species.*

### **2.3.7 Preferential trade agreement between SACU and MERCOSUR**

Page 18 paragraph 2.53: The report notes that the agreement covers trade in non-agricultural products, including fish and other sea products, and processed agricultural products. Can the Government of Namibia elaborate on how the agreement "covers fish and other sea products." Are there any measures in place under this agreement to combat illegal, unreported and unregulated (IUU) fishing?

**Answer**

***Namibia to provide an answer at a later stage.***

### **3.2 Customs Procedures and Valuation**

Page 20 paragraph 3.8: The Secretariats report notes that the SACU trade partnership strategy was also developed to, *inter alia*, strengthen the consultation process between customs and business, and develop an Authorized Economic Operator (AEO) program aligned with the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE), and is aimed at rewarding compliance; securing and facilitating legitimate trade; and promoting mutual recognition among member States and third parties. Does this partnership include cooperation, such as information sharing, to stop illegal trade in flora and fauna? Can the Government of Namibia provide details on any such projects?

**Answer**

***Namibia to provide an answer at a later stage.***

### **WT/TPR/S/324, Annex 3**

Page 208 paragraph 1.7: The Secretariat report notes that in 2004, Namibia adopted Vision 2030 which spells out the country's medium-term development programs and strategies to achieve its national objectives. Are sustainability targets and environmental conservation among the goals to improve the quality of life of the people of Namibia? If so, please elaborate on such goals and any recent steps Namibia has taken to achieve them.

**Answer**

***Namibia to provide an answer at a later stage***

### **3.4.3 State trading, state-owned enterprises, and privatization**

Page 233-34, paragraph 3.94 and Table 3.4: According to the Secretariat's Report, Namibia has stated to the WTO Working Party on State Trading Enterprises that it has no state trading enterprises. However, according to table 3.4 of the Secretariat's Report, the Diamond Board of Namibia has a monopoly on trade in diamonds as the result of specific legislation enacted in Namibia. Given the working definition of "state trading enterprise" in the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, that references "[g]overnmental and non-governmental enterprises. which have been granted exclusive or special rights or privileges. In the exercise of which they influence through their purchases or sales the level or direction of imports or exports," please clarify how the Diamond Board of Namibia does not qualify as a state trading enterprises to be notified to the WTO's Working Party.

**Answer**

***Namibia to provide an answer at a later stage.***

### **3.4.5 Intellectual property rights**

#### **Page 238, Paragraph 3.106 and table 3.5:**

Does Namibia have plans to join the WIPO Internet Treaties (WCT and WPPT) or the new Beijing or Marrakesh treaties?

**Answer**

***Namibia will provide responses to this question at a later stage.***

Pages 238-239, Paragraphs 3.103 and 3.4.5.1: What is the relationship between the new Business and Intellectual Property Authority (BIPA) under the Ministry of Industrialization Trade and SMEs Development (MITSD) and the Audiovisual Media, Copyright Services and Regional Offices Directorate of the Ministry of Information and Communication Technology?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Pages 237-240, Section 3.4.5: Section 3.4.5 does not address the enforcement of intellectual property rights. Can the Government of Namibia please provide a brief overview of what mechanisms are available through the court system to enforce patents, copyrights and trademarks? What authority does the customs agency have to enforce against piracy and counterfeiting at the borders?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 238, paragraph 3.107: Are there provisions in the civil and/or criminal laws to enforce against copyright piracy? What penalties are provided for such violations?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 239, paragraphs 3.113-3.115: Are there provisions in the civil and/or criminal laws to enforce against trademark counterfeiting? What penalties are provided for such violations?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 240, paragraph 3.115: The report indicates that only one trademark registered in 2014 due, in part, to an examination backlog. Could Namibia please provide an update on the status of this backlog?

**Answer**

***Namibia will provide a response to this question at a later stage.***

**4 Trade Policies by Sector****4.3 Fishing and Aquaculture**

Page 247 paragraph 4.41: The report notes that Namibia's marine resources are found in one of the most productive fishing grounds in the world, and that fisheries continue to provide an important contribution to Namibia's economy, though its contribution to real GDP has fallen over the period reviewed mainly due to poor catches and higher fuel and labor costs. Please provide some context for the declining catches. Is this domestic over-exploitation or are there issues with illegal, unreported or unregulated fishing in Namibia's EEZ?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 248 paragraph 4.45: The report states that MFMR sets a total allowable catch (TAC) annually for all major or commercial fisheries with the objective of managing resources sustainably and preventing overexploitation of Namibian fish stocks. Please clarify and expand on the actions that the government is taking to ensure that the total allowable catch conforms to the allowable biological catch.

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 249 paragraph 4.41: The report states that the Fishery legislation in Namibia is unchanged since the last TPR report, and that MFMR is in the process of reviewing and updating policies, the Marine Resources Act and its regulations, as well as the Inland Fisheries Act and Regulation. When are the updates anticipated to be final? Will these updates include measures to recover or more sustainably utilize Namibia's marine fisheries? Does Namibia intend to ratify and implement the Port State Measures Agreement?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 248 paragraph 4.44: The report notes that Namibia's Strategic Plan would be active from 2009-14—has Namibia developed a new Strategic Plan for 2015 to 2020? If so, please outline. Will the objectives include sustainable management of marine fisheries?

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 248 paragraph 4.45: The report notes that MFMR sets a total allowable catch (TAC) annually—and in a footnote, that fishery scientists in the Ministry make suggestions for the TAC to a working group composed of economists and scientists, but the advice that reaches the Minister must first clear the Marine Resources Advisory Council which includes various, presumably commercial, stakeholders. Are there measures in place to prevent commercial interests in the Advisory Council from making TAC recommendations that do not conform to the allowable biological catch? Please clarify and expand on the actions that the government is taking to ensure that the total allowable catch conforms to the allowable biological catch.

**Answer**

***Namibia will provide a response to this question at a later stage.***

Page 251 paragraph 4.60: The report mentions a study on the nature and outcomes of policies, incentives and management procedures in the Namibian hake industry that concluded despite current over-capacity, the government continues to reward new investments. Please provide more information on the policies, incentives and management procedures or assistance programs in the Namibian fishing industry. Is the Namibian government taking steps to address the inefficiency and discipline harmful over-capacity? If so, please explain. Of the 18 notifications that Namibia made to the WTO (noted in paragraph 2.15 on page 216), did Namibia make any notifications for assistance programs to marine capture fisheries? Please detail if so.

**Answer**

***Namibia will provide a response to this question at a later stage.***

**4.4 Forestry**

Page 251 paragraph 4.62: The report provides a brief overview of Namibia's biodiversity, and notes forest area is declining. The report also notes that the government is aiming to promote utilization and commercialization of forest products. How is Namibia balancing these economic aims with sustainable forestry management practices?

**Answer**

***Namibia has a regulatory framework in line with the Forestry ACT of 2001. This enables empowers MAWF to control the use of natural resources through a system of issuing permits. Such permits are issued pending the inspection and assessment of resources. In some part s of the country there is excessive amount of woody vegetation that threatens other land uses (Bush encroachment). Most of the products for commercialisation are obtained from the encroached areas. Note: As the population increase, the land use needs also increase. Hence the declining forest areas.***

Questions

Does Namibia have in place any designated conservation areas to protect threatened species?

Answer

***Namibia has a programme on community forestry which fosters cooperation between government and concerned communities to manage community forests. Such community forestry are legally gazetted and managed in line with approved forestry management plans. Such plans are designed to promote sustainable use of forest resources.***

**4.6 Manufacturing**

Page 259 paragraph 4.110: The report notes that Namibia's manufacturing sector "is largely based on its resource endowment of fisheries and meat", but Table 4.8 only reports data on meat processing. Is data available on the fisheries sector's contribution to GDP? If so, please provide.

Answer

***Namibia will provide a response to this question at a later stage.***

p. 262, paragraph 4.124: The Report states that Namibia has not yet signed the SADC Protocol on trade in services due to the internal process before signature by the Head of State. What is the status of this internal process?

Answer

***The internal process is ongoing in this regard.***

**Part II: Questions on the Government Report**

Page 29, paragraph 3.3: The Government report notes the government has embarked on the establishment of a National Single Window. In light of these steps, could Namibia provide an update on when it expects to formally submit its Category A notification and deposit its articles of acceptance the WTO Trade Facilitation Agreement?

Answer

***The internal process of ratifying the TFA has commenced and once that process is finalized, Namibia will deposit its instrument of ratification through the necessary processes. Namibia has concluded its Category A commitments and will be notified before the 10th Ministerial Conference.***

**QUESTIONS FOR SOUTH AFRICA – ANNEX 4****Part I: Questions on the Secretariat report**

WT/TPR/S/324

**2.3 Trade Agreements and Arrangements****2.3.2 African Union (AU)**

Page 15, paragraph 2.34: The Secretariat report notes the NEPAD is the African Union's program for economic and social development in Africa. This overview does not note environmental challenges or goals.

Answer

***African Convention on Conservation of Nature and Natural Resources (Maputo Convention 2003) – South Africa has ratified this AU Convention which aims to promote transboundary management of natural resources, however it has yet to come into force.***

***African Union Climate Change Strategy – SA has provided inputs into this Strategy which is being finalised by the AU Commission.***

***African Common Strategy on Combatting Illegal Exploitation and Illegal Trade in Wild Fauna and Flora - – SA has been involved with development of this Strategy which is being finalised by the AU Commission.***

***Furthermore, South Africa is engaged at a SADC level in implementing the SADC Protocol on Wildlife Conservation and Law Enforcement and has signed a bilateral MoU on Cooperation in the Field of Biodiversity Conservation and Management with Mozambique in April 2014.***

Can the Government of South Africa detail any active cooperative environmental programs? If so, what do these environmental programs address?

**Answer**

*Please refer to response above.*

Page 15, paragraph 2.35: The Report notes that the NEPAD promotes regional economic integration priorities, including climate change and natural resource management.

Does the Government of South Africa participate in any natural resource management projects that include wildlife conservation and combatting poaching? Do the Governments of SACU, specifically South Africa, engage in any joint wildlife conservation programs through NEPAD? If so, please describe. Do any resource management projects in South Africa include ecosystem protections?

**Answer**

***NEPAD Environment Initiative, which contains eight subthemes for priority interventions:***

***Combating Desertification***

***Wetland Conservation***

***Invasive Alien Species***

***Coastal Management***

***Global Warming and Climate Change***

***Trans-frontier Conservation Areas (TFCAs)***

***Environmental Governance***

***Financing***

***South Africa has been involved in all of these to a lesser or greater extent.***

***For example, on TFCAs, South Africa has established six TFCAs with neighbouring countries. TFCAs are becoming a development and a conservation model that provide a platform for collaboration in improving the management and use of shared natural resources such as watersheds and habitats of animal species with large home ranges. In addition to creating an enabling environment for collaboration in dealing with issues of transboundary significance such as wildlife crimes, TFCAs serve as nodes for socio-economic development. They are located in rural areas often surrounded by disenfranchised communities with limited employment opportunities. Tourism development, investment and rehabilitation of ecosystems in TFCAs will promote economic development by creating jobs in geographically remote areas as well as providing of alternative land-use options in marginal lands thereby contributing to food security and improved livelihoods in these areas. Further, TFCAs involve two or more countries so their implementation fosters cooperation, peace and contribute to regional integration.***

**2.3.7 Preferential trade agreement between SACU and MERCOSUR**

Page 18 paragraph 2.53: The report notes that the agreement covers trade in non-agricultural products, including fish and other sea products, and processed agricultural products. Can the Government South Africa elaborate on how the agreement "covers fish and other sea products?" Are there any measures in place under this agreement to combat illegal, unreported and unregulated (IUU) fishing?

**Answer**

***The SACU – MERCOSUR agreement is a preferential trade agreement and therefore does not provide tariff preferences on all tariff lines. Since there is no separate agreement on Fisheries and other sea products, fisheries and other sea products are covered in the main agreement as all other products. The agreement covers fish and other sea products listed in Annexure I and II (Offer of MERCOSUR to SACU and Offer of SACU to***

***MERCOSUR) of the SACU-MERCOSUR agreement as wholly obtained products (provided they comply with the relevant rules).***

Page 20 paragraph 3.8: The Secretariats report notes that the SACU trade partnership strategy was also developed to, *inter alia*, strengthen the consultation process between customs and business, and develop an Authorized Economic Operator (AEO) program aligned with the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE), and is aimed at rewarding compliance; securing and facilitating legitimate trade; and promoting mutual recognition among member States and third parties. Does this partnership include cooperation, such as information sharing, to stop illegal trade in flora and fauna?

**Answer**

***The partnership does not include cooperation such as information sharing on flora and fauna. The AEO program is about preferred traders***

Can the Government of South Africa provide details on any such projects?

**Answer**

***There are no special projects on flora and fauna.***

WT/TPR/S/324 – Annex 4

**2 Trade and Investment Regimes**

**2.2 Trade Agreements and Arrangements**

Page 293, paragraph 2.8: The Secretariat report notes that, with regards to the WTO Trade Facilitation Agreement, South Africa "...has yet to notify its category A measures. According to the authorities, the ratification process is ongoing." Can South Africa provide an estimate on when it expects to submit its Category A notification and deposit its letter of acceptance of the WTO TFA?

**Answer**

***Section 231(2) of the South African Constitution states that all international Agreements shall bind the Republic only after it has been approved by resolution of both Houses of Parliament. The only exceptions to this rule are in Section 231(3): Agreements of a technical, administrative or executive nature, or Agreements which do not require accession or ratification. Consequently Parliament is only required to approve international agreements which require ratification or accession, and which are not of a technical, administrative or executive nature.***

***The umbrella Agreement creating the WTO (the Marrakesh Agreement Establishing the WTO) is a major multilateral instrument. Furthermore Article 3 of the Protocol demands that the amendment thereof has to be accepted by members. Consequently this Protocol plus its Annex the TFA fall under Section 231(2) of the Constitution and Parliamentary approval is required. The domestic process is still ongoing and it would be difficult to provide an indicative date when it will be concluded.***

Page 298, paragraph 3.8: The Secretariat's report states that South Africa allows for the use of alternative dispute resolution procedures for appellants who are still unsatisfied with the decisions of a customs officer following the decision of the appeal committee. Can South Africa please describe the alternative dispute resolution procedures?

**Answer**

***The alternative dispute resolution procedures are outlined in the Customs and Excise Act 1964, Chapter XA and the rules thereto.***

And, do these procedures allow for the right to appeal to a judicial authority without penalty?

**Answer**

***Yes***

### 3 Trade Policies and Practices by Measure

Page 301, Section 3.1.3 Standards and other technical requirements: It is our understanding that global technology firms are experiencing significant delays, often up to a year, in obtaining licenses for their computer products and equipment from the South African Bureau of Standards (SABS). What steps is South Africa taking to address these delays?

#### Answer

*This question refers to the National Regulator for Compulsory Specifications (NRCS) in terms of the Letters of Authority (LoA) approval process that is prescribed in the compulsory specifications (technical regulations) related to all Electrical and Electronic Products.*

*(This function was performed by the South African Bureau of Standards (SABS) prior to 2008, when the NRCS was established in terms of the NRCS Act, Act 5 of 2008).*

*This is done in terms of the section 14 of the NRCS Act, Act 5 of 2008, that states that no person may import, sell or supply a commodity, product or service to which a compulsory specification applies, except in accordance with the specification. The objective is to protect the South African consumer against unsafe products.*

*It is the responsibility of the importers to acquire the required approval prior to shipping the containers into the country. The same requirement is applicable to local manufacturers prior to placing their products on the market in terms of the NRCS Act.*

*Processing of LoAs requires detailed attention especially on imports as the products are imported as finished goods, the complexity of the test reports coupled with incorrect and misrepresented information has necessitated NRCS to become more rigorous in assessing the applications before approval is granted.*

*The maximum turnaround time for issuing a LoA is 120 days. In instances where it goes beyond the 120 days, it is because of the submission of insufficient documentation and non-admissible test reports.*

*This maximum turnaround time was recently reduced by the Minister as an interim measure, from 120 working days (effectively 6 months) to 120 calendar days (effectively 4 months).*

*The NRCS is in the process of developing a risk-based approach to LoAs. The aim is to maximise its resource utilisation by calculating the risk of an application. The risk-based approach will be used to determine risk levels based on product, company and country of origin.*

*The target date for rolling out the risk based approach is mid-2016 as it would be contained in regulations.*

#### 3.1.4.2: Main SPS requirements

Page 307-308, paragraphs 3.40-3.45: We understand that South Africa recently adopted a Cabinet Decree concerning countries classified as negligible risk status for bovine spongiform encephalopathy (BSE) by the World Organization for Animal Health (OIE). Could South Africa provide a copy of this decree and explain how it views this decree in light of its commitments under the WTO SPS Agreement?

#### Answer

*The South African Cabinet made the following decision regarding the importation of cattle and bovine products on 24 June 2015: Cabinet approved that the relevant international standards and other scientific measures be implemented with a view to ensuring adequate risk management is applied when importing cattle and bovine products. This alignment of South Africa's import requirements with international scientific guidelines will strengthen the country's position in international trade. This will broaden access to sufficient, safe and nutritious food for people and animals through strategic sourcing and will increase job creation through importation of beef products intended for further processing in South Africa.' The cabinet decision of 24 June 2015 is in line with the WTO SPS Agreement*

#### Question

Please describe South Africa's requirements for the import of poultry meat from countries affected by highly pathogenic avian influenza (HPAI) and explain these requirements in light of South Africa's commitments under the WTO SPS Agreement.

**Answer**

*Upon receipt of a notification of an outbreak of highly pathogenic avian influenza in any trade partner, South Africa places trade restrictions on the import of live poultry, birds, meat and other products derived from poultry and birds from the affected country into South Africa. South Africa does not import any poultry / birds or products thereof from countries where Highly Pathogenic Avian Influenza occurs in domestic poultry. Trade restrictions are placed on the entire country and include the following commodities:*

- *Live poultry, pigeons and other birds*
- *Eggs (excluding SPF eggs)*
- *Fresh (including frozen) poultry meat*
- *Other poultry products not subjected to a process to ensure the satisfactory inactivation of the avian influenza virus (must be proven scientifically).*

*This suspension excludes poultry / birds or products thereof from NAI-free compartments according to the OIE guidelines. The requirements of such compartments are agreed upon between the veterinary authorities of South Africa and the affected country. South Africa is willing to consider regionalisation providing that the country in question is able to provide information to demonstrate that regionalisation is applied in compliance with the recommendations of the World Organisation for Animal Health (OIE) Terrestrial Animal Health Code*

**Chapter 4.3 on Zoning and Compartmentalisation read together with the Avian influenza Chapter, Chapter 10.4.**

**Question**

South Africa is a member of the WTO and apply SPS measures e the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)": Please describe South Africa's import requirements concerning trichinae, pseudorabies, and porcine reproductive and respiratory syndrome and explain these requirements in light of South Africa's commitments under the WTO SPS Agreement.

**Answer**

*South Africa follows international guidelines set by the World Organisation for Animal Health (OIE) for trade when it comes to the following diseases:*

*Trichinae: South Africa follows the guidelines set in the OIE Terrestrial Animal Health Code, Chapter 8.16*

*Aujeszky's Disease (Pseudorabies): South Africa follows the guidelines set in the OIE Terrestrial Animal Health Code, Chapter 8.2*

*Porcine reproductive and respiratory syndrome (PRRS): Unfortunately there are no international guidelines provided by the OIE even though this is a OIE listed disease of concern. Thus South Africa conducted a risk review, taking into account measures put in place by other countries free from PRRS. South Africa has put restrictions in place due to PRRS for the import of:*

- *Live pigs*
- *Porcine genetics*
- *Pork meat - Please see attached document entitled: A risk review of Porcine Reproductive and Respiratory Syndrome virus (PRRSv) entering the Republic of South Africa via imported pork.*

*These measures are the same and applied to all countries uniformly.*

**Question**

Please describe South Africa's requirements concerning Salmonella and explain these requirements in light of South Africa's commitments under the WTO SPS Agreement.

**Answer**

*In terms of the "Procedure Manual – Microbiological Monitoring of Imported Meat 21 October 2011", imported meat is subjected to microbiological monitoring upon arrival in South Africa. The requirements with regard to Salmonella are: S. enteritidis and S. typhimurium, must be absent in 25g. Any Salmonella that is detected must be typed and the type will determine the outcome.*

***Salmonella other than S. enteritidis and S. typhimurium is handled as follows:***

| Commodity    | Number of samples (n) | Allowable number of marginally acceptable (c) | Minimum (m) cfu/g | Maximum (M) cfu/g |
|--------------|-----------------------|---|-------------------|-------------------|
| All products | 5                     | 3   | Absent in 25g     | -                 |

***Any product that fits within the allowable number of marginally acceptable as described above must be subjected to heat treatment before release.***

***Meat that is produced locally is monitored.***

***The above measure is consistent with the requirements as stipulated in the Codex Alimentarius Code of Hygiene Practice for meat (CAC/RCP 58-2005), Guidelines for the control of Campylobacter and salmonella in chicken meat (CAC/GL 78-2011). It is also consistent with article 2 and 5 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). While South Africa has made this information available to the interested trading partners including the USA, it is in the process of notifying the WTO to ensure consistency with article 7 of the above WTO SPS agreement.***

**South Africa bases import requirements upon international standards and guidelines while taking into consideration the local standards.**

**South Africa frequently enters into consultation with trading partners in order to negotiate import conditions for animals and animal products. Consultations take place in the form of meetings as well as written communications.**

### **3.2 Measures Directly Affecting Exports**

#### **3.2.3 Export prohibitions, restrictions and licensing**

Page 310 paragraph 3.64: The report notes that South Africa maintains export control, including export permits (licenses) and prohibitions on grounds of safety, security, and the environment, and to ensure compliance with international obligations under treaties and conventions to which it is a signatory. South Africa is party to CITES, but has been identified as a Party requiring attention as a priority under the National Legislation Project. Has the Government of South Africa strengthened or put in place any new national legislation to make progress toward achieving CITES category 1, i.e. legislation that meets the requirements for implementation of CITES to ensure that international trade in specimens of wild animals and plants does not threaten their survival? Please detail any progress.

#### **Answer**

***The Convention on International Trade in Endangered Species (CITES) Regulations promulgated in terms of National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA) meet the requirements for Cat 1 Legislation in terms of CITES.***

***The document from the CITES website that reflects South Africa as a country with Cat 1 legislation can be accessed through the following links:***

- <http://cites.org/eng/legislation>
- <https://cites.org/sites/default/files/eng/prog/Legislation/CITES-NLP-Cat1.pdf>.

***The Department is in a process of finalising additional national legislation relating to CITES I species, in that all CITES I species that are not already listed as threatened or protected species, are now to be included as protected species. The possession and selling of imported specimens will be regulated by means of a permit, and the selling of the imported specimen will be prohibited under certain circumstances. This is an aspect that is currently not regulated in terms of the CITES Regulations.***

### **3.2.4 Export subsidies, finance and assistance**

pages 310-311, 355, paragraphs 3.67-3.76: The Report notes that South Africa has implemented a series of industrial development zones (IDZ) under its Spatial Development Initiative (SDI) programmes. Firms that locate in those zones will benefit from incentives, such as duty suspension on imports of raw materials, including machinery used in the production of goods intended for export. Further, Table A3.2 of this report provides a list of incentive schemes available to South African exporters for the promotion and development of exports and export markets.

The Report, including Table A3.2 also explains that South Africa's Sector Specific Assistance Scheme (SSAS) provides reimbursable grants to priority industries, which must be used to, *inter alia*, stimulate exports, diversify exports, and stimulate the participation of SMEs in the export sector. In addition, grants are also available under the Project Funding for Emerging Exporters, which targets new exporters. This report describes other sector-specific programmes aimed at promoting exports, such as the Motor Industry Development Programme (MIDP), the Productive Asset Allowance for the automotive industry, Duty Credit Certificates for the Textiles Industry, and Fund for the Committee on Secondary Manufacture. Please further explain the above-mentioned programs in light of Article 3 of the WTO Subsidies Agreement regarding subsidies contingent upon export.

#### **Answer**

***The programs described above generally are designed to promote export but are not contingent on export performance. In particular, it should be noted that the MIDP was discontinued in 2012 and replaced by the Automotive Production and Development Program (APDP), which is neither in law nor in fact contingent on exports. Further, the Duty Credit Certificate Scheme for the textile industry has also been discontinued.***

Please also explain whether South Africa plans to notify these programs, pursuant to Article 25 of the Subsidies Agreement.

#### **Answer:**

***South Africa is in the process of reviewing its incentive programs and will notify these to the WTO in due course.***

### **3.3.4 Government procurement**

page 318, paragraph 3.114: The Secretariat notes that South Africa is neither a member of nor an observer to the WTO GPA. The addition of South Africa to the GPA would constitute an important expansion of the GPA. In light of the adoption of the revised GPA by all Parties, which includes language that would allow for necessary and temporary transitional measures for new developing country members, does South Africa have plans to consider accession to the WTO GPA?

#### **Answer**

***South Africa does not plan to join the Government Procurement Agreement at this stage.***

### **3.3.5 Intellectual Property Rights**

Page 319, Paragraph 3.116: Does South Africa have a time frame for ratifying the WCT and WPPT or joining the Beijing or Marrakesh treaties?

#### **Answer**

***South Africa is still in the process of developing its IP policy.***

page 319, Table 3.7: What is the expected relationship between the draft Copyright Amendment Bill, should it become law, and the existing Performers Protection Act, since both pieces of legislation cover some of the same activities?

#### **Answer**

***South Africa is still in the process of developing its IP policy.***

page 322, Paragraphs 3.118 and 3.120: What is the current status of the draft Copyright Amendment Bill and the draft Cybercrimes and Cybersecurity Bill?

**Answer**

***South Africa is still in the process of developing its IP policy.***

**Part III: Other Questions**

On February 25, 2014, South Africa's parliament passed the Private Security Services Industry Regulation Amendment Bill, which includes a requirement of at least 51 percent local (South African) ownership of foreign-owned private security firms. The bill was sent to President Zuma for review and signature. Can South Africa please provide an update as to where this stands?

**Answer:**

***The Bill is still under consideration and South Africa's international commitments will be taken into account in this process.***

**Question**

It is our understanding that South Africa is proposing a formula change to the sharing of SACU revenue. What is the anticipated impact on other SACU member states of South Africa's proposed formula change for revenue sharing?

**Answer**

***The review of the revenue sharing arrangement is a collective decision of all SACU Member States. It is still under consideration and therefore the anticipated impact will not be determined at this stage.***

**QUESTIONS FOR SWAZILAND****Part I: Questions on the Secretariat Report****WT/TPR/S/324, ANNEX 5****3.3.3 State trading, state-owned enterprises, and privatization**

Page 392, paragraph 3.89: The Secretariat's Report states that Swaziland has not submitted any notification on state trading enterprises to the WTO. Yet, it appears that state enterprises have a significant role in, among other areas, agricultural trade. Please provide an update as to when Swaziland will make its required notification.

**Answer**

**WTO notifications are co-ordinated by the International Trade Department (ITD) for the various Government Ministries, department and parastatals in the country. Over the years the Department has been faced with human resource challenges hence the non-submission of the notifications of state trading enterprises and others as well. The Ministry of Commerce, Industry and Trade is working on addressing the challenges faced by the Department.**

**3.3.5 Intellectual property rights**

Pages 398 and 400, paragraphs 3.117 and 3.130: How does the new planned National Intellectual Property Strategy relate to the existing 1912 Copyright Act and the draft Copyright and Neighbouring Rights Bill?

**Answer**

***The Process is still at stakeholders' consultation stage. This question could be best answered once the draft of the strategy has been completed.***

Page 398, paragraph 3.117: The report indicates that a National Intellectual Property Strategy is being developed and is at the stakeholder consultation phase. Could Swaziland please share an estimated timeline for completion of the National Intellectual Property Strategy?

**Answer**

***It is anticipated that the strategy will be finalized during the first half of 2016.***

Page 398, paragraph 3.118 and Table 3.8: Is Swaziland still planning to join the WIPO Internet Treaties?

**Answer**

***Joining the internet treaties is still in the country's plans, however this is anticipated after the enactment of the Copyright and Neighbouring Rights Bill.***

Page 400, paragraphs 3.130: What is the status of the drafted Copyright and Neighbouring Rights Bill?

**Answer**

***The Copyright and Neighbouring Rights Bill has been Presented to the Portfolio Committee of the House of Assembly in Parliament.***

**Part II: Questions on the Government Report**

Page 48, paragraph 4.8: The Government of Swaziland notes, "The Trade Facilitation Agreement is still in the process of ratification and committees have been successfully formed and awaiting Cabinet approval." Does Swaziland have any estimates regarding when it expects Cabinet approval, and when it expects to submit its Category A notification? Notification of the category A commitments will resume shortly after Cabinet approval. The process of the ratification of the TFA and the notification of the category A commitments will run parallel.

**Part III: Other questions**

It is our understanding that South Africa is proposing a formula change to the sharing of SACU revenue. What is the anticipated impact on other SACU member states, specifically Swaziland, of this proposed formula change for revenue sharing?

**Answer**

***The review of the revenue sharing arrangement is a collective decision of all SACU Member States. It is still under consideration and therefore the anticipated impact will not be determined at this stage.***

## SWITZERLAND

### Economic Environment

#### 1.3 Trade and investment performance

Para. 1.18 states that the business environments in SACU countries collectively underperformed in 2015, which will likely constrain FDI inflows and the economic performance in the near future. According to table 1.2, the ease of doing business rank decreased for every SACU member state since 2008, showing in particular that costs to exports and imports increased quite significantly. What are the possible reasons behind this underperformance?

#### Answer

- *The reasons for underperformance cannot be attributed to inactivity, sluggish or inertia. This is because a number of vibrant and strategic reform measures have been planned, designed and proposed for improvements of the business and investment environment, however the implementation process appears to be slow and tardy, therefore as other countries from other regions seems to be faster and more efficient in implementing reform measures, the ranking of SACU countries decreases.*
- *SA has slipped 4 places in the international ranking from 69th in DB 2015 to 73rd in DB 2016. SA lags in particular on Getting Electricity (168 of 189), trading across borders (130th), enforcing contracts (119th), Registering property (101th) and Dealing with Construction Permits (90th). The government is taking steps to lower the cost of doing business in South Africa. The Ports Regulator of South Africa has begun a 10-year programme to ensure tariffs better reflect the cost of using port assets such as berths and quay walls. Cargo dues on export containers are 38 per cent lower than three years ago. The port of Durban has implemented an integrated ports management system, dramatically reducing turnaround times by replacing manual processes and improving train loading and cargo shipment. Furthermore, the refurbishment and development of South Africa's ports infrastructure continues. Please check with Angelika if she's got a figure for you.*
- *The Cities Doing Business 2015 report for South Africa was produced by the World Bank on behalf of the National Treasury, Department of Trade and Industry, South African Cities Network and nine urban centres. Local firms evaluated performance across six indicators. The survey found that South African entrepreneurs face different regulatory hurdles depending on where they establish their businesses. Across the nine participating cities, it is easiest to start a business in Ekurhuleni, Johannesburg and Tshwane; deal with construction permits in Cape Town; get a commercial electricity connection and enforce a contract in Mangaung; and register property in Johannesburg. There is no relationship between the size of the city and the rankings, and no single city performs equally well on all indicators. The results suggest that well-targeted administrative improvements that do not require legislative changes can make a difference for small or medium-sized firms. If each metro were to adopt the good practices found across the nine cities for construction permits, getting electricity and enforcing contracts, they would surpass the average performance of high-income members of the Organisation for Economic Cooperation and Development.*

What measures are the SACU countries planning to take to improve the business climate?

#### Answer

*In Namibia a number of initiatives are under way to create a conducive business climate for both domestic and foreign investors. Steps are at an advanced stage to set up a One – Stop - Shop facility to be known as Integrated Client Service Facility (ICSF) in the country to provide comprehensive information and an efficient admission procedure to all foreign investors in the country.*

*The Government is working on an effort to create a single window for trade transactions that would allow traders to file standard information and documents through a single window entry point to fulfill both import, export and transit shipment. Such relevant information will then be shared by all relevant parties involved in trade such as public entities, including immigration, customs & excise, vehicle registration authorities, as*

*well as private participants like banks, insurance companies and import/export agencies.*

*A robust e-governance project is being spearheaded by the Office of the Prime Minister that will usher in the usage of electronic medium in a number of functional areas such as electronic payments and recognition of electronic signatures in legal documents. The Ministry responsible for property registration is currently working on a project regarding business re-engineering and possible inter face linkages to other institutions such as company registrations and municipalities in order to streamline the process of property registration and deeds transfers, as well as to reduce all costs involved For South Africa, see the response provided to the previous question.*

## **The Common Regime**

### **Overview**

Concerning para 2.2, the report states that one of the goals of the SACU Agreement of 2002 (Art. 2) is to increase investment opportunities in the Common Customs Area. What concrete measures are planned to implement this?

### **Answer**

*SACU Member States are signatories to the SADC Protocol on Finance and Investment (FIP). The Protocol gives legal and practical effect to the Parties' commitments under the SADC Treaty. The two overarching objectives of the FIP are i) to improve the investment climate in each Member State and thus catalyse foreign and intraregional investment flows; and ii) to enhance cooperation, coordination and harmonisation in domestic financial sectors in the region.*

*On the trade side, work undertaken to expand market access for goods manufactured in the customs area makes the region more attractive for foreign and local investors who intend to take advantage of the new foreign markets resulting from trade arrangements.*

Para. 2.6 indicates that the SACU Agreement does not establish provisions for trade in services. However, SACU member states decided in 2012 to make trade in services a priority area in the Union's work program, while this work is still at the very beginning. What is the calendar and what are the next concrete steps to achieve this?

### **Answer**

*The region has not yet agreed on a fixed timeframe, this will be guided by the preliminary assessment on the scope and need for developing a legal framework.*

Furthermore, para. 2.6 notes that the main focus of the SACU Agreement is related to customs, while non-tariff measures are not yet harmonized within the Union. Did the SACU states elaborate the possibilities for a harmonization of non-tariff measures?

### **Answer**

*SACU Member States agreed to harmonize the non-tariff measures under the SADC Protocol on Trade.*

*How do the SACU states assess the perspectives with regard to a possible harmonization of non-tariff measures within the Union in future, aiming to facilitate regional trade?*

### **Answer**

*Same as above.*

## **2.3 Trade agreements and Arrangements**

### **2.3.1 Participation in the WTO**

Para. 2.28 states that SACU's notification obligations are fulfilled with varying degrees of regularity. Can SACU members indicate when they will notify their quantitative restrictions according to the Decision on Notification Procedures for Quantitative Restrictions, adopted by the Council for Trade in Goods in (G/L/59/Rev.1)?

**Answer**

*Although Article 25 of the 2002 SACU Agreement contains provisions for import and export prohibitions and restrictions, there is no obligation to harmonise quantitative restrictions in SACU. Article 25 (5) of the SACU Agreement stipulate that "Member States shall co-operate in the application of import restrictions with a view to ensuring that the economic objectives of any import control legislation in any State in the Common Customs Area are attained."*

*With regard to the Decision on Notification Procedures for Quantitative Restrictions, adopted by the Council for Trade in Goods in (G/L/59/Rev.1), members should note that SACU is not a WTO Member but its individual Member states are. Thus there is no notification obligation on SACU to notify its quantitative restrictions, but it is an obligation of its individual Member States. The WTO Secretariat reported in its factual information on notifications received on quantitative restrictions circulated in document G/MA/114 of 22 May 2015, that only 27 Members have submitted the required notification since 2012. Thus only 16.7 percent of the WTO's 161 Members have complied with the notification obligation. Switzerland itself only submitted 1 notification on quantitative restrictions that was circulated in document G/MA/QR/N/CHE/1 of 11 March 2014.*

*The notification format as contained in document G/L/59/Rev.1 Annex 1 is intricate and comprehensive and notification fulfillment is quite resource intensive that makes it difficult for developing countries to comply. Although South Africa has started with the preparation of the notification, it also finds it difficult to submit the notification due to different government authorities and domestic legislation dealing with quantitative import and export control. South Africa is also experiencing constraint in skilled resources to complete a full notification. To complete the notification, South Africa is considering requesting assistance from the Secretariat as provided for in paragraph 6 of the Decision on Notification Procedures for Quantitative Restrictions, adopted by the Council for Trade in Goods on 22 June 2012 in Document G/L/59/Rev.1.*

**2.3.4 Relations with the EU**

Para. 2.41 include information on the SADC-EU Economic Partnership Agreement (EPA). When does SACU expect the EPA to be signed? Can SACU already provide information about a possible entry into force of the EPA?

**Answer**

*Entry into force of the Agreement will to a large extent depend on the ratification processes of the Member States of both parties. In light of the end date of the EU Market Access Regulation (1528/2007), the SACU Member States will work towards finalising the signing and ratification processes by October 2016.*

**3. Trade Policies and Practices by Measure****3.4 Tariffs and Other Charges****3.4.2 Bindings**

According to para. 3.25 of the Secretariat's report, all tariff bindings are *ad valorem*, including lines to which specific, mixed or formula duties apply. Therefore, the imposition of non-*ad valorem* duties, including specific, mixed and formula does not ensure compliance by the SACU countries with their binding commitments. Could the SACU countries indicate how do they control and ensure that the non-*ad valorem* duties levied at the border are not higher than the bound rates for the same national tariff line? Please refer to the list of products listed in table 3.5.

**Answer**

*In consideration of applications for increases in the duty where the bound duty is an ad-valorem duty, whilst the applied rate is in non-ad-valorem terms (formula or specific duties), the International Trade Administration Commission of South Africa (ITAC) calculates the ad-valorem equivalent of the proposed applied duty to ensure that it does not exceed the ad valorem bound rate.*

**Annex 1 – Botswana****2. Trade and Investment Regime****2.4 Investment regime**

Para 2.21 states that the citizen reservation requirements are perceived to be discriminatory and non-transparent. Could you further explain, what the citizen reservation entails and whether the government is reflecting to encourage further foreign investments via a policy reform?

**Answer**

*The reservations are stipulated in the relevant Acts and Policies. The reserved activities are at small scale, require low level of start-up capital and do not require specialised skills nor sophisticated technologies. However, foreigners are allowed to participate in the reserved activities through Joint Ventures with the locals. This is a government initiative aimed at empowering the locals and eradication of poverty especially in rural areas.*

**3. Trade Policies and Practices by Measure****3.1 Tariffs and Other Charges****3.1.4 Tariffs**

According to para. 3.16 of the Secretariat's report, the 2015 MFN applied rates appear to be higher than the bound rate for 16 tariff lines in Botswana. Could Botswana specify if this is really the case and if so, when does it intend to align its applied rates to the level of its bound rates?

**Answer**

*Botswana as a member of SACU applies a common external tariff to its third parties, which was determined by a common denominator principle within the Customs Union, and has led to the anomaly. SACU Member States continue to engage with a view to come up with a solution.*

**3.3 Measures Affecting Production and Trade****3.3.2 Competition policy and price controls**

Para. 3.91 describes Botswana's new Competition Law and Regulations enacted in 2009 and 2011 respectively, pointing out certain specific practices (e.g. agreements related to IPR holders). Are anti-competitive practices such as vertical agreements and horizontal agreements between businesses as well as the abuse of a dominant position covered by its Competition Law and Regulations? If so, could Botswana please provide more information on these practices? Is there any control of mergers under Botswana's new Competition Law. Furthermore, Botswana's Competition Law covers all areas of the economy, with some exceptions. Could Botswana please name these economic sectors and explain the reason behind the exceptions?

**Answer:**

*YES, they are covered by the Competition law.*

***Horizontal agreements***

*Section 25 of the Competition Act, 2009 provides for prohibition of horizontal agreements. The section states that: An enterprise shall not enter into a horizontal agreement with another enterprise if the agreement involves any of the following practises:*

*(a) directly or indirectly fixing a purchase or selling prices or any other trading conditions;*

*(b) dividing markets by allocating customers , suppliers, territories , or specific types of goods or services;*

*(c) bid-rigging, except where the person requesting the bids or tenders is informed of the terms of the agreement before the time that the bids or tenders are made;*

*(d) restraints on production or sale , including restraint by quota;*

*(e) a concerted practise; or*

*(f) a collective denial of access, of an enterprise , to which is an arrangement or association crucial to competition.*

***Vertical agreements***

*Section 26 of the Act, provides for prohibition of vertical agreements. The section states that:*

*An enterprise shall not enter into a vertical agreement with another business to the extent that the agreement involves resale price maintenance.*

*It further provides that a supplier may recommend a minimum resale price maintenance to the reseller if the supplier makes it clear to the reseller that the recommendation is not binding OR the product has the recommended price stated on it.*

*Abuse of dominance*

*Section 30 provides that , any conduct on the part of one or more enterprises is subject to prohibition by the Authority if, following an investigation by the Authority, such conduct is determined to amount to an abuse of dominant position in any market. A dominant position refers to a situation in which one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors.*

*YES , the Law covers merger control*

*Part X of the Competition Act provides for control of mergers. The chapter covers a wide range of provisions including: Acquisition of control of Mergers; Exemptions from merger control; threshold for mergers; pre-notification of mergers; hearing in relation to mergers; assessment of mergers; determination of proposed mergers; acceptance of undertakings; Revocation of approval of mergers; merger implemented in contravention of Act; enforcement of directions among others.*

*The Competition Act of Botswana DOES NOT explicitly make any exceptions to any economic sector. Rather, the Act has made exceptions to certain economic areas across board.*

*Section 3(3) provides that the Act does not apply to:*

*agreements relating to protection, licensing and assignments of rights under any law governing intellectual property rights;*

*enterprises operating on the basis of statutory monopoly;*

*practises authorised by any law or scheme;*

*any collective bargaining activity or agreement negotiated or concluded in terms of any labour legislation;*

*conduct designed to achieve a non-commercial socio-economic objective;*

*any practise or agreement relating to exports of goods from Botswana; or supply of services outside Botswana;*

*any practise or agreement approved under an international agreement to which Botswana is party to; and*

*services carried out under a contract of employment.*

Para 3.92 states that a new Competition Authority was established to implement the competition policy and enforce the act. How does Botswana ensure the independence of its Competition Authority?

**Answer:**

*Section 4 of the Act establishes the Competition Authority as a body corporate vested with powers to run its own affairs. It reports to the Competition Commission, which is the body responsible for the general policy direction of the Authority as well as the adjudicative body (section 9). The decision of the Competition Authority and the Competition Commission can only be appealed to the High court (Part XI).*

## **Annex 2 – Lesotho**

### **3. Trade Policies and Practices by Measure**

#### **3.1 Measures Directly Affecting Imports**

##### **3.1.4 Tariffs**

According to para. 3.17, in Lesotho there are two tariff lines for which the applied tariff rates (specific duty) are higher than their bound levels (60%). Could Lesotho indicate how it will ensure the consistency between its bound and applied rates?

**Answer:**

*Lesotho as a member of SACU applies a common external tariff to its third parties, which was determined by a common denominator principle within the Customs Union, and has led to the anomaly. SACU Member States continue to engage with a view to come up with a solution.*

#### 4. Trade Policies by Sector

##### 4.2 Mining and quarrying

###### 4.2.2 Policies

Para. 4.34 states that in order to apply for a mining lease, investors must first obtain an environmental impact assessment license. Which criteria or guidelines are requested by the Department of Environment to execute these EIA?

*The environment Act of 2008 provides the schedules of business activities that require EIA*

*The Department of Environment, within the Ministry of Tourism, Environment and Culture – Ms. T. Matela Senior Environment Officer – EIA can be contacted on telephone: +266 22311767 for further details.*

Furthermore, the terms and conditions governing a mining lease are subject to individual negotiations. What is Lesotho undertaking in order to render the system more transparent and predictable? Which institutional settings are in place?

*This was the case before the development of the Mining Policy in 2015 which has introduced strategies to minimize negotiability of contracts and ensure uniformity in awarding of mining leases. The Ministry of Mining is currently reviewing the mining legal framework to align it to the newly developed policy.*

###### *Institutional Setting*

*For awarding of mining lease there is a Board made up of the Representatives from the Ministries of Mining and Finance, 2 members of the public with knowledge and experience in, mining, environment, engineering or geological matters and a representative of Chamber of Commerce*

*Decisions with regard to negotiating terms and conditions of the mining lease are made with the Ministry of Mining.*

#### Annex 3 – Namibia

##### 3. Trade Policies and Practices by Measure

###### 3.3 Export prohibitions, restrictions, and licensing

###### 3.3.1 Export taxes, charges, and levies

Para 3.63 states inter alia that an export tax of 10% is collected on unprocessed diamonds. What is the purpose of such a tax and how are these funds used?

###### Answer

*Namibia will provide an answer at a later stage.*

##### 3.4 Measures Affecting Production and Trade

###### 3.4.2 Competition policy and price controls

According to **para. 3.91**, the Namibian Competition Commission (NaCC) is responsible for regulating competition across all economic sectors. How does Namibia ensure independence of the NaCC?

###### Answer:

*Section 4 of the Competition Act 2, 2003 established the Namibian Competition Commission (NaCC) as an independent juristic body that is subject only to the Namibian Constitution and the Law. The Competition Act applies to all economic activity within or having an effect on the Namibian market.*

*Section 3(2) of the Act "binds the State" in so far as the State engages in trade business for the production, supply or distribution of goods or the provision of any service....."*

*The Commission has the statutory functions of investigating and remedying anti-competitive practices, inclusive of restrictive business practices and anti-competitive mergers, and of opening up markets, promoting advocacy, education and awareness on the principles of fair competition. It furthermore has the function and powers to establish cooperation and exchange information with other competition*

**authorities, and to advise the Government on matters related to public interest and sector regulation.**

**All its decisions in terms of anticompetitive practices are reviewed by the High Court of Namibia. The High Court can impose pecuniary penalties for contraventions of the Competition Act.**

**The Ministry of Industrialisation, Trade and SME Development have legislative powers only to review merger decisions upon application by the merging parties.**

Para. 3.91 further states that there are four authorities regulating specific sectors, some of them with overlapping competences with the NaCC. The conclusion of Memoranda of Understanding between these authorities should remedy this conflicting situation. Could Namibia please elaborate on further plans to remedy this situation?

**Answer**

**Namibia has a number of sector regulators in key sectors, such as financial services sector, the non-banking services sector, the communications services sector, the regulation of ports and the distribution of electricity.**

**These sectors have concurrent jurisdiction with the NaCC with regards to competition.**

**Section 67 of the Competition Act 2, 2003 mandates the Commission to conclude agreements with sector regulators on concurrent jurisdiction.**

**The NaCC has concluded Cooperation Agreements (MOU's) with all sector regulators, namely, BON, CRAN, NAMFISA, NAMPORT and ECB. The Agreements cover the following areas: (i) purpose and basis of the Agreement; (ii) complaints related to restrictive business practices; (iii) application for approval with regard to mergers and acquisitions; (v) sharing of information; and (vi) confidentiality and use of information.**

**Annex 4 – South Africa**

**1. Economic Environment**

**1.2 Recent Economic Developments**

Para. 1.10 to 1.14 describe the current economic headwinds South Africa is currently facing. Furthermore, the depreciation of the rand continues, affecting South Africa's competitiveness and economic uncertainty accordingly. Could South Africa share information on the impact of such a challenging economic situation on SACU's revenue and budget?

**Answer**

**At the time of the February 2015 Budget, the SACU revenue Pool was projected to be R51 billion next year, then decline to R36.5 billion in 2016/17, as a result of a decline in customs duties associated with lower import projections. As the economy recovers and imports rise, SACU revenue is expected to increase to R45.4 billion in the outer year. A combination of lower-than expected real yields, the timing of new debt issuance and the weaker exchange-rate forecast is expected to increase receipts from financial transactions.**

**1.3 Foreign Direct Investment**

Table 1.3 shows a certain variability concerning FDI in- and outflows. The Promotion and Protection of Investment Bill (published for public comments in 2013, para 2.15) could improve predictability and investors' confidence. Para 3.120 states that a main objective of the new Intellectual Property policy (published for public comments in 2013) is the establishment of confidence to attract investments. When will the Promotion and Protection of Investment Bill and the IP Policy enter into force?

**Answer**

**The Bill is currently subjected to consultation in the Portfolio Committee on Trade and Industry until the end of November 2015. It is expected that Bill will be brought before the National Council of Provinces and the National Assembly during the first quarter of 2016 where-after it will be signed into by the President.**

Regarding investment conditions, will the Investment Bill prevail over other laws or policies?

**Answer**

***No. The Investment Bill will coexist side by side with other legislation. It does not seek to override other existing legislation.***

**3. Trade and Investment Regime****3.1 Investment Regime**

**Table 2.2** gives an overview on the South Africa's BITs. Several BITs with European countries have been terminated, while others remain in force (such as China, Czech Republic, Korea, Russian Federation). What were the criteria applied to terminate some BITs, but not other - very similar - BITs?

**Answer**

***The duration process of the BITs was the main criteria that was applied when the decision terminate the BITs was taken. It was agreed that termination was going to take place on a regional basis with regard to BITs that were at the end of their duration. Once we had dealt with one region we would then move to the next one.***

What is the role of FDI stock in a partner country when taking such decisions?

**Answer**

***FDI stock does play an important role in the decision. South Africa has very strong legislation with regard to protection of property and assets, whether domestic or foreign. It was therefore understood that such stock would be protected under existing domestic laws as well as the survival clause of the BITs while the Investment Bill is being taken through the Parliamentary process.***

**3. Trade Policies and Practices by Measure****3.1 Measures Directly Affecting Imports****3.1.1 Customs procedures and requirements**

**Para 3.12** states that the base of the VAT, for local supplies, is the "domestic open-market value". For imports, the taxable value is the f.o.b. customs value plus a 10% mark-up on the customs value. What is the reason of the mark-up on the customs value?

**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%.***

**3.1.2 Import prohibitions, restrictions, and licensing**

According to **table 3.1** the fill rates of many tariff rate quotas are very low. What are the reasons for the underutilization of tariff rate quotas? What is South Africa undertaking in order to improve the utilization of the tariff rate quotas?

**Answer**

***Underutilization of tariff quotas can be attributed to various factors. As a rule, no restrictions are placed on the issuing of import permits in relation to TRQs. Market conditions are in most cases the reason for the low fill rates of TRQs. Often, the difference between the IQTR and the MFN applied rate is very low and importers opt not***

*to use the relevant permits. The administration system of the market access quotas is transparent and aims at facilitating of imports of the TRQ access quantities.*

### **3.3 Measures Affecting Production and Trade**

#### **3.3.2 Competition policy and price controls**

According to **para. 3.83**, intermediate and large merging parties have to notify the Competition Commission (CCSA) of a merger before it is implemented and, however, small mergers may be notified voluntarily or upon the CCSA's instruction. Could South Africa please provide more information regarding these instructions, in particular the CCSA's criteria?

#### **Answer**

*The Competition Act 89 of 1998 ("the Act") requires that the Minister set merger thresholds, based on the asset values and turnover of the merging firms, which classify transactions as:*

- *large (above the higher threshold),*
- *intermediate (between the lower and higher thresholds) and*
- *small (below the lower threshold).*

*On 6 March 2009, the Minister published the following thresholds in the Government Gazette . These thresholds took effect since 1 April 2009 and are as follows:*

*- Merger thresholds as at 1 April 2009*

*Thresholds Combined turnover / Asset value Target turnover / asset value*

*- Lower threshold R 560m R 80m*

*- Higher threshold R 6 600m R 190m*

*Small mergers in contrast to both large and intermediate merger transactions do not require mandatory notification and approval. According to Section 13(3) of the Act, the Commission has discretion to require the parties to a small merger to notify the Commission of that merger, if the merger may substantially prevent or lessen competition or cannot be justified on public interest grounds. A merger contemplated in terms of section 13(3) may not take further steps to implement that merger until it has been approved or conditionally approved. More detail is provided under: <http://www.compcom.co.za/wp-content/uploads/2014/09/Small-Merger-Notification.pdf>.*

*The Commission continually monitors and identifies small mergers that may require notification. In addition to the monitoring function the Commission also relies on the public and competitors of merging parties to alert the authority to possible anti-competitive transactions. The Commission will evaluate whether small mergers require notifications on its own merits, subject to the guidance provided by section 13(3) of the Act.*

*The Commission will require a notification of a small merger which meets the following criteria:*

- *At the time of entering into the transaction any of the firms, or firms within their group, are subject to an investigation by the Commission in terms of Chapter 2 of the Act (Restrictive Practices Abuse of Dominance) and/or;*
- *At the time of entering into the transaction any of the firms, or firms within their group, are respondents to pending proceedings referred by the Commission to the Competition Tribunal in terms of Chapter 2 of the Act (Restrictive Practices Abuse of Dominance).*

*The Commission also advises parties to small mergers which meet the above criteria, to voluntarily inform the Commission of such intention to enter into a transaction. Such firms are required to provide the Commission with sufficient detail/information on the parties, the transaction and the affected markets within which the transaction takes place.*

### 3.3.4 Government procurement

**Para. 3.102** states that the government procurement market is not open to foreign bidders. What are the processes and conditions for the procurement of goods or services that are not produced nationally and need to be imported?

**Answer**

*The goal of SA procurement is, firstly, to advance economic transformation and enhance the economic participation of black people in the SA economy. Procurement is therefore used as an enabler for socio-economic transformation. It is for this reason that the Preferential Procurement Policy Framework Act and Preferential Procurement Regulations of 2011 makes provision for the preference point system. This system rates the bidders in terms of their ability to perform the task and the socio economic standing. The regulations also makes provision for those bidders who do not have a scorecard to be rated against.*

*SA also wants to boost their manufacturing sector hence the need for designated sectors. Preference will be given to manufacturers within SA. If products are imported, there are certain mandatory requirements that a foreign bidder must abide by, in the interest of SA.*

**Para. 3.105** outlines the regulations and institutions related to government procurement. What are the institutional arrangements and regulations to assure transparency and accountability as well as competition in the government procurement processes?

**Answer**

- *Section 217 of the South African Constitution, Section 38 (1) (iii) of the Public Finance Management Act, and Section 112 (1) of the MFMA require " an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective."*
- *Competition in the procurement process:-*
- *Preferential Procurement Regulations, 2011, section 5 and 6, makes provision for departments and entities/ institutions to utilize the 90/10 and 80/20 preference points system. Bidders compete in terms of price and socio-economic goals.*
- *Preferential Procurement Regulations, 2011, section 4, makes provision for bids to be evaluated in terms of functionality. A selection criteria is approved prior to the bid being published. Bidders will therefore compete on ability.*
- *National Treasury practice notes and Municipal Regulations requires departments/ entities/ institutions to establish structures within the organization for bid evaluation, drafting of specification and bid adjudication. These structures ensure fairness, competitiveness, cost effectiveness and transparency throughout the procurement process.*
- *Accountability in the procurement process:-*
- *The Public Finance Management Act and the Municipal Finance Management Act provides for the functions of the accounting officers and accounting authorities. The accountability of an organ of state rests with the accounting officer or authority. Functions within the department/ entities / institutions are then delegated to officials in writing for a specific function. The administration of the procurement process rests with the executive SCM. The adjudication of bids rests with the adjudication committee and or approval with the accounting officer and or the accounting authority.*
- *Transparency in the procurement process:-*
- *The eTender Publication Portal was developed in order to improve access to government business opportunities. www.etenders.gov.za provides a single point of entry where government business opportunities are advertised electronically in an easily accessible format and at no charge to businesses. The e-Tender publication portal was launched on 1 April 2015 in accordance with Minister's announcement. The launch was supported by National Treasury Instruction note 1 of 2015 directing all national and provincial government institutions to publish bids above R500 000 on the e-Tender portal.*
- *Prospective suppliers are now able to self-register on the CSD website www.csd.gov.za. The CSD interfaces to South African Revenue Service (SARS) to*

*enable tax clearance certificate verification and the Companies and Intellectual Property Commission (CIPC) for verification of business registration and business ownership information. The CSD furthermore verifies supplier information with the register for tender defaulters and database of restricted suppliers, and verifies South African identification numbers with the Department of Home Affairs (DHA).*

- *The Procurement Plans of Departments and Public Entities are published on the OCPO website on a quarterly basis. The publishing of the procurement plans on a quarterly basis allows for transparency in the procurement of goods and services within the Public Sector. It further promotes transparency and visibility in the supplier market in that suppliers are afforded equal and fair opportunities to public procurement. Suppliers become aware of the service, products/ goods required within the public sector. The publishing of the procurement plans further prevents the abuse of the supply chain system in that no supplier is unfairly advantaged in terms of having access to bid information. The publishing of the bids quarterly allows suppliers equal footing in terms of preparation and response to public procurement of service, products/ goods.*
- *Treasury Regulations 16.A6.3 also allows for bid awards to be published in the medium in which the bid was advertised. The details that must be published is in the Treasury Instruction Note 32.*

### **3.3.5 Intellectual property rights**

The Secretariat's report states in **para. 3.120** that a draft IP policy was published in 2013 for public comments and that the main objectives of the draft policy include inter alia the introduction of a public health aspect perspective into national IP laws. Could the South African authorities specify how this will be implemented, specifically in the field of patents?

**Answer**

***South Africa is still in the process of developing its IP policy and once finalised the implementation thereof will be addressed.***

*When will this IP policy enter into force and what is the timeline of implementation?*

**Answer**

***See response provided above.***

*How is compliance of the IP policy and its implementation in the national IP law with WTO law and in particular with the TRIPS Agreement addressed and reflected?*

**Answer**

***South Africa's IP policy and its implementation once finalised, will take due consideration of all South Africa's international commitments related to intellectual property.***

The Secretariat's report states in **para 3.121** that, in accordance with the Patent Act, at any time after the expiration of 3 years from the date of the grant of a patent or 4 years from the date of filing a patent, whichever is later, any interested person may apply to the CIPC for the grant of a licence under the patent, provided that a market for the patented invention is not being supplied, is not being supplied on reasonable terms in South Africa, or it is in the public interest that a licence or licences should be granted.

Could the South African authorities specify the procedure, which can lead to the grant of a compulsory licence?

**Answer**

***This will be addressed in the development of the IP policy.***

Please explain to what extent this procedure and the steps required to be taken by an applicant for a compulsory licence are consistent with article 31 TRIPS?

**Answer**

***See the response provided above.***

Article 31(b) TRIPS requires that the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions. How is this implemented in practice and what happens if such efforts have not been successful within a reasonable period of time?

***Answer***

***See the response provided above.***

**Annex 5 – Swaziland**

**3. Trade Policies and Practices by Measure**

**3.3 Measures Affecting Production and Trade**

**3.3.2 Competition policy and price controls**

According to **para. 3.80**, the Swaziland Competition Commission (SCC) is an independent body. How does Swaziland ensure the independence of the SCC?

***Answer***

***The Commission is governed by Board of Commissioners from different organizations. Decisions by the Commissioner are independent and can only be appealed in the High Court.***

Furthermore, **para. 3.80** describes the SCC's enforcement actions as inadequate due to a lack of financial and staff resources. Could Swaziland please elaborate on its plans to remedy the situation?

***Answer***

***Continued advocacy for an increased subvention from Government and other cooperating partners would improve the financial situation of the organization. As a result the enforcement actions will be improved.***

**General Questions**

**WTO Trade Facilitation Agreement:** Botswana has already submitted its Category A notification and South Africa as well as Swaziland indicate that work in this regard are ongoing. Could all SACU Members, except Botswana, estimate when the notification process for Category A will be completed? Further, could the SACU Members elaborate on the status of work regarding their ratification processes for the TFA?

***Answer***

***Answer provided to similar question from the EU above.***

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**TPR RESPONSES TO QUESTIONS RECEIVED AFTER THE DEADLINE****CHINA****Part I. Questions based on Report by the Secretariat (WT/TPR/S/324)**

Page 14, Para 2.23

2.23. In accordance with Article 31 of the 2002 SACU Agreement, no SACU member State can negotiate or amend a trade agreement without consent from the others. SACU members currently have a unified approach towards negotiations with third parties on an ad hoc basis. An annex establishing a Common Negotiating Mechanism (CNM) has been drafted and awaits adoption.

**Question 1**

Please introduce in detail the unified approach towards negotiations among SACU members with third parties. And when will the Common Negotiating Mechanism (CNM) be adopted?

**Answer 1**

*The Common Negotiating Mechanism (CNM) outlines a process that SACU should follow in ensuring a unified engagement in its negotiations with third parties. The processes to adopt the Annex on CNM is ongoing.*

Page 17, Para 2.45

2.45. During the transition period, a "market access regulation" (in place until October 2016) will regulate trade between the EU and BLNS, while the TDCA will continue to govern trade between the EU and South Africa.

**Question 2**

Please introduce in detail the "market access regulation" between the EU and BLNS. SACU members have signed multiple regional and bilateral free trade agreements, therefore subject their trade partners to different access conditions to the SACU market. How do SACU members address the uncertainty in implementing the obligations of different agreements under such circumstances?

**Answer 2**

*There is no uncertainty due to common and uniform application of the CET by customs authorities. The market access regulation (1528/2007) is a unilateral arrangement by the EU to secure continued market access whilst completing negotiations on the Economic Partnership Agreement (EPA).*

Page 18, Para 2.53

2.53 The agreement covers trade in non-agricultural products, including fish and other sea products, and processed agricultural products. In addition, the individual EFTA States and SACU concluded bilateral agreements on basic agricultural products, which form part of the free trade area package. Since the entry into force of the agreement, EFTA States grant the SACU members duty-free entry for all non-agricultural goods. The SACU States are to dismantle their tariffs progressively over a period not exceeding nine years; 76.8% of their tariff lines were duty-free in 2015.

**Question 3**

Please introduce the effects of EFTA-CU agreements on agricultural and non-agricultural products.

**Answer 3**

*There has been no notable effects for SACU on non-agricultural trade resulting from tariff phasedown. The trade in basic and processed agricultural products has been in favour of SACU until 2011 since then SACU exports declined resulting in a negative trade balance. However the overall trade balance remains in SACU.*

**Question 26**

What are the countries included in the SADC EPA Group? Why are negotiations conducted in the name of SADC instead of SACU in EPA and African Tripartite FTA (TFTA) talks?

**Answer 26**

*The countries of the SADC EPA group are the 5 SACU member states (Botswana, Lesotho, Namibia, South Africa and Swaziland, and Angola and Mozambique). The negotiations were premised on the basis of the recognized Regional Economic Communities.*

*In the Tripartite the negotiations are not conducted in the name of SADC by the SACU Member States. Because SACU is a customs union, it has to negotiate as one entity in order to maintain the integrity of its common external tariff.*

Page 40, Para 5.3

5.3. In terms of the process and timeframe for entry into force, the Agreement has been subjected to a legal vetting process. Thereafter, the Agreement will be presented to Cabinet and, if approved, submitted to the South African Parliament for ratification. Once ratified, the Agreement may be signed, and it will enter into force once all Parties have concluded their own respective national approval processes.

**Question 27**

Please introduce the specific timetable for the entry into force of EPA. Has SACU set a target time for the approval and signing of EPA? Before the signing, can the EPA provisions be implemented on an ad hoc basis?

**Answer 27**

*Entry into force of the Agreement will to a large extent depend on the ratification processes of the Member States of both parties. In light of the end date of the EU Market Access Regulation (1528/2007), the SACU Member States will work towards finalizing the signing and ratification processes by October 2016.*

**Part III. Other Questions****Question 29**

It has been reported that SADC is considering the possibility of creating a regional currency and establishment of a Common Monetary Area with SACU. Could this be confirmed and if so, could more information be provided? For example, what would be the base currency?

**Answer 29**

*SADC Member States have revised the Regional Indicative Strategic Development Plan (RISDP) and have identified new priorities.*

**Question 30**

According to Art.28 of the SACU Agreement, Botswana and other members agreed to harmonize product standards and technical regulations. Do SACU member countries have a common policy on these issues? Could you give some examples of concrete measures taken to this end? Could you give an update on the progress in harmonizing customs procedures, standards, sanitary and phytosanitary measures, and in competition and counter-unfair trade practices since the last review?

**Answer 30**

*No. SACU does not have a common policy on standards, technical regulations, and SPS. For Customs, SACU member states are reviewing Customs Legislations and Policies to align to international best practices such as the Revised Kyoto Convention and the WTO Trade Facilitation Agreement (TFA). SACU Secretariat is supporting the Member States with this process and the ultimate objective is to ensure harmonization of Customs regulations, policies and procedures that relates to the Common External Tariff. Thus far work is still at an initial phase and an assessment of the Customs legislative frameworks will take place before end of December 2015.*

**Question 31**

The SACU membership consists of four middle-income countries and one least developed country, Lesotho. Are there any schemes for South-South cooperation within SACU? If so, please introduce the relevant arrangement and give some examples, such as preferential treatment for Lesotho provided by other SACU members.

**Answer 31**

***There are no explicit South-South cooperation policies in SACU. However, policy decision undertaken in SACU takes into account differences in Member States economic developments in line with the SACU Agreement, 2002. These relate to amongst others the establishment of the development component of the revenue sharing formula which aims to compensate the least developed economies. Further, there is infant industry protection which applies mostly to the least developed economies.***

## **HONG KONG, CHINA**

### **The Common Regime**

Harmonisation (Services)

(WT/TPR/S/324: Page 12 para 2.6)

1. The 2002 SACU Agreement is limited to the liberalization of trade in goods. The Agreement does not establish provisions for trade in services. In 2012, SACU member States decided to make trade in services a priority area in the Union's work programme. Work in this area is still at infancy stage.

#### **Question 1**

Further to making trade in services a priority area in the Union's work programme, have there been further actions that the Union has adopted or is preparing to adopt across member States to enhance liberalisation of trade in services?

#### **Answer 1**

*The region has not yet agreed on a fixed timeframe, this will be guided by the preliminary assessment on the scope and need for developing a legal framework.*

### **Harmonisation (Value-added Tax)**

(WT/TPR/S/324: Page 28 para 3.31)

2. The SACU agreement does not provide for harmonization of value-added tax (VAT). Each SACU country continues to set its own VAT. Differences are significant in respect of tax bases and rates, as well as in experience with VAT.

#### **Question 2**

Are there any plans to harmonise VAT among member States? What are the considerations/difficulties that are preventing the SACU from harmonising their VAT?

#### **Answer 2**

*There are no plans to harmonise VAT within SACU Member States.*

**KOREA, REPUBLIC OF****PART I: Questions Regarding the Secretariat Report*****Page 25 (Para 3.25)***

All tariff bindings are ad valorem, including lines to which specific, mixed, or formula duties apply. Therefore, the imposition of non-ad valorem duties, including specific, mixed, and formula does not ensure compliance by the countries with their binding commitments (Table 3.5). Tariff quotas were included in the commitments made by South Africa and apply to imports of selected agricultural products.

**Question 1**

Tariff bindings by all SACU members are at ad valorem rates. The imposition of non-ad valorem rates on some tariff lines creates a risk of non-compliance by SACU Members with their individual tariff bindings, and the use of formula duties based on reference prices does not ensure conformity with obligations under the WTO Agreement on Customs Valuation.

What measures does SACU intend to take to ensure its tariff regime is WTO compliant?

***Answer 1***

***In consideration of applications for increases in the duty where the bound duty is an ad-valorem duty, whilst the applied rate is in non-ad-valorem terms (formula or specific duties), the International Trade Administration Commission of South Africa (ITAC) calculates the ad-valorem equivalent of the proposed applied duty to ensure that it does not exceed the ad valorem bound rate.***

**SINGAPORE**

**PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT  
II TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

Page 14 (Para 2.25)

**Question 1**

We note that SACU is negotiating a PTA with India. Does SACU have plans to negotiate trade agreements with other Asian countries?

**Answer 1**

***SACU priority is to conclude current negotiations prior to engaging in new trade negotiations.***

Page 12 (Para 2.6)

**Question 2**

We understand from the WTO Secretariat report that SACU member states decided in 2012 to make trade in services a priority area in the Union's work programme. Could SACU elaborate on the elements for trade in services in the work programme?

**Answer 2**

***The region is yet to agree on the elements to be included in the work programme.***

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## ANNEX 1

### BOTSWANA - TPR RESPONSES TO QUESTIONS RECEIVED AFTER THE DEADLINE

#### CHINA

Annex 1-Botswana

Page 57, Para 1.8

1.8 ...nevertheless FDI flows have been volatile while portfolio investment has declined since 2009.

#### Question 4

What's the reason for the FDI volatility and decrease of indirect investment in Botswana?

#### Answer

***FDI flows have to a larger extent mirrored the movement of investment flows across the world. In this regard, Botswana has not been spared by the recent global economic crisis thus affecting the levels of investment into the country. However, with the relocation of the diamond aggregation from London to Botswana, there has been an increase in investment particularly from diamond cutting and polishing as well as jewellery manufacturing entities.***

Page 65, Para 2.21

2.21 The citizen reservation requirements affect foreign investors' decisions, as they are perceived to be discriminatory and non-transparent especially if reservations are not well defined and/or change often.

#### Question 5

Does the government of Botswana have a plan for improving the business environment? If so, please provide details.

#### Answer

***The Government has been reviewing its internal processes and has developed the Doing Business Reform Roadmap that was adopted in 2015. The Roadmap aims to improve all the administrative and regulatory framework as well as institutional structures that are an impediment to the ease of doing business.***

Page 66, Para 2.26

2.26. Land in Botswana is divided into three categories (freehold, state and tribal). Land, no matter its category, can be put to any use. Freehold land, which amounts to 3% of Botswana's land area, is the only type of land.... The Government has set aside land for investors.

#### Question 6

How does the government of Botswana choose the land to be set aside? Is reserved land limited in some regions only? What procedures do foreign investors need to complete to lease the land?

#### Answer

***Land is set aside for investment based on government priorities and advice by the competent authority responsible for investment facilitation. Land is reserved all over the country where there is potential for investment.***

***Both foreign and domestic investors need to apply for land through Botswana Investment Trade Centre, Ministry of Agriculture and other investment facilitating agencies. Land applications are to be accompanied by business proposals.***

Page 85, Para 3.92

3.92. ...In accordance with the Competition Law, a Competition Authority was established to implement the Competition Policy and enforce the Act. The Competition Authority is responsible for preventing anticompetitive practices in the economy, even in areas where there is another regulator such as the Civil Aviation Authority, the Botswana Communications Regulatory Authority (BOCRA), the Non-banking Financial Institution Regulatory Authorities (in charge of non-banking financial institutions), and the Bank of Botswana (financial institutions). These institutions have

memoranda of understanding (MoUs) with the Competition Authority and the Act provides for the establishment of a consultation mechanism between the Authority and sector regulators.

**Question 7**

Please introduce the specific measures for consultation and coordination between the Competition Authority and sector regulators regarding the regulation of enterprises.

**Answer:**

*Competition Act mandates the Competition Authority (CA) and sector regulators to establish a mechanism through which they can have regular contact. The CA has signed MoUs with sector regulators which provide for the establishment of Joint Working Committees (JWCs) made of representatives from the Authority and the regulators. The JWCs meet regularly to assess the effectiveness of the MoUs in facilitating cooperation between the partners and also to identify opportunities for joint initiatives aimed at addressing anti-competitive behaviour in the sectors.*

**HONG KONG, CHINA**

## Trade Policies and Practices by Measure

State-owned Enterprises and Privatization

(WT/TPR/S/324: Page 87 para 3.101; Page 90 para 3.106)

1. The Privatization Master Plan II has the main objective of identifying services and public enterprises that are suitable for privatization.

## Question

Could Botswana advise the considerations/criteria taken into account in identifying the services and public enterprises suitable for privatization?

**Answer:**

***The process of identifying public enterprises as candidates for privatisation for the Privatisation Master Plan II is two-fold. The first stage involved the review of the performance of the parastatals, while the second stage involved the assessment of the desirability and feasibility for privatisation of the public enterprises and the results were graded against the Privatisation Decision Grid.***

(WT/TPR/S/324: Page 88 para 3.102)

Foreign participation in privatization is encouraged and any restrictions on foreign ownership are to be decided on a case by-case basis.

## Question

Could Botswana explain the considerations behind the case-by-case decisions, and give examples on restrictions on foreign ownership? Are the restrictions industry/sector specific?

**Answer:**

***The Desirability Criterion assesses whether there is relative advantage or disadvantage that the private sector has over Government in providing a particular service. Key factors to be considered include:***

- a) Whether the private sector will have relative advantage over Government in improving delivery of goods and services (efficiency and productivity); Whether there will be creation of opportunities or prospects for citizen economic empowerment;***
- b) Whether Government's social and developmental objectives will continue to be delivered; and***
- c) Whether Government will have adequate returns from the privatisation and/or be relieved of the financial.***

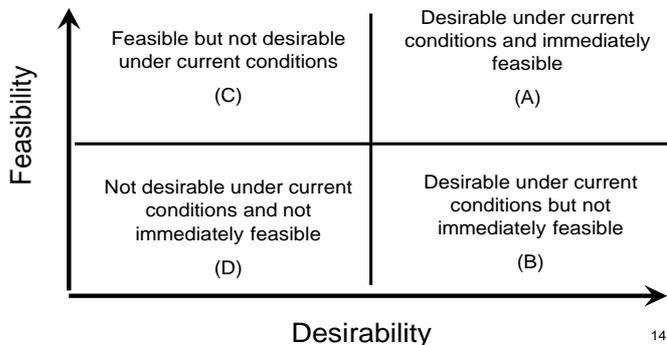
***The Feasibility Criterion is determined by the ease of privatisation and the attractiveness of the activity to the private sector. Key factors to be considered include whether:***

- the parastatal is (still) profitable;***
- there is a competitive market position and growth potential;***
- there is investor appetite for such a PE; and***
- there are any necessary sector reforms, legislative changes and PE restructuring to support PEs divestiture.***

**THE PRIVATISATION DECISION GRID**

***The grid divides privatisation candidates into four categories based on the feasibility and desirability criteria as shown below:***

### Privatisation Decision Grid



**The four grid categories are: Quadrant A: Divest/Contract Out; Quadrant B: Restructure prior to Divestiture; Quadrant C: Commercialise and corporatisation; and Quadrant D: Monitor Performance.**

**Regarding services, the Government is currently implementing the first tranche of the Public Services Outsourcing Programme (PSOP) that was approved in February 2011. The first tranche of activities under the programme involves the mandatory outsourcing of landscaping and gardening services while cleaning and security guarding services were optional. Outsourcing of services therefore under the Privatisation Master Plan II will focus on the second tranche of the PSOP. This will cover the outsourcing of gardening, cleaning and security services for government offices outside the government enclave. Other key outsourcing projects, that are not under the PSOP, will also be implemented as and when identified and approved by Government.**

#### Telecommunications

(WT/TPR/S/324: Page 115 para 4.75)

1. According to the Secretariat's report, the Botswana government has started to privatise state-owned Botswana Telecommunications Corporation (BTC). The BTC was split into two wholly state-owned companies in 2012, namely the Botswana Telecommunications Corporation Ltd. (BTCL) and Botswana Fibre Networks Ltd. (BoFiNet). The Botswana government has planned to sell up to 49% of BTCL's shares through initial public offering (IPO) in end-2014, but the sale was postponed to the second half of 2015/16. BoFiNet remains wholly state-owned but it "will be partially privatised in due course".

#### Question

What are the factors leading to the postponement of the IPO for BTCL in end-2014? Has the launch of the IPO taken place yet? Would legal persons in Botswana with foreign capital be allowed to buy the shares of BTCL in the stock market? What factors have been considered in deciding the distribution of shares of BTCL?

#### Answer:

- **The launch of the IPO for BTCL was postponed in 2014 due to the need to secure funding for underwriting offer of subscription as required by the Botswana Stock Exchange. The underwriter has now been identified and will follow rules and procedures of the Stock Exchange.**
- **Only Botswana citizens and 100% citizen owned companies can acquire the shares.**
- **Mechanisms have been devised to ensure equitable and fair distribution of the share amongst all eligible persons with caps to be set.**

What is the latest plan for the privatisation of BoFiNet? How will BoFiNet be privatised?

#### Answer:

**There are no plans to privatize Bofinet.**

**THE RUSSIAN FEDERATION****QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/324 ANNEX 1 - BOTSWANA)****3 TRADE POLICIES AND PRACTICES BY MEASURE****3.1.8 Sanitary and phytosanitary requirements****3.54 p 80**

In order to protect plant health, imports of plants and other plant-related material require an import permit and the importation of some plant products is prohibited. Import permits are issued by the Division of Plant Protection under the Department of Crop Production. Efforts to establish the National Plant Protection Organization (NPPO) have been undermined by resource constraints. Imports also require an original phytosanitary certificate issued in the country of origin. If the imported articles are not accompanied by the required documentation they are re-exported or destroyed. In addition, imported plants and plant products are subjected to inspection at approved ports of entry and may be disinfected and destroyed if necessary.

Question

What requirements and deadlines have been set up by the competent authorities for obtaining the certificates for Botswana origin products? Are there any additional grounds for refusals in obtaining an import permit other than those that are listed in the legislation?

Answer

*To be issued a Phyto-sanitary certificate for Botswana originating product, the exporter has to meet the requirements of the importing country. There is no deadline for obtaining the certificates except that the certificate must be produced at the time of crossing the border. Requirements are that the importer/exporter makes an application to Division of Plant Protection specifying name of product, quantity and source after which they are offered a Phyto-sanitary import permit. The permit specifies conditions to be met before importation/exportation.*

**3.55 p 80**

Disease prevention and control continues to be based on the Diseases of Animals Act of 1977 (as amended). As in the case of plants and plant products, any person who suspects or has reason to suspect that animals are affected by a disease needs to report it immediately, and as far as possible keep the animals separated. If an area is declared as infected no animals should be moved from or into that area, without being previously disinfected and granted a written permission from a veterinary officer. The Director of Veterinary Services is required to issue an import (export) permit for any animal, animal product, or other pathogenic agent capable of causing diseases in animals. In addition Botswana applies strict controls at the borders including, *inter alia*, quarantine, testing and inoculation of suspected animals. As part of the disease control strategy, the country is divided into fenced-off control zones. These are: the OIE-recognized FMD-free area (no buffalo may enter) and the livestock free areas (no livestock may enter). The principle is to separate livestock and buffalo, vaccinate cattle at risk and keep them separate from OIE-recognized FMD-free cattle. The movement of animals is also controlled. There are quarantine points for the movement of animals.

Question

*Please specify from what and to what particular zones free of domestic animals dangerous diseases could the susceptible livestock be exported and imported. What is the origin of the breed cattle? Please explain the ways to control the spread of the bovine spongiform encephalopathy? What are the import requirements for the pedigree cattle? What are the priorities for the importation (dairy products, meat products, etc.)?*

Answer

*Movement of animals between zones, importation and exportation of livestock can be done to and from any zone subject to a written permit from the Department of Veterinary Services. In cases of outbreaks movement, exportation and importation can be prohibited until such a time when it is deemed safe to allow for movement. Breed cattle are of different origins. Spongiform encephalopathy is controlled like other animal diseases by constant monitoring for the disease, separating suspected animals and ensuring that there is controlled movement of animals from the affected zones.*

***The import requirements for the pedigree cattle are the sanitary certificates from the originating country.***

**3.56. p 80**

Botswana does not have regulations on biotechnology or genetically modified organisms.

Question

*Please describe the current regulations regarding the GMO products circulation in Botswana? Is there a specific reason for the absence of a regulation act? Is there an intention for developing such regulation later?*

Answer

***There are currently no regulations regarding GMO products. However, Botswana is currently developing a Biosafety Act which will guide the use of GMOs.***

**3.2 Measures Directly Affecting Exports**

**3.2.1 Export procedures and requirements**

**3.57 p 80**

Exporters, like importers, need to register as a business or a company under the Company Act, and obtain a trading licence under the Trade Act (for registered businesses or companies); while individuals need a hawker's/street vendor licence prior to engaging in any commercial activity (Section 2).

Question

*Please provide information on the body responsible for licensing. During what time period should the licensing committee consider the appeal to obtain a trading license? Article 12 of the Trade Act provides the general refusal grounds for obtaining a license. Are there any special grounds for such refusals? Is there any possibility of an electronic application submission?*

Answer

***Licensing function in Botswana is delegated to Local Authorities. The Trade Act and Industrial Development Act provide for recourse in cases of grievance with a Licensing Committee's decisions. Appeals to the Regional Appeals Board are to be submitted within 30 days of notification of the decision.***

***Under e-Gov, Government intends to automate all services including licensing.***

**3.2.3 Export prohibitions, restrictions, and licensing**

**3.64 p 81**

Export permits issued by the Department of Agribusiness Promotion at the Ministry of Agriculture are required for the following products: animal feed for poultry and livestock, sorghum grains and sorghum products, maize grain and maize products, millet grains and millet products, wheat grain and wheat products, pulses (castor beans and groundnuts), sunflower seed and basic foods and vegetables not exceeding a specific quantity stipulated by law. Permits are issued to a holder of a valid trading licence, who could either be a citizen of Botswana, a resident foreign national or a company or firm registered and carrying on business in Botswana. Permit applications must be accompanied by the trading licence and certificate of incorporation; and a sanitary and phytosanitary permit and/or Botswana Bureau of Standards (BOBS) Certificate.

Question

*Please clarify the rationale behind the introduction of export restrictions for agricultural goods, for example for cattle.*

Answer

***Rationale for export restrictions are due to food security concerns. Botswana applies the restrictions to guard against seasonal shortages. An export restriction on live cattle is mainly due to economic reasons.***

**SINGAPORE**

**Trade and Investment Policies**

Annex 1, Page 65 (Para 2.21)

The WTO Secretariat Report mentions that foreign investment in Botswana is already regulated by an array of laws. We also understand that Botswana is in the process of developing an Investment Facilitation Law. How would the new law consolidate and streamline existing acts, and when is the law expected to be passed?

***Answer***

***The development of Botswana Investment Facilitation Law is still at its initial stage. The Government is working in partnership with UNCTAD to identify ways in which investment laws could be consolidated or streamlined.***

**THAILAND****QUESTIONS REGARDING THE SOUTHERN AFRICAN CUSTOMS UNION REPORT****3.1 Trade Policies and Strategies****Page 7 (Paragraph 3.2)**Question 1

What kind of businesses that are eligible and given priority for trade and investment schemes of BITC?

**Answer**

*In line with government's initiative of diversifying the economy, BITC has designated the following sectors as priority sectors for investment:*

- *Agriculture & Agro-processing;*
- *Mining and Resource beneficiation;*
- *Manufacturing;*
- *Financial and Business Services;*
- *Business Process Outsourcing*
- *Applied Information Communication Technology (ICT);*
- *Transport, Cargo and Logistics;*
- *Hospitality & Tourism;*
- *Education & Skills development; and*
- *Health Care Services.*

Question 2

In addition, Thailand can possibly get the benefit from the Special Economic Zones (SEZ) in Botswana. What are the incentives that FDI can get from SEZ?

**Answer**

*Currently, the government is offering the following incentives for companies operating in Botswana:*

- *No foreign exchange controls;*
  - *Remittances and full repatriation of profits and dividends allowed;*
  - *15 % for Manufacturing, Financial services companies & companies registered in the Innovation Hub (22% Corporate tax for other sectors);*
  - *Low personal income tax, maximum 25%;*
  - *12% Value Added Tax;*
  - *Possible tax holidays for a period of 5 – 10 years through the Development Approval Order dispensation;*
  - *Duty-free import of machinery and equipment for manufacturing purposes;*
  - *200% deductible Tax Allowance for Training costs;*
  - *IFSC certified companies are exempted from Withholding Tax on interest; dividends, management fees and royalties paid to non-resident director; and*
  - *IFSC companies are also exempted from VAT and Capital gains tax.*
- Plans are at an advanced stage to develop specific incentives for SEZs.*

**4.2 Agriculture Sector****Page 9 (Paragraph 4.3)**Question 3

What is the Green box support? Does it in line with FTA of WTO regulation? Please clarify on this point.

**Answer**

Green box supports/ subsidies are those agricultural domestic supports considered to have no or atmost minimal distorting effects on trade or production. Green box supports can be used without limitation, if it complies with the criteria of Annex 2 of the AoA. These subsidies should be provided through publicly funded government programmes

**and should not involve transfers from consumers and should not result in price support to producers.**

**4.3.4 Tourism**

**Page 124 (paragraph 4.116)**

Question 1

Thailand would like to seek more clarification on sub-sectors and activities of tourism and travel related services to be covered and any specific criteria or qualification that foreign investors need to abide by under the Ecotourism Certification System.

***Answer***

***To be responded to at a later stage, within the stipulated one month period.***

## BOSTWANA – OUTSTANDING RESPONSES

**THAILAND**4.3.4 Tourism

Page 124 (paragraph 4.116)

Question 1

Thailand would like to seek more clarification on sub-sectors and activities of tourism and travel related services to be covered and any specific criteria or qualification that foreign investors need to abide by under the Ecotourism Certification System

Page 124 paragraph 4.116: The report mentions that the Botswana Tourism introduced an Ecotourism Certification System to encourage eco-friendly tourism products and services.

**Answer 1**

***Ecotourism Certification is not compulsory, but voluntary with the aim to protect Botswana's precious resources to ensure that natural and cultural heritage is enhanced, historic and archeological resources are protected and restored.***

***For operators to qualify for Ecotourism Certification they are required to develop, where possible, or adopt a code of conduct to guide their operations and the following thematic areas should be an integral part of the code of conduct;***

- ***Water Conservation: Conserve water through the uses of flow restrictions, low flush toilets & efficient kitchen equipment***
- ***Energy: Use alternative energy sources (sun & wind),***
- ***Biodiversity: Conduct conservation programs and support local conservation projects,***
- ***Manage waste and recycle:, Compost all biodegradable materials including kitchen waste,***
- ***Distribute economic benefits of tourism to the community: More than 60% of the employees come from the local community and region,***
- ***Marketing and promotions: Print all materials on recycled paper using non – toxic ink,***
- ***Offer a complete ecotourism experience: Design and deliver quality environmental education programs,***
- ***Employ only trained guides and qualified Staff: Ensure that guides are adequately trained to provide a quality ecotourism experience,***
- ***Respect local and traditions cultures: Cooperate with Botswana cultural groups and respect their privacy,***
- ***Develop partnerships and distribute the code of conduct: hire local entertainers and story tellers, introduce guests to the traditions and cultural heritage of the region through planned encounters with locals, and***
- ***Respect standards and guidelines: comply with Botswana Tourism Organization Standards, and Implement the Ecotourism Best Practices.***

**Accommodation:**

***The Ecotourism Accommodation Standards can be applied to all facilities within Botswana that operate under the Department of Tourism's A or B licenses i.e accommodation on fixed sites.***

**Travel/Activities:**

***Ecotour standards can be applied to all operations within Botswana that operate under the Department of Tourism from C-I i.e mobile safaris, travel agents, tour operators, water travel & activities, travel activities(cycling), and foreign based transfer companies.***

***The Ecotourism Certification is non-discriminatory between local operators and foreign operators.***

Question 2

Is this system part of larger sustainability program or plan? Please describe what sustainability measures or standards must be met to achieve the certification

**Answer 2**

***The Ecotourism Certification System is part of the National Ecotourism Strategy (2002). Operators must first be licensed to qualify for certification, and they should comply with all national (relevant) laws; i.e. Companies Act (2007), Environmental Impact Assessment Act (2011), Botswana Tourism Organization Act (2009), Tourism Act (2009), Public Health Regulations (2008), Waste Management Act (1998) Wildlife and National Conservation and National Parks Act (1992), Town and Country Planning Act (1977) Control of Smoking Act (1992), and the Trade Act 2003, as well as meet the Code of Conduct guide.***

## ANNEX 2

### LESOTHO - TPR RESPONSES TO QUESTIONS RECEIVED AFTER THE DEADLINE

#### CHINA

##### Annex 2- Lesotho

##### Page 149, Para 1.18

**1.18 During the period 2008-13, FDI increased substantially, especially after 2010. In that year, investment rose to US\$1.4 billion from about US\$0.6 billion in 2009, mainly reflecting the rise in investment in the mining sector.**

##### Question 8

**During the period under review, has the government of Lesotho introduced relevant policies to encourage foreign investment? If so, please provide details.**

##### Response

*The Government has recently adopted the National Investment Policy. The objective of this policy is to promote investments in the country through an enabling environment with a view to grow the economy, create employment, alleviate poverty and attain sustainable development.*

##### Page 155, Para 2.22

**2.22 During the period under review, Lesotho also implemented the "One-Stop Business Facilitation Centre" (OBFC) to simplify and streamline business procedures and facilitate FDI.... it places a number of procedures under one roof.**

##### Question 9

**Please introduce detailed procedures.**

##### Response

*Detailed information is accessible on OBFC's website: [www.obfc.org.ls](http://www.obfc.org.ls)*

**THE RUSSIAN FEDERATION****QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/324 ANNEX 2 – LESOTHO)****3 TRADE POLICIES AND PRACTICES BY MEASURE****3.1.6 Import prohibitions, restrictions and licensing****3.34 p 164**

The permits are issued by different ministries and their requirements and duration vary depending on the product. They apply to imports from all countries, except for clothing, tyres, vehicles and fuel where they apply only to imports from extra-SACU countries; and are in general automatic, except for instance in the case of agricultural products. Indeed, for milk, sugar, bread, meat, fresh fruit, fresh vegetables, pulses, beans, peas, red meat, poultry and eggs, permits are granted depending on the supply of locally produced goods. Permits may be valid for one shipment (e.g. clothing, milk, dairy products and livestock), one year (e.g. petroleum fuel, precious stones and alcoholic beverages), one month (e.g. sugar, bread, fresh fruit and vegetables) or three months (i.e. bank notes, gold securities or foreign currency). Moreover, in most cases importers must hold a trading license (see Section 2.3.3) to apply for one of these import permits; exceptions were clothing, tyres, vehicles, milk, dairy products and bank notes, gold securities or foreign currency.

**Question**

Could you please clarify whether the permits are valid for one shipment only. Moreover, the TPR Report doesn't indicate the sanitary or phytosanitary certificate as one of the main documents. Could you please clarify whether the mentioned certificate is a mandatory requirement for an importer?

***Response***

***For agricultural commodities (sugar, bread, meat, fresh fruits, fresh vegetables, pulses, beans, peas, red meat, poultry and eggs), import permits are valid for a period of one month with an exception of dairy / milk whereby single entry consignment applies. For other commodities, it depends on an individual importer to spread his/her shipment within the specific validity of an import permit issued. SPS certificates are required for importation of all agricultural products.***

**3.1.9 Sanitary and phytosanitary requirements****3.55 p 168**

Lesotho's national enquiry point for SPS measures is the Department of Livestock Services of the Ministry of Agriculture and Food Security. Lesotho has not submitted any notifications on SPS measures to the WTO, neither has it notified its national notification authority.

**Question**

Could you please provide the internet link where we could get acquainted with the Lesotho's phytosanitary requirements.

***Response***

***There is no internet link but the SPS Contact Point is:***

*Ministry of Agriculture and Food Security*

*P O Box 24*

*Maseru 100*

*Tel: +266 22322741*

***Email: seeisotabitha@yahoo.com***

**ANNEX 3****NAMIBIA - TPR RESPONSES TO QUESTIONS RECEIVED AFTER THE DEADLINE****CHINA****Annex 3- Namibia**

Page 213, Para 1.22

1.22 Encouraging domestic and foreign investment, and continuing efforts to implement policies to create a regulatory environment that fosters private sector development will enhance the business environment and promote competitiveness and investment, thereby facilitating development spill overs.

Question 10

Has the government of Namibia set specific goals in promoting foreign investment? Are there any concrete measures to realize these goals?§

**Answer**

***The revised Investment Bill is geared towards promoting both foreign and domestic investment. It is also geared towards having a transparent investment regime and to provide an efficient dispute resolution mechanism involving investment. The Bill provides for matters on investment promotion, admission, treatment and management.***

Page 260, Para 4.117

4.117. In 2009-10, Namibia developed an Industrial Upgrading and Modernization Programme (IUMP), drawing upon the knowledge and regional expertise developed during the formulation of the SADC IUMP. The goal of the programme is to support the dynamics of upgrading and modernization of industries and related services, and to improve their competitiveness, growth, job creation and access to national, regional and international markets. Projects are only considered if they operate primarily in the following categories: agro-food processing; fish processing; pharmaceuticals and cosmetics manufacturing (including biodiversity-based products); and minerals beneficiation (metallic and non-metallic).

Question 11

It is known that the government of Namibia has developed Industrial Upgrading and Modernization Programme covering pharmaceuticals. Does this programme cover the industry of traditional Chinese medicine (TCM)?

**Answer**

***The programme targets to support all manufacturing activities using natural based ingredients irrespective of where they are sourced from, provided that the companies meet the basic set criteria, which can be obtained the Ministry of Industrialization, Trade and SME Development***

Page 261, Para 4.119

4.119 Where an investor wishes to establish a new manufacturing venture in Namibia, or relocate an existing operation to Namibia, a special tax package may be negotiated through the MITSD which makes recommendations to the Ministry of Finance.

Question 12

Are there any differences in the treatment for domestic and foreign enterprises in this special tax package? If so, please provide details.

**Answer**

***There is no difference in the treatment of domestic and foreign enterprises in the special tax incentives package. All enterprises in Namibia that meet the requirements regardless of nationality qualify to apply for special tax incentives.***

Page 261, Para 4.120

4.120. According to the Namibian Manufacturers' Association, the incentives available to manufacturers and exporters of manufactured goods are not sufficient. Manufacturers face a challenge obtaining "manufacturer status" from the relevant ministries. Firstly, the production processes currently employed by several industries – including fish and meat processing, textiles, pharmaceuticals and automotive industries – are not regarded as falling within the definition of manufacturing and therefore are not eligible for these incentives. Secondly, this status has to be granted by two Ministries (MITSD and MoF), thus increasing bureaucracy and red tape, and whose requirements reveal a tension between revenue protection and enhancing manufacturing activities.

Question 13

What are the concrete standards for issuing "manufacturer status" by related ministries? What production process has to be employed by TCM enterprises in order to comply within the definition of manufacturing, thus obtaining the "manufacturer status"?

**Answer**

**Criteria for Selection of granting Manufacturing status:**

**For the company to be considered for manufacturing incentives, it needs to comply with the following:**

- **Firstly the company should be classified as manufacturer under the International Standards Industrial Classification of all Economic Activities (ISIC).**
- **Secondly, if indeed the company is classified under manufacturing as stated above, it should further meet the following requirements as stipulated by Section 5 A (Registration of companies as registered manufacturers) of the Income Tax Act, Act 24 of 1981, which states the following:**

**(1) A company which conducts or intends to conduct a manufacturing activity and which requires to be recognised as a registered manufacturer in respect of that manufacturing activity for the purposes of this Act, may apply for registration to the Minister.**

**(2) An application for registration in terms of subsection (1) shall-**

**(a) Be made in writing to the Minister; and**

**(b) Be accompanied by such information or documents as the Minister may require.**

**(3) Upon receipt of an application in terms of subsection (1), the Minister may register a company in respect of the manufacturing activity applied for if the Minister, acting with the concurrence of the Minister of Trade and Industry, is satisfied that the manufacturing activity concerned -**

**(a) Is or will be beneficial to the Namibian economy by way of net employment creation, net value addition, replacement of imports or an increase in net exports; and**

**(b) Represents or will represent an investment in a new manufacturing activity or a substantial expansion of an existing manufacturing activity.**

- **Eligibility and Registration**
- **Enterprises involved in manufacturing**
- **Application to the Ministry of Industrialization, Trade and SME Development (MITSD)**

**The application is submitted to the MITSD, which conducts an inspection of the manufacturing facilities of the applicant. This is to ensure that indeed the applicant is manufacturing the specific products mentioned. Based on the findings, the applicant is either recommended or not to the Ministry of Finance (MoF) for consideration. MoF based on or the Ministry of MITSDs recommendation and their consideration will grant the manufacturing status to the applicant.**

Page 266, Para 4.146

4.146 The Banking Institutions Amendment Act, 2010 (Act No. 14 of 2010) amending the Banking Institutions Act, 1998 (Act No. 2 of 1998) includes provisions... to authorize foreign banking institutions to open branches in Namibia...

Question 14

In addition to setting up branches, can foreign banking institutions invest in other forms in

Namibia?

**Answer**

**Yes they can for as long as such institutions observe the requirements set out in regulatory frameworks of those sectors.**

Page 26, Para 3.9

1.50 Secondly, the NDP4 focuses on foundation issues: without these foundations, other efforts are not likely to succeed. Such issues include – making Namibia the preferred investment location in Africa.

Question 24

Please introduce the objective and specific measures for improving the Namibian investment environment.

**Answer**

**The revision of the Investment Act is one of the measures aimed at improving Namibia's investment environment. The revision aims at creating a more favourable environment for domestic and foreign investment. The Namibian Investment Centre has also embarked on a study to review Namibia's Investment Incentives Regime with the aim of improving the competitiveness of the incentives offered to both local and foreign investors, leading to a more attractive and competitive investment environment. The Ministry of Industrialisation, Trade and SME Development has re-strategized its investment promotion activities to encourage and target investments to Namibia's priority areas which also include joint ventures and partnerships with Namibians, as well as to ensure that investments have a broader development impact.**

**To improve the investment environment, Namibia has to improve her ease of doing business. The reduction in cost of starting-up a business can be achieved through enhanced policy coordination amongst all the various regulators. The Ministry undertook consultations with World Bank experts in this regard. The Ministry has also established a Business and Intellectual Property Authority (BIPA) to improve service delivery and the effective administration of business and intellectual property rights registration by serving as a single window. This process is viewed as an effective business registration and licensing tool which is crucial as it facilitates and increases the rate of business establishment, investments and growth of existing enterprises.**

**HONG KONG, CHINA**

(WT/TPR/S/324: Page 233 para 3.96)

5. The SOE Governance Council must submit a proposed plan for the restructuring of any provisionally identified SOEs to the Cabinet for determination. No privatization of SOEs has taken place since 2008, nor is any planned at this time.

Question

Could Namibia advise further the functions of the SOE Governance Council? Is there any particular reason why there has not been any privatization of SOEs since 2008?

**Answer**

***Some of the functions of the SOE Governance Council is to develop common policy frameworks, establish common principles of corporate governance and good practices for SOEs; to determine criteria for the performance management and evaluation of SOEs and develop appropriate means for monitoring their performance.***

***The Government of Namibia has recently established a Ministry of Public Enterprises to monitor their performance and to make appropriate recommendations for restructuring, if deemed necessary.***

**Other Measures**

(WT/TPR/S/324: Page 208 para 1.10)

10. In 2011, the New Equitable Economic Empowerment Framework (NEEEF) was introduced in Parliament. The objective of NEEEF is to encourage firms to bring previously disadvantaged Namibian shareholders on board, to train and promote them into senior management positions, to use procurement to stimulate more local businesses, and to promote the well-being of the communities in which they operate. Companies wanting to do business with Government or requiring licences from Government would have to be scored on each of NEEEF's five pillars, three of which are mandatory (ownership, management control and employment equity, and human resources and skills development).

Question

Could Namibia explain if this Framework covers firms with foreign investments and if it is applicable to some particular sectors or all sectors? Would there be any impact on foreign investments?

**Answer**

***The NEEF is currently under review and the new framework is yet to be adopted.***

(WT/TPR/S/324: Page 231 para 3.81)

11. Three facilities for the SME Financing Strategy have been proposed: a credit guarantee scheme designed to address the challenge of inadequate collateral; a catalytic first loss venture capital fund designed to finance the growth-oriented SMEs; and a challenge fund, a theme-based risk-sharing facility that will address the needs of MSMEs in terms of non-financial services that will enhance their growth and development. The three facilities are currently under consideration.

Question

Could Namibia explain if the facilities would be available to SMEs with foreign investment? Are they sector specific or open to all sectors? What does "theme-based risk-sharing" refer to?

**Answer**

***The facilities are available to all SMEs registered in Namibia and it covers all sectors. Theme-based risk-sharing refers to the process where the government aims to reduce or share in the risk of financing stakeholders/partners specific theme based financing facilities towards SMES.***

**THE RUSSIAN FEDERATION****QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/324 ANNEX 3 - NAMIBIA)****3.47 p 226**

Animals may only be imported from countries free from bovine spongiform encephalopathy (BSE) and foot-and-mouth disease (FMD) where vaccination is not practiced. In practice, live animals are usually only imported from South Africa or occasionally Botswana. Veterinary staff based at the border are available 24 hours a day to verify compliance with import and export requirements. All shipments of animals or animal products are verified, even if an MRA is in place. Heavy fines (N\$1 million or imprisonment for a term not exceeding 20 years) are levied in the event of contravention or failure to comply, if found guilty in a court of law. In the event of an immediate risk of a disease being introduced or further spread in Namibia from another country, emergency restrictions may be put in place to prohibit imports. A health certificate is required for the exportation of animals, animal products and restricted material. A quarantine regime is operable in Namibia only for pets.

Question

*According to the paragraph 3.47, fines (NAD 1 million) or imprisonment not exceeding 20 years are levied in the event of contravention or failure to comply with import and export requirements, if an importer/exporter is found guilty in the court of law. What other such measures (guiding importers' liability) are provided for in the Namibian legislation?*

**Answer**

***Imports of animals and animal products contravening to the Animal Health Act are prohibited. In the event of illegal importations the following provision of animal health act applies.***

- The court fine NAD 1 million or imprisonment not exceeding 20 years***
- The court fine NAD 1 million and imprisonment not exceeding 20 years***
- Animal or and animal products are destroyed or disposed without compensation and at the cost of the importer***

## **THAILAND**

4.8 Participation in the Multilateral Trading System - WTO  
Page 33 (Paragraph 4.24)

### Question 6

As a net food-import developing country, what kind of food does Namibia import?

### **Answer**

***In broad terms, Namibia imports grains, cereals, fruits and vegetables products.***

### 4.6 Manufacturing

Page 260 (paragraph 4.114)

### Question 2

Thailand has the expertise in construction sector, both domestic and foreign markets, while Namibia's policy is to be a distribution center of SACU and SADC. We would like to ask for information regarding major infrastructure projects of Namibia that Thailand can be a co-developer.

### **Answer**

***Such construction projects, once available, are normally made available through print media for bidders to express their interest. Government encourages business to business networking through the Chambers of Commerce and Investment Centre and through local representation in Namibia.***

NAMIBIA – OUTSTANDING RESPONSES

**EUROPEAN UNION**

Question 2

What is the current state of play and intentions of the government regarding the legislation on public procurement given the above shortcomings identified by the IPPRN?

**Answer 2**

*The current system will shortly be phased out with the implementation of the recently adopted Public Procurement Bill. The organisational structure under the new system will have an oversight body as well as a Review Panel for the review of complaints. Transparency, accountability, fairness, integrity, value for money, efficiency and effectiveness will be enhanced as the procurement processes under the new law will be in accordance with international best practices. The procurement system across the public sector will be harmonized as all public entities will be required to perform procurement activities in full compliance with the law using standard bidding documents and compliance will be monitored. The oversight body will also have the responsibility to plan and implement capacity building strategies and to submit an annual report on the functioning of the procurement system to the Minister to be tabled in Parliament. A copy of the adopted Bill will be posted on the Ministry's website as soon as available.*

**SWITZERLAND**

Question 9

Para 3.63 states inter alia that an export tax of 10% is collected on unprocessed diamonds. What is the purpose of such a tax and how are these funds used?

**Answer 9**

*The Minerals Act, Act (Section 114 (1) (a) makes provisions for the payment of royalties (!))> This is basically a form of rent, because the Mineral resources of the country are all vested in the state. This Royalty is also reiterated in the Diamond Act UNDER Section 62, but the it is called "Export Duty", but it is essentially the same thing as the Royalty referred to in the Minerals Act. These are paid to the Mining Commissioners office minus cost of Sales. The Office of the Mining Commissioner has a pay point as Authorised by the Treasury Department of the Ministry of Finance. All moneys are credited to a Ministry of Finance Account.*

**UNITED STATES**Question 3

Please provide some context for the declining catches. Is this domestic over-exploitation or are there issues with illegal, unreported or unregulated fishing in Namibia's EEZ?

**Answer 3****Answer-Page 247 paragraph 4.41**

***It should be noted that the overfishing which happened before Namibia's independent made more harm to our fisheries resources. Most of the fish stocks in the Namibian water had collapsed before 1990 that is why relevant policies, laws, strategies and management system were identified and adopted to start rebuilding the fisheries resources. Naturally as we all know fisheries resources take long to recover and as we speak the Namibian fisheries resources are in the recovering process.***

***It is therefore important to understand that the poor catches which are experienced it is not because of the overfishing but rather changes in the climatic condition.***

Question 4

When are the updates anticipated to be final?

Will these updates include measures to recover or more sustainably utilize Namibia's marine fisheries?

Does Namibia intend to ratify and implement the Port State Measures Agreement?

Page 249 paragraph 4.41

**Answer 4**

- ***The process of reviewing Policies and legal frame works do take time because of the consultation required with all stakeholders. The Ministry is anticipating that by the end of 2017 the process might be completed.***
- ***Measures to recover and sustainable utilisation have always been part of our Policies and legal framework as they are developed or drawn up in accordance with the FAO CODE of Conduct for Responsible Fisheries and the United Nation Law of the Sea UNCLOS. The review of policies and legal framework focuses on ensuring fish stock sustainability while at the same time promote value addition and socio-economic contribution of fisheries and aquatic resources to Namibia's economy.***

Question 5

Page 248 paragraph 4.44: The report notes that Namibia's Strategic Plan would be active from 2009-14—has Namibia developed a new Strategic Plan for 2015 to 2020? If so, please outline.

- Will the objectives include sustainable management of marine fisheries?

Page 248 Paragraph 4.44

**Answer 5**

***The Ministry of Fisheries and Marine Resources has a Strategic Plan which is active from 2012 to 2017. The main focus of this strategic plan is to sustain Namibia's international acclaimed image in fisheries resources management, while ensuring that set targets for biomass levels of different species are achieved. The plan also provides for the inclusion of environmental impacts due to climate changes in fisheries resources, while providing for continuous scientific research and activities such as the ecosystem approach to fisheries to support resource management efforts.***

***This strategic plan is concerned with the socio-economic aspects of fisheries activities such as their contribution to employment creation, to food security and to the overall national economy. It also addresses issues such as value addition, market and product diversification, external economic factors, and International agreements, all of which have the potential to significantly influence the growth of the fisheries sector.***

Question 6

Page 248 paragraph 4.45: The report states that MFMR sets a total allowable catch (TAC) annually for all major or commercial fisheries with the objective of managing resources sustainably and preventing overexploitation of Namibian fish stocks. Please clarify and expand on the actions that the government is taking to ensure that the total allowable catch conforms to the allowable biological catch.

**Answer 6****Answer-Page 248 Paragraph 4.45**

*Since 1992 our laws (Acts) have been making provisions for the establishment of the Marine Resources Advisory Council. The Act also made provision for appointment of the members of that council in terms of number and from which institutions of the society they should be drawn. It is important to note that the appointment of the council members has been done in accordance with the Marine Resources Act, Act No.27 of 2000. It should be noted that Namibia has not detected any commercial interests among the Advisory Council Members ever since it came to force. Namibia always set TACs that conforms to the recommended TAC of the scientists.*

**Question 7**

- Please provide more information on the policies, incentives and management procedures or assistance programs in the Namibian fishing industry.
- Is the Namibian government taking steps to address the inefficiency and discipline harmful over-capacity? If so, please explain.
- Of the 18 notifications that Namibia made to the WTO (noted in paragraph 2.15 on page 216), did Namibia make any notifications for assistance programs to marine capture fisheries? Please detail if so.

**Answer 7**

*There is no change in the management of Hake fishery. The same management measures have been in place, since the fishery Department under the Ministry of Agriculture became a stand-alone Ministry. The Policy of Namibianization was introduced first in a Policy document entitled "The White Paper", which was adopted at the end of 1991. The policy of Namibianization is for the whole fisheries sector and not only meant for hake fishery. Knowing where we were coming from the policy aimed to rebuild the fisheries stocks (which were overfished by the international distance water fleet because of the open access, which was administered by then the South Africa Apartheid regime); and develop a Namibian Fishing Industry. In 1994 the long-term rights were introduced and the process and the terms of granting fishing rights remain the same. The right holders' term of fishing right do come to an end and companies do leave the industry unless they meet the conditions attached to those terms then their terms can be extended.*

*The vessel quota system was introduced in 1994 in the hake fishery but did not live long as it was based on the vessel capacity which if the vessel is big in terms of holding it required more quota. In 1995 a pro rata quota allocation system was introduced and it is still in force today.*

**ANNEX 4****SOUTH AFRICA – TPR RESPONSES TO QUESTIONS RECEIVED AFTER THE DEADLINE****CHINA**

Page 17, Para 2.45

2.45. During the transition period, a "market access regulation" (in place until October 2016) will regulate trade between the EU and BLNS, while the TDCA will continue to govern trade between the EU and South Africa.

**Question 2**

Please introduce in detail the "market access regulation" between the EU and BLNS. SACU members have signed multiple regional and bilateral free trade agreements, therefore subject their trade partners to different access conditions to the SACU market. How do SACU members address the uncertainty in implementing the obligations of different agreements under such circumstances?

***Answer***

***SACU shares a common external tariff and therefore any imports into the customs union are subjected to similar tariff treatment across SACU Member countries. The TDCA between South Africa and the EU was signed prior to the review of the SACU Agreement 2002 which introduced the Common Negotiating Mechanism. Thus, whilst all imports from the EU are subjected to the above SACU common external tariff, BLNS did not have access to benefits conferred by the TDCA. BLNS however have access into the EU under its GSP schemes, including as covered under the EU market access regulation. Thus, the market access regulation referred to in the question is rather an EU initiative affecting only exports to the EU from BLNS, until such time that the recently concluded Economic Partnership Agreement between SACU and the EU enters into force.***

Annex 4-South Africa

Page 295, Para 2.15

2.15. On 1 November 2013, the authorities published, for public comment, the Promotion and Protection of Investment Bill.

**Question 15**

Except for those introduced at the end of this section, are there any contents of encouraging foreign investment in this bill? If so, please provide details.

***Answer***

***There is no language or section in the draft bill that makes specific reference to the issue of promotion. It is however understood that the protection that is contained will provide the necessary assurance to current investors which will encourage them to increase their investments in the Republic. Such protection will further promote confidence among potential or new investors that may want to establish business operations in the Republic.***

Page 337, Para 4.97

4.97 The APDP has four key elements: (a) tariff measures, i.e. stable import tariffs set at 25% for completely built up vehicles (CBVs) and 20% for components used by vehicle assemblers; (b) a local assembly allowance (LAA); (c) production incentives (PI); and (d) an Automotive Investment Scheme (AIS). The LAA allows vehicle manufacturers with a plant volume of at least 50,000 units per annum to import a percentage of their components duty-free. The PI consists in an allowance for duty-free imports of vehicles or components, calculated as a percentage of manufacturing value addition (MVA) in South Africa's supply chain. The AIS provides for a non-taxable cash grant of 25% of the value of qualifying investment in productive assets by component manufacturers and tooling companies. An additional a non-taxable cash grant of 5 to 10% may be made available for projects that meet a list of economic benefit criteria.

Question 19

Please explain the basis for setting the above-mentioned respective subsidy standard in car manufacturing industry.

**Answer**

*The process of designing a specific support mechanism involves the following key activities, amongst others;*

- 1. Global assessment and evaluation of the industry including comparative analysis of related issues,*
- 2. Local economic assessment of the industry and related variables,*
- 3. Setting a vision, objectives and direction for the local industry,*
- 4. Alignment of the vision to a set of levers based on resource availability.*

*Following on this inclusive process (includes consultation with key industry stakeholders such as the private sector and labour), a specific support program is designed and implemented.*

South Africa

Page 38, Para 3.7

3.7 To reach this vision, the NDP sets long-term targets for investment, growth and employment creation, and provides a holistic plan for reaching these targets, drawing on other policies and programmes.

Question 25

Please provide details of investment targets in NDP.

**Answer**

*The Medium Terms Strategy Framework (MTSF) targets include increasing investment rate to 25% of GDP.*

Question 30

According to Art.28 of the SACU Agreement, Botswana and other members agreed to harmonize product standards and technical regulations. Do SACU member countries have a common policy on these issues? Could you give some examples of concrete measures taken to this end? Could you give an update on the progress in harmonizing customs procedures, standards, sanitary and phytosanitary measures, and in competition and counter-unfair trade practices since the last review?

Import and export regulations and requirements are not fully harmonized. The transit procedures (domestic and external) and securities (bond/guarantee) requirements differ within the five Member States. Procedures related to management of customs warehouses (bonded warehouses, manufacturing warehouses and storage warehouses) are also not fully harmonized.

The regional work towards harmonization of customs procedures is ongoing. Thus far, progress recorded include introduction of the Single Administrative Declaration (SAD) form and it is used as a common customs declaration in SACU. With the advent of modernization of customs systems, processes and procedures, an electronic version is implemented respectively at a national level as part of automation process. Work is underway to harmonize procedures for import and export data exchange with the objective of strengthening cooperation and improving trade data matching process.

SACU Member States are using the SAD 500 document for import and export procedures. There is no requirement to have identical documentation..

The harmonization of SPS measures is done on the level of the Southern African Development Community (SADC).

**JAPAN****INTERNATIONAL ARRANGEMENTS AND TRADE NEGOTIATIONS****5.1 The Economic Partnership Agreement (EPA)**

(Question 1: Page 39 and 40, Paragraph 5.1-5.3)

It is widely recognized that ensuring the effectiveness of the SADC Free Trade Area (SADC FTA) is a crucial task for South Africa to establish its position as the regional hub of production and logistics in Southern Africa. On the other hand, in some SADC countries and regarding some products, tariff reduction based on the SADC FTA has not been effectively implemented yet. Please express the view of South African government on such a challenge concerning the SADC FTA implementation and possible concrete measures to improve such shortcomings promptly.

**Answer**

***South Africa strives to maintain the integrity of the SADC Protocol on Trade as a rules-based system for regional trade. South Africa continues to work with the member states concerned (mainly Zimbabwe, and to a lesser extent Malawi and Tanzania), both in SADC fora and bilaterally, to resolve the outstanding implementation issues. South Africa is concerned about the negative impact that non-compliance could have on the success of the current drive for regional industrial development and building of regional value chains, and also on investor confidence across the region. All of these are critical underpinnings for successful economic development in the region.***

***The assertion above that South Africa aims to "establish its position as the regional hub for production and logistics" is unfounded speculation. South Africa has consistently been advocating the need for regional industrial development and diversification of the manufacturing base over recent years. The country fully supports the prioritization of industrial development, the recently adopted SADC Industrialization Strategy, and the on-going work to develop an action plan in this regard.***

(Question 2: Page 39 and 40, Paragraph 5.1-5.3)

It is widely acknowledged that a One Stop Border Post (OSBP) among South Africa and its neighbouring countries is a salient initiative to expand regional trade. At the moment, it is understood that the Government of South Africa is preparing for the establishment of the Border Management Agency. In this context, please indicate the schedule and the timing of the establishment of a Border Management Agency. In addition, please specify the name of the Department which is in charge of trade facilitation measures including OSBP before the establishment of the Border Management Agency.

**Answer**

***The Border Management Agency (BMA) Bill was published in the Government Gazette for public comments, which were subsequently collated for cabinet's approval and submission to Parliament. This process is still ongoing. The OSBP and the BMA are facilitated by the Departments of National Treasury and Home Affairs respectively***

**ANNEX 4 SOUTH AFRICA****3 TRADE POLICIES AND PRACTICES BY MEASURE****3.1 Measures Directly Affecting Imports****3.1.3 Standards and Other Technical Requirements**

(Question 3: Page 302, Paragraph 3.28)

It is reported that the gap between imported electric products and locally produced electric products is not negligible in terms of the duration of respective administrative periods to obtain the Letter of Authority. Please specify the average duration of period from the application to the issuance of the Letter of Authority in the case of imported electric products and in the case of locally produced electric products, respectively.

**Answer**

***Section 14 of the NRCS Act, No 5 of 2008, states that no person may import, sell or supply a commodity, product or service to which a compulsory specification applies,***

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***except in accordance with the specification. The objective is to protect the South African consumer against unsafe products.***

***Processing of LoAs requires detailed attention especially on imports as the products are imported as finished goods, the complexity of the test reports coupled with incorrect and misrepresented information has necessitated NRCS to become more rigorous in assessing the applications before approval is granted.***

***The maximum turnaround time for issuance of Letters of Authority for both locally produced and imported products is 120 days.***

(Question 4: Page 302, Paragraph 3.28)

It is considered that the spot check in the product retail market is effective to verify the actual compliance to regulations to achieve the fair market competition. Does the South African government have any plan to implement such periodical spot checks in the near future?

***Answer***

***Periodical spot checks/inspections at retail outlets form part of the NRCS market surveillance and enforcement strategy which includes: inspection at source and retailer, sampling, sanctions, confiscation and destruction.***

***Inspection at source is still considered the most effective method of market surveillance as it identifies non-compliant products prior to it been placed on the market, thus reducing the risk to the safety of the South African consumer.***

(Question 5: Page 302, Paragraph 3.28)

With regard to the initial registration of agrochemicals, it takes a long period of time for registering newly developed agrochemicals because of the long-lasting review process. It prevents South African farmers from using high quality agrochemicals to deal with harmful insects. How does your government see this situation?

***Answer***

***Registration of agrochemicals takes about 14 months from the date of submission. This timeframe is in line with other countries for newly developed agrochemicals. We are of the view that the 14 months period is reasonable to allow South African farmers to have access to new products.***

(Question 6: Page 302, Paragraph 3.28)

In the process of applying for initial registration of agrochemicals, especially the preparation of "summary of toxicity report" which is required to be submitted for the review process takes long time. Could you specify the legal basis for requiring the submission of the report? We would be grateful if you could accept the original data of exporting countries instead of the summary.

***Answer***

***South Africa relies on scientific data to support registration. Original toxicological data is accepted to support the registration. Summary toxicity reports from the regulatory authorities and independent toxicologist(s) enable us to register the products to be registered quicker.***

(Question 7: Page 302, Paragraph 3.28)

Please explain the measures of any for shortening or simplifying the review period and process by the NRCS in the near future.

***Answer***

***This maximum turnaround time was recently reduced by the Minister as an interim measure, from 120 working days (effectively 6 months) to 120 calendar days (effectively 4 months).***

***The NRCS is in the process of developing a risk-based approach to LoAs. The aim is to maximise its resource utilisation by calculating the risk of an application. The risk-based***

*approach will be used to determine risk levels based on product, company and country of origin.*

*The target date for rolling out the risk based approach is mid-2016 as it would be contained in regulations.*

### 3.3 Measures Affecting Production and Trade

#### 3.3.1 Incentives

(Question 8: Page 311, Paragraph 3.77)

In the article 6 of revised BBBEE (Act No.46 of 2013), the new paragraph "(e) determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment" which was added to the Article 10 of (Act 53 of 2003) seems unrelated to the rule pertaining to government procurement (previous Article 10 (1) (b) of Act 53 of 2003) which was regarded as part of the exception permitted under the paragraph 8 (a) in GATT Article 3. Rather, the revision appears to pertain to general rules of investment. Please explain the consistency of this revision with WTO rules on national treatment (Article 2 of WTO TRIMS).

#### **Answer**

*Section 6 of the Broad Based Black Economic Empowerment Act 2013 amends Section 10 of the Broad Based Black Economic Empowerment Act 2003 by providing that "every organ of state or public entity must take into account and as far as possible, apply any relevant code of good practice in terms of this act in... "(e) determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment". Reference to investment schemes in paragraph (e) is made in the context of Government's procurement policy process and not in the context of establishment of business operation. The investment scheme referred to in paragraph (e) would therefore qualify as subsidy in terms of paragraph 8 (b) of GATT Article 3 which allows for "payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products". The investment scheme in question is therefore not a trade related investment measure but a procurement measure which falls under the exception in Article 8 (b) of GATT Article 3.*

#### 3.3.4 Public Procurement

(Question 9: Page 318, Paragraph 3.110)

Several cases have been reported where proposed programs were dismissed without substantial reasons. Japan is concerned about the operation of NIP. In order to ensure transparency, we request a mechanism to enable NIP obligators to request for disclosure of the rejection reasons and appeal against the correspondence and guidance from the NIPP Secretariat when necessary. Please explain the view of the government regarding the possibility and necessity of developing such a mechanism to ensure transparency.

#### **Answer**

*The South African Constitution provides for fair administrative action and allows affected parties to approach the High Court in South Africa where they are of the view that the administrative process was not fair.*

## 4 TRADE POLICIES BY SECTOR

(Question 14: Page 324)

Please express the views of your government on the background and policy reasoning of raising import tariffs on some steel products.

#### **Answer**

*South Africa has made binding commitments on its tariffs. However, where there is policy space between the applied and the bound rate, South Africa is entitled to use that policy space through a process of investigations. The outcomes of these investigations*

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**are made public through reports that are published on the ITAC website. Report No: 505 provide the details of the investigation covering some steel products.**

(Question 15: Page 324)

In terms of additional steel products under consideration for raising tariffs, kindly share the list of products as well as the envisaged process and schedule for consideration and implementation.

**Answer**

**The list of steel products currently under consideration includes flat-rolled products of iron or non-alloy steel, semi-finished products of iron or non-alloy steel, cold rolled products of iron or non-alloy steel, angles, shapes and sections of iron or non-alloy steel, bars and rods. The normal process for tariff investigations takes 6 months and the investigations are conducted within the relevant legislative framework.**

(Question 16: Page 324)

If import tariffs of high-quality steel products which are not produced locally are raised, while other steel products falling under the same HS code, there is little effect of protecting the domestic steel industry in this light, but there are considerable effects in terms of eradicating the global competitiveness of the downstream industry such as motor vehicles. Kindly indicate how your government is going to keep these cases to the minimum.

**Answer**

**The rationale for amending tariffs on steel including the high quality steel is contained in report No: 505, which is published on the ITAC website.**

## 4.2 Mining and Energy

### 4.2.1 Mining

#### 4.2.1.1 Overview

(Question 17: Page 331, Paragraph 4.60)

Is the draft amendment bill of the Mineral and Petroleum Resources Development Act (MPRDA) under deliberation consistent with WTO rules particularly the Article 11.1 of GATT?

**Answer**

**This bill is still under consideration and due consideration will be given to South Africa's WTO obligations in this process.**

## 4.3 Manufacturing

### 4.3.1 Key Subsectors

#### 4.3.1.1 Automotive Industry

(Question 18: Page 336 and 337, Paragraph 4.96 and 4.97)

Please reveal the policy objective and background to launch the review process of the APDP in 2014. Please implicate the major changes to the current APDP as well as the time schedule of publication and implementation of those changes.

**Answer**

**The APDP was announced in September 2008 for implementation by January 2013. During 2008/ 2009 the world economy was hit by a financial crisis whose impact is still felt today and therefore it became necessary to evaluate whether the APDP's objectives would still be achieved under the prevailing economic environment with a view to make amendments where appropriate such that the most optimal economic benefits would still be realized.**

**The outcomes of this review will be published during November 2015 for implementation thereafter.**

(Question 19: Page 336 and 337, Paragraph 4.96 and 4.97)

It is observed that the condition of assembling over 50,000 CBU units to enjoy the benefit of VAA (Volume Assembly Allowance) stands as an entry hurdle for potential new investors to assemble CBUs (completely built units), who would contribute to the expansion of the automotive industry in South Africa. Please explain the rationale to set such a condition despite such an observation.

**Answer**

***The idea behind setting a minimum volume threshold was to steer the industry towards high volume production leading to providing better economies of scale for component suppliers.***

(Question 20: Page 336 and 337, Paragraph 4.96 and 4.97)

The current APDP will be valid up to 2020. Does the South Africa government intend to keep supporting the automotive industry by policy incentives to the similar degree as it is, and what kinds of policy incentives are envisaged? Please also explain the policy planning process and schedule of the post-2020 policy framework.

**Answer**

***The South African government intends to sustain an environment that supports the existence and growth of automotive production into the future through a variety of policy measures that will be developed at appropriate times. The publication of the outcomes of the recent APDP review should provide a sense of direction and timelines for the development of a post 2020 policy framework.***

(Question 21: Page 336 and 337, Paragraph 4.96 and 4.97)

Does the South African government have any intention/plan to develop a master plan of the national automotive industry in South Africa, to set the vision and the growth scenario which will guide all the relevant stakeholders and policy planning process?

**Answer**

***The South African government will continue to work with key stakeholders and partners in sustaining and growing the automotive industry as it is an important contributor to the local economy regarding investment, exports, employment and general development.***

(Question 22: Page 336 and 337, Paragraph 4.96 and 4.97)

The APDP incentive earned by a car manufacturer, namely the Production Rebate Credit Certificate, is resalable to any other companies including pure importers of CBU (completely built unit). Please explain the rationale to allow the resale of the APDP incentive to importers of CBU, which seems to contradict the intended policy objective to stimulate production in South Africa.

**Answer**

***The APDP and its predecessor also sought to encourage competition in the market for the benefit of consumers. Thus those who earn the benefit will realize the value through selling the certificates, and thus share it with importers otherwise they might fully lose that value if they have no duties to off-set with the earned rebate certificates.***

(Question 23: Page 336 and 337, Paragraph 4.96 and 4.97)

While the APDP incentive is applicable to offset the import duty of CBUs by 100% of PRCC value, which has a secondary effect to reduce the ad valorem tax on CBUs, it is applicable to offset the import duty of components only by 80%. This could imply that the CBUs import is more rational and encouraged implicitly rather than the components import for local assembly. Please explain the rationale of the applicable percentage of the APDP incentive for offsetting import duty in the case of CBUs import and in the case of components import.

**Answer**

***PRCCs earned on CBUs offset import duty on CBUs by 100%. PRCCs earned on Components offset import duty on Components by 100% but offset import duties on CBUs by 80%.***

**KOREA, REPUBLIC OF**Page 317 (Para 3.107)

In evaluating a tender, out of 100 points, government agencies must allocate 90 to the reference price submitted by the tenderer. This is in line with what procurement seeks to achieve, namely getting best value for money. The 10 remaining points are allocated in respect of previously disadvantaged persons in accordance with the Black Economic Empowerment (BEE) programme depending on ownership, management, and employment goals. Where the contract is below a prescribed threshold value (currently 1 million rand), the preference system operates on the basis of 80/20 split. The award of preference points is tied to a supplier's certified broad-based black economic empowerment (BBBEE) status in accordance with the Broad-Based Black Economic Empowerment Act. The higher the BBBEE rating of a supplier, the higher the number of preference points awarded. The regulations to the PPPFA give guidance on how to calculate the points for price and categories of preference. The regulations then require the tender to be awarded to the bidder that scores the highest number of points. Exemption from provisions of the PPPFA might be justified on grounds of public or national security interests..

Question 2

For investors with plans to invest in South Africa, regulations on ownership and possible restriction from participation in the Government Procurement market as a result of the "Broad-Based Black Economic Empowerment (BBBEE)" policy have been identified as sources of major concern.

In particular, it has been pointed out that BBBEE regulations are quite complex and are difficult to understand.

1. Taking this into account, could South Africa clarify whether foreign companies are subject to more stringent restriction on ownership?

**Answer**

***The BBBEE regulations apply equally to domestic and foreign companies.***

***In terms the Broad-Based Black Economic Empowerment (B-BBEE) Codes of Good Practice (the Codes), all entities operating in the South African economy are required to make a contribution towards the objectives of B-BBEE through compliance with the Codes including ownership. However, it is noted that there may be multinationals that have global practices preventing them from complying with the ownership element of the Codes through the traditional sale of shares to black people (South Africans). In this instance, the Codes provide for an Equity Equivalent Investment Programme (EEIP) which the multinational corporation can contribute towards under Statement 103. Such contributions count towards the ownership element of B-BBEE made by multinational. The value of these EEIP contributions may be measured against 25% of the value of the multinational's South African operations or may be measured against 4% of the Total Revenue from its South African operations annually over the period of continued measurement.***

***The EEIP must be approved by the Minister of Trade and Industry in order to qualify for ownership points on the scorecard. Where approval for an EEIP has been granted, the programme and points awarded may not form part of any other B-BBEE element in the multinational's B-BBEE Scorecard. The multinational must still comply with the rest of the elements under the Codes.***

***Further, a memorandum of agreement will be entered into between the department and the multinational in question regarding the administration and implementation of the EEIP.***

***The multinational will submit progress reports to the department and site visits will be conducted as part of monitoring the programme. The Minister is able to withdraw the EEIP certificate at any point as a result of non-compliance.***

***The EEIP must focus on enterprise and supplier development, research and development as well as critical and core skills. The maximum period for the EEIP is 10 years.***

*However, local companies must comply with the Codes or relevant Sector Code. There is no option of an EEIP.*

*In light of the above, it is clear that B-BBEE is not aimed at negatively affecting multinationals but to drive a developmental agenda and respond to government outcome 4 which is facilitate broad-based economic participation through targeted interventions to achieve more inclusive growth as aligned to the National Growth Path, National Development Plan, and Industrial Policy Action Plan.*

*Ownership requirements are even flexible when it comes to Multinationals as they have an option to be exempted from B-BBEE ownership through the EEIP provided they satisfy the EEIP requirement.*

*To date South Africa has received R1, 022 billion worth of investments from the following companies participating in the EEIP:*

- *Hewlett Packard: R 93, 2m.*
- *Microsoft SA: R 36, 2 m.*
- *Turner & Townsend :R19,5m*
- *Liebherr : R 18,2m.*
- *Hansen Transmission SA: R 34,2m.*
- *IBM SA: R 700m.*
- *DELL SA: R 121m.*

2. In addition, could South Africa clarify whether companies which have received foreign investment will be denied access to the public procurement market?

**Answer**

*No company will be excluded from the public procurement market based on foreign investment.*

*The public procurement process is a fair and transparent process. The Preferential Procurement Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000) governs public procurement.*

*The PPPFA Regulations further provide rules and conditions for organs of state in case of designated sectors where in the award of the tenders local production and content is of critical importance, to advertise such tenders with specific tendering condition that only locally produced goods, services, works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.*

*National Treasury will issue instructions, circulars and guidelines to all organs of state with specific reporting mechanisms to ensure compliance with the above.*

*The following sectors have been designated:*

| Industry/sector/sub-sector  | Minimum threshold for local content |
|---|-------------------------------------|
| Buses (Bus Body)  | 80%                                 |
| Textile, Clothing, Leather and Footwear   | 100%                                |
| Steel Power Pylons,<br>Monopole Pylons,<br>Steel Substation Structures,<br>Powerline Hardware,<br>Street Light Steel Poles,<br>Steel Lattice Towers | 100%                                |
| Canned / Processed Vegetables   | 80%                                 |
| Pharmaceutical Products:  |                                     |
| OSD Tender  | 70% (volumes)                       |
| Family Planning Tender  | 50% value                           |
| Rail Rolling Stock  | 65%                                 |
| Set Top Boxes (STB)   | 30%                                 |
| Furniture Products:   |                                     |

| Industry/sector/sub-sector           | Minimum threshold for local content |
|--------------------------------------|-------------------------------------|
| Office Furniture                     | 85%                                 |
| School Furniture                     | 100%                                |
| Base and Mattress                    | 90%                                 |
| Solar Water Heater Components        | 70%                                 |
| Electrical and telecom cables        | 90%                                 |
| Valves products and actuators        | 70%                                 |
| Residential Electricity Meter :      |                                     |
| Prepaid Electricity Meters           | 70%                                 |
| Post Paid Electricity Meters         | 70%                                 |
| SMART Meters                         | 50%                                 |
| Working Vessels/Boats (All types):   | 60%                                 |
| Components                           | 10% - 100%                          |
| Conveyance Pipes                     | 80% - 100%                          |
| Transformers and Shunt Reactors:     |                                     |
| Class 0                              | 90%                                 |
| Class 1                              | 70%                                 |
| Class 4                              | 10%                                 |
| Components and conversion activities | 50% - 100%                          |

***Other industries, sectors and sub-sectors are still being considered for designation. Once a thorough research and consultations have been concluded a decision to designate will be communicated to the public.***

**THE RUSSIAN FEDERATION****QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/324 ANNEX 4 – SOUTH AFRICA)****3 TRADE POLICIES AND PRACTICES BY MEASURE****3.1.7 Sanitary and phytosanitary requirements**

3.45 p 308

For meat products, additional import requirements set by the Directorate of Veterinary Public Health with respect to the slaughtering procedures and abattoirs of the exporting country must be complied with. Permits for meat products may only be issued if they are imported from a place approved by the National Executive Officer by notice in the Gazette. Meat must be stored at an approved facility until the prescribed veterinary procedures are performed, and the meat is inspected, sampled, and/or tested. These procedures vary according to the origin of the meat. The executive officer might in the "public interest" suspend or withdraw a permit, or impose new or additional conditions on a permit.

Question 1

*According to paragraph 3.45, the executive officer may in the 'public interest' suspend or withdraw a permit, or impose new or additional conditions on permit. This provision is not consistent with Article 2 of the SPS Agreement, as this SPS measure represents unjustified discrimination. Could you please comment on this measure?*

**Answer**

***The paragraph mentioned is consistent with Article 2 of the SPS Agreement. The basis on which the national executive officer may withdraw a permit, or impose new or additional conditions on permits will be based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, which is equivalent to scientific justification which is provided for in Article 2(2). If there is a potential threat to the public related to a commodity to be imported, the national executive officer will be in his right to implement preventative measures to ensure the protection of the flora and fauna of the Republic of South Africa.***

**3.1.4.3 Genetically modified organisms (GMOs)**

3.47. p 308

In order to give effect to the 2000 Cartagena Biosafety Protocol, the Genetically Modified Organisms (GMO) Act was amended in 2006; and the Amendment Act, as well as related regulations came into operation in February 2010. The new legislation seeks to provide for the "responsible development, production, use and application of GMOs", as well as an "adequate level of protection" during all activities involving GMOs that may have an adverse impact on the conservation and sustainable use of biological diversity, and human and animal health. In addition, it seeks to ensure that, *inter alia*, GMOs do not present a hazard to the environment, and to establish appropriate procedures for the notification of specific activities involving the use of GMOs.

Question

*Please elaborate on the principles of the GMO safety. Whether the principle of equal security is used while evaluating the GMO products if the significant human settings (size, nutritious etc.) for GMOs are the same with the ones for the non-modified organism predecessor.*

**Answer**

***South Africa is a member of the Codex Alimentarius Commission, as a result it follows the Codex internationally recognised standards, codes of practice, guidelines and other recommendations for the evaluation of the safety of food and feed derived from GMOs.***

3.51. p 309

Permit applications have to be submitted to the Registrar in hard and electronic formats.

The application must include:

- a scientifically based risk assessment;
- proposed risk management measures;
- a copy of the public notice as required under the GMO Regulations; and
- an assessment of the impact of the proposed activity on the environment and the socio-economic benefits of the activity, if required by the Executive Council.

**Question**

*It is mentioned in paragraph 3.51. that a scientifically based risk assessment is required in order to submit an application for activities involving GMOs. Could you please clarify whether the assessment is carried out by private entities or by competent authority?*

**Answer**

***The GMO Act makes provision for the appointment of an Advisory committee. The Advisory Committee (AC) is appointed by the Minister of Agriculture, Forestry and Fisheries and consists of ten scientists who are experts in various scientific fields relating to GMOs.***

3.53. p 309

South Africa has approved GMO permits for herbicide-tolerant soybean, maize, and cotton, insect resistant maize and cotton, as well as stacked insect-resistant and herbicide-tolerant maize and cotton for commercial release and/or for food and animal feed.

**Question**

*Please specify the approved activities for each type of mentioned GMOs (food, feed and outdoor plant cultivation).*

**Answer**

| <b>GMO</b>  | <b>Approved activity</b>  |
|---|---|
| insect resistant maize                                  | <ul style="list-style-type: none"> <li>• Commodity clearance (i.e. for Food, feed and processing only) and</li> <li>• General release (i.e. commercial release/planting)</li> </ul> |
| herbicide-tolerant maize                                | <ul style="list-style-type: none"> <li>• Commodity clearance (i.e. for Food, feed and processing only) and</li> <li>• General release (i.e. commercial release/planting)</li> </ul> |
| stacked insect-resistant and herbicide-tolerant maize   | <ul style="list-style-type: none"> <li>• Commodity clearance (i.e. for Food, feed and processing only) and</li> <li>• General release (i.e. commercial release/planting)</li> </ul> |
| herbicide-tolerant soybean                              | <ul style="list-style-type: none"> <li>• Commodity clearance (i.e. for Food, feed and processing only) and</li> <li>• General release (i.e. commercial release/planting)</li> </ul> |
| stacked insect-resistant and herbicide-tolerant soybean | Commodity clearance (i.e. for Food, feed and processing only)   |
| insect resistant cotton                                 | General release (i.e. commercial release/planting)  |
| herbicide-tolerant cotton                               | <ul style="list-style-type: none"> <li>• Commodity clearance (i.e. for Food, feed and processing only) and</li> <li>• General release (i.e. commercial release/planting)</li> </ul> |
| stacked insect-resistant and herbicide-tolerant cotton  | General release (i.e. commercial release/planting)  |

## **SINGAPORE**

Annex 4, Page 295 (Para 2.16)

4. We note that under the dispute resolution section of the Promotion and Protection of Investment Bill, the Government may consent to international arbitration, subject to the exhaustion of domestic remedies. How would the exhaustion of domestic remedies be established?

### **Answer**

***In terms of the Constitution, any party has the right to access to the courts in South Africa and can even approach the Constitutional Court. Once the judicial process in South Africa has been exhausted, parties may agree to international arbitration in terms of the Promotion and Protection of Investment Bill.***

## **Trade and Investment Policies**

Annex 4, Page 296 (Para 2.18)

We understand that South Africa has terminated some Bilateral Investment Treaties, following a review in 2010. What is South Africa's policy towards negotiating new BITs?

### **Answer**

***Cabinet decided to refrain from entering into BITS in future unless there are compelling economic and political reasons. South Africa is currently developing a new investment act to codify typical BITS provisions into domestic law.***

**THAILAND**

QUESTIONS REGARDING THE SOUTHERN AFRICAN CUSTOMS UNION REPORT

QUESTIONS REGARDING THE SECRETARIAT REPORT

4.3.1.1 Automotive industry

Page 336 (paragraph 4.95)

Question 3: Thailand is the center of automotive production in the region and the number 1 exporter of rubber products in the world, while South Africa is the leader of the automotive industry in the region. Thailand can be a supplier of parts and raw materials for South Africa. We would like to know the demand of South Africa on parts and raw materials.

***Answer***

***South Africa has a growing automotive industry consisting of 8 automotive assemblers. The industry has set a target to produce 1,2 million vehicles by 2020.***

## SOUTH AFRICA – OUTSTANDING RESPONSES

**CHINA**Question 2

Please introduce in detail the "market access regulation" between the EU and BLNS. SACU members have signed multiple regional and bilateral free trade agreements, therefore subject their trade partners to different access conditions to the SACU market. How do SACU members address the uncertainty in implementing the obligations of different agreements under such circumstances?

Page 18, Para 2.53

2.53 The agreement covers trade in non-agricultural products, including fish and other sea products, and processed agricultural products. In addition, the individual EFTA States and SACU concluded bilateral agreements on basic agricultural products, which form part of the free trade area package. Since the entry into force of the agreement, EFTA States grant the SACU members duty-free entry for all non-agricultural goods. The SACU States are to dismantle their tariffs progressively over a period not exceeding nine years; 76.8% of their tariff lines were duty-free in 2015.

**Answer 2**

***SACU shares a common external tariff and therefore any imports into the customs union are subjected to similar tariff treatment across SACU Member countries. The TDCA between South Africa and the EU was signed prior to the review of the SACU Agreement 2002 which introduced the Common Negotiating Mechanism. Thus, whilst all imports from the EU are subjected to the above SACU common external tariff, BLNS did not have access to benefits conferred by the TDCA. BLNS however have access into the EU under its GSP schemes, including as covered under the EU market access regulation. Thus, the market access regulation referred to in the question is rather an EU initiative affecting only exports to the EU from BLNS, until such time that the recently concluded Economic Partnership Agreement between SACU and the EU enters into force.***

Annex 4-South Africa

Page 295, Para 2.15

2.15. On 1 November 2013, the authorities published, for public comment, the Promotion and Protection of Investment Bill.

Question 15

Except for those introduced at the end of this section, are there any contents of encouraging foreign investment in this bill? If so, please provide details.

Page 331, Para 3.17

3.17. Import control is also maintained under, inter alia, the Meat Safety Act (Act No. 40 of 2000), the Fertilizers, Farm Feeds, Agricultural Remedies, and Stock Remedies Act (Act No. 36 of 1947), the Agricultural Pests Act (No. 36 of 1983), and associated regulations. The import control regime is implemented for various purposes, including: protection of public morals, compliance with domestic regulations and relevant international conventions, and protection of public health. Controlled imports include live plants and animals and products thereof; drugs and narcotics.

**Answer Q15**

***There is no language or section in the draft bill that makes specific reference to the issue of promotion. It is however understood that the protection that is contained will provide the necessary assurance to current investors which will encourage them to increase their investments in the Republic. Such protection will further promote confidence among potential or new investors that may want to establish business operations in the Republic.***

Question 16

What is the legal basis for the South Africa Government to regulate the import of TCM products? Are there any restrictive import policies, and what is their legal basis?

Page 331, Para 4.54

4.54. The Department of Minerals and Energy has embarked on a 2015-20 Strategic Plan aimed at promoting energy security through reliable, clean, and affordable sources, universal access to energy sources, and transformation of the energy sector, as well as developing a national coal policy with regulations that will include a strategy to secure coal supply and which will have been aligned with the Mining Beneficiation Action Plan by July 2016.

**Answer 16**

**Amendments to the Medicines and Related Substances Act 101 of 1965 provide for the regulation of complementary and alternative medicines (CAMs) by the Medicines Control Council (MCC). Among others**

- **all existing and new CAMs must be submitted to the MCC for safety, quality and efficacy assessment and registration;**
- **all category D medicines must be appropriately labelled and any product not registered with the MCC must carry a label declaring: "This medicine has not been evaluated by the Medicines Control Council. This medicine is not intended to diagnose, treat, cure or prevent any disease";**
- **all CAM products that contain banned substances which are potentially dangerous to public health must be withdrawn;**
- **all CAMs manufacturers and wholesalers must be licensed.**

Question 17

Please introduce the specific policy ideas and institutional design of the 2015-2020 Strategic Plan.

**Answer 17**

**The Department of Energy (DoE) was established in May 2009 – the outcome was the split of the Department of Minerals and Energy into the Department of Energy and Department of Mineral Resources.**

**The Department of Energy's aim is to formulate energy policies, regulatory frameworks and legislation, and oversee their implementation to ensure energy security, promotion of environmentally friendly energy carriers and access to affordable and reliable energy for all South Africans.**

**Its mission is to regulate and transform the sector for the provision of secure, sustainable and affordable energy.**

**The DoE indicated that the approved organisational structure consists of the following seven branches:**

**Energy Policy, Planning & Clean Energy: Ensure evidence- based planning, policy setting and investment decisions in the energy sector to improve energy security, through supply and demand side options, and increase competition through regulation.**

**Petroleum and Petroleum Regulations: Manage the regulation of petroleum and petroleum products to ensure optimum and orderly functioning of the petroleum industry to achieve government's developmental goals.**

**Energy Programmes and Projects: Manage, co- ordinate and monitor programmes and projects focused on access to energy;**

**Nuclear Energy: Manage the South African nuclear energy industry and control nuclear material in terms of international obligations, nuclear legislation and policies to ensure the safe and peaceful use of nuclear energy.**

**Corporate Services: To provide corporate support to the DOE.**

**Governance and Compliance: To ensure good corporate governance and compliance by the DOE and its SOEs; and**

**Financial Management Services: To provide financial management, accounting and supply chain management services to the DOE.**

Page 331, Para 4.60

4.60 Under the Mineral and Petroleum Resources Development Act (MPRDA) (Act No. 28 of 2002, as amended), foreigners and nationals may apply for a prospecting right, mining permit, reconnaissance permit.

Question 18

Are there different requirements for domestic and foreign investors in getting the above right and permits? If so, please provide details.

**Answer 18**

***The requirements applicable to domestic and foreign investors are the same. In addition, Minister of Minerals and Energy may facilitate assistance to any historically disadvantaged person to conduct prospecting or mining operations.***

Page 337, Para 4.97

4.97 The APDP has four key elements: (a) tariff measures, i.e. stable import tariffs set at 25% for completely built up vehicles (CBVs) and 20% for components used by vehicle assemblers; (b) a local assembly allowance (LAA); (c) production incentives (PI); and (d) an Automotive Investment Scheme (AIS). The LAA allows vehicle manufacturers with a plant volume of at least 50,000 units per annum to import a percentage of their components duty-free. The PI consists in an allowance for duty-free imports of vehicles or components, calculated as a percentage of manufacturing value addition (MVA) in South Africa's supply chain. The AIS provides for a non-taxable cash grant of 25% of the value of qualifying investment in productive assets by component manufacturers and tooling companies. An additional a non-taxable cash grant of 5 to 10% may be made available for projects that meet a list of economic benefit criteria.

Question 19

Please explain the basis for setting the above-mentioned respective subsidy standard in car manufacturing industry.

**Answer 19**

***The process of designing a specific support mechanism involves the following key activities, amongst others;***

- 1. Global assessment and evaluation of the industry including comparative analysis of related issues,***
- 2. Local economic assessment of the industry and related variables,***
- 3. Setting a vision, objectives and direction for the local industry,***
- 4. Alignment of the vision to a set of levers based on resource availability.***

***Following on this inclusive process (includes consultation with key industry stakeholders such as the private sector and labour), a specific support program is designed and implemented.***

South Africa

Page 38, Para 3.7

3.7 To reach this vision, the NDP sets long-term targets for investment, growth and employment creation, and provides a holistic plan for reaching these targets, drawing on other policies and programmes.

Question 25

Please provide details of investment targets in NDP.

**Answer 25**

***The Medium-Term Strategic Framework targets include increasing investment rate to 25% of GDP.***

Page 40, Para 5.1

5.1 After ten years of preparations and negotiations, the EPA between the SADC EPA Group and the EU was "initialled" in Pretoria, South Africa, on 15 July 2014. The initialling of the Agreement signals that the negotiations are concluded. The timing is significant because it pre-empted the 1 October 2014 deadline imposed by the EU after which Botswana, Namibia and Swaziland would have lost preferential access to the EU market for their exports of beef, fish, sugar on which their economies depend heavily. The EU has assured us all that the act of initialing ensures that the current market access will continue until the agreement enters into force.

Question 26

What are the countries included in the SADC EPA Group? Why are negotiations conducted in the name of SADC instead of SACU in EPA and African Tripartite FTA (TFTA) talks?

**Answer 26**

*The countries of the SADC EPA group are the 5 SACU member states (Botswana, Lesotho, Namibia, South Africa and Swaziland), and Angola and Mozambique.*

*"The SADC EPA Group" (initially known as the "SADC-minus" group) is merely the name of this group of 7 countries. SACU negotiates as a single entity here, while Angola and Mozambique negotiate in their own right. Each entity (i.e. 3) made and received individual tariff offers.*

*The regional community SADC, comprising 15 member states, was divided across 3 EPA groupings: the SADC EPA (containing 7 SADC member states), East Africa EPA (where Tanzania resorts), and the ESA EPA (East and Southern Africa – containing the remaining 7 SADC member states, together with some COMESA member states).*

*In the Tripartite the negotiations are not conducted in the name of SADC. South Africa participates there as part of SACU. Because SACU is a customs union, of necessity it has to negotiate as one entity in order to maintain the integrity of its common external tariff.*

*SADC does not negotiate as one entity in the Tripartite, because it is not a customs union and because 9 of its members are also members of COMESA and/or the East African Community (EAC). The Tripartite FTA is not an agreement among the 3 regional economic communities, but among the 26 countries of the 3 communities. The 2 customs unions in this group, namely SACU and the EAC, each negotiate as single entities for the reason explained above.*

Page 40, Para 5.3

5.3. In terms of the process and timeframe for entry into force, the Agreement has been subjected to a legal vetting process. Thereafter, the Agreement will be presented to Cabinet and, if approved, submitted to the South African Parliament for ratification. Once ratified, the Agreement may be signed, and it will enter into force once all Parties have concluded their own respective national approval processes.

## Part III. Other Questions

Question 28

Please introduce relevant policies on foreign-invested enterprises' exploitation of oil and gas resources in South Africa. Please introduce the oil import and export management and administration system of South Africa.

**Answer 28****POLICY FRAMEWORK**

*The South African offshore oil and gas industry is governed by the White Paper on the Energy Policy of the Republic of South Africa and the Energy Security Master Plan for Liquid Fuels. The policy document aims to, among other objectives, improve social equity by addressing the energy*

*requirements of the poor; enhance the efficiency and competitiveness of the South African economy providing low-cost and high quality energy inputs to industrial, mining and other sectors; and accomplish this within the constraints of environmental sustainability. The Master Plan focuses on developing supply chain solutions to South Africa's liquid fuels supply challenges, management of liquid fuels demand and emergency response tactics. It thus promotes local refining and calls for a policy of limited imports be re-endorsed, and that an independent energy planning coordinator be considered.*

**REGULATORY FRAMEWORK**

*The following Acts govern the offshore oil and gas industry in South Africa:*

- *Petroleum Products Act 2003, No.120 of 1977*
- *Petroleum Products Amendment Act, No. 2 of 2005*
- *Gas Act 2001, No. 48 of 2001*
- *Gas Regulator Levies Act, 2002, No. 75 of 2002*
- *Petroleum Pipelines Act, 2003, No.60 of 2003*
- *Petroleum Pipelines Levies Act, 2004, No. 28 of 2004*
- *National Energy Act, 2008, No.34 of 2008*
- *Central Energy Fund Act, Act No.38 of 1977*

- *Central Energy Fund Amendment Act, Act No.48 of 1994*
- *Electricity Regulation Act*
- *National Nuclear Regulatory Act*
- *Nuclear Energy Act*
- *National Energy Regulator Act No. 40 of 2004*
- *National Energy Act No. 34 of 2008*
- *National Ports Act No. 12 of 2005*
- *Mineral and Petroleum Resources Development Act, No. 28 of 2002.*

#### **INSTITUTIONAL GOVERNANCE**

*The industry's interests are administered by the Department of Mineral Resources and the Department of Energy. PASA, a subsidiary of Central Energy Fund (Pty) Ltd, is responsible for promoting, licensing, monitoring and data archiving of South Africa's petroleum exploration and production industry and is the designated agency in terms of the Mineral and Petroleum Resources Development Act, No. 28 of 2002.*

*The National Energy Regulator of South Africa (established in 2005) is the body responsible for regulating policy over the entire South African energy industry and is responsible for implementing South Africa's energy plan.*

*Natural gas from Mozambique is imported through the 535-mile Sasol Petroleum International Gas pipeline and transported to Sasol's Secunda synfuels plant. Sasol, the South African government, and the government of Mozambique own the pipeline through a joint venture. The pipeline has a peak capacity of 524 million cubic feet per day of natural gas and was part of a \$1.2-billion natural gas project started in 2004. It is designed eventually to be able to transport double its current capacity. The governments of South Africa and Mozambique, along with SacOil Holdings, a South Africa-based oil and gas company, are studying the possibility of constructing a \$6 billion natural gas pipeline, running from Mozambique's northeastern province Cabo Delgado to South Africa. There have been several significant gas discoveries in Mozambique's northeastern Rovuma Basin over the past few years.*

*South Africa consumes the second-largest amount of petroleum in Africa, behind Egypt. The petroleum consumed in South Africa comes mostly from its domestic refineries that import crude oil and its CTL and GTL plants. South Africa imports crude oil mostly from OPEC countries in the Middle East and West Africa.*

*In 2014, South Africa imported 425,000 bbl/d of crude oil, according to South African Revenue Service, as published by GTIS. South Africa imports crude oil mostly from OPEC countries, namely Saudi Arabia (38%), Nigeria (31%), and Angola (12%)*

**HONG KONG, CHINA**Intellectual Property Rights

(WT/TPR/S/324: Page 319 para 3.116)

South Africa has not yet concluded its accession to the Madrid Protocol.

Question 1

Is there a timetable for South Africa to accede to the Madrid Protocol? What are the factors holding up the accession procedures?

**Answer 1**

***South Africa is still in the process of developing its IP policy.***

(WT/TPR/S/324: Page 319 para 3.118; Table 3.7)

Coverage of the Copyright Act includes literary works, musical works, artistic works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published editions and computer programs.

Exclusions and limitations of the Copyright Act include: Copyright shall not be infringed by any fair dealing for the purposes of research, private study and use, criticism or review, reporting current events, or judicial proceedings provided that the source is mentioned as well as the name of the author.

Question 2

In South Africa, does the Copyright Act provide for a copyright exception for the purpose of commenting on current events? Or is it subsumed under other exceptions (e.g. criticism or review)?

**Answer 2**

***There is no explicit exception for commenting on current events. Depending on the nature of the comments it may be subsumed, e.g., under criticism or review or reporting current events. The Copyright Amendment Bill suggests a general fair use provisions for purposes such as comment (among other purposes).***

Question 3

It seems that South Africa is currently using the "fair dealing" model. Is there a plan to move to "fair use"? What are the considerations for moving or not? If yes, is there a timetable for implementation?

**Answer 3**

***Yes, SA currently uses the fair dealing model and the Copyright Amendment Bill proposes to move towards "fair use". The drafting of the fair use provision in the Bill will most likely be subjected to changes following public comments.***

Question 4

Does the Copyright Act cover streaming and communications by other electronic modes?

**Answer 4**

***Not expressly.***

Question 5

Does the Copyright Act provide for a copyright exception for parody, satire, etc.? If yes, what is the coverage? If not, is there a timetable for the introduction of such an exception? If not, why?

**Answer 5**

***No, not yet. Such activities may currently fall under "criticism and review". Having said this, the Copyright Amendment Bill - in Section 12A(4) - proposes to allow the permission-free use of copyrighted material for such purposes. Again, the wording is likely to be subjected to changes following public comments.***

Question 6

Does the Copyright Act provide for a copyright exception for user-generated content? If yes, what is the coverage? If not, is there a timetable for the introduction of such an exception? If not, why?

**Answer 6**

**No. Inclusion of material in user generated content may, however, be subsumed under other exceptions (e.g., criticism or review). A new fair use exception pursuant to the Amendment Bill may also cover such uses.**

Under the Registration of Copyright in Cinematographic Films Act, registration of copyright in cinematograph films is on a voluntary basis.

Question 7

Could South Africa advise the considerations for introducing a voluntary registration regime regarding the Registration of Copyright in Cinematographic Films Act?

**Answer 7**

**The legislation emanates in large part from requests brought forward by the film industry submitting that such a system would assist them in providing the evidence needed in court proceedings to enforce their Copyright in cinematograph films more effectively since Copyright is generally not subject to registration. Please note, however, that registration of cinematograph films is NOT required for Copyright to come into existence**

**JAPAN****5 INTERNATIONAL ARRANGEMENTS AND TRADE NEGOTIATIONS****5.1 The Economic Partnership Agreement (EPA)**Question 1

Page 39 and 40, Paragraph 5.1-5.3

It is widely recognized that ensuring the effectiveness of the SADC Free Trade Area (SADC FTA) is a crucial task for South Africa to establish its position as the regional hub of production and logistics in Southern Africa. On the other hand, in some SADC countries and regarding some products, tariff reduction based on the SADC FTA has not been effectively implemented yet. Please express the view of South African government on such a challenge concerning the SADC FTA implementation and possible concrete measures to improve such shortcomings promptly.

**Answer 2**

***South Africa strives to maintain the integrity of the SADC Protocol on Trade as a rules-based system for regional trade. South Africa continues to work with the member states concerned (mainly Zimbabwe, and to a lesser extent Malawi and Tanzania), both in SADC fora and bilaterally, to resolve the outstanding implementation issues. South Africa is concerned about the negative impact that non-compliance could have on the success of the current drive for regional industrial development and building of regional value chains, and also on investor confidence across the region. All of these are critical underpinnings for successful economic development in the region.***

***The assertion above that South Africa aims to "establish its position as the regional hub for production and logistics" is unfounded speculation. South Africa has consistently been advocating the need for regional industrial development and diversification of the manufacturing base over recent years. The country fully supports the prioritization of industrial development, the recently adopted SADC Industrialization Strategy, and the on-going work to develop an action plan in this regard.***

Question 2

Page 39 and 40, Paragraph 5.1-5.3

It is widely acknowledged that a One Stop Border Post (OSBP) among South Africa and its neighbouring countries is a salient initiative to expand regional trade. At the moment, it is understood that the Government of South Africa is preparing for the establishment of the Border Management Agency. In this context, please indicate the schedule and the timing of the establishment of a Border Management Agency. In addition, please specify the name of the Department which is in charge of trade facilitation measures including OSBP before the establishment of the Border Management Agency.

**Answer 2**

***The Border Management Agency (BMA) Bill was published in the Government Gazette for public comments, which were subsequently collated for cabinet's approval and submission to Parliament. This process is still ongoing. The OSBP and the BMA are facilitated by the Departments of National Treasury and Home Affairs respectively***

Report by the Secretariat (WT/TPR/S/324)

## ANNEX 4 SOUTH AFRICA

## 3 TRADE POLICIES AND PRACTICES BY MEASURE

## 3.1 Measures Directly Affecting Imports

## 3.1.3 Standards and Other Technical Requirements

Question 3

Page 302, Paragraph 3.28

It is reported that the gap between imported electric products and locally produced electric products is not negligible in terms of the duration of respective administrative periods to obtain the Letter of Authority. Please specify the average duration of period from the application to the issuance of the Letter of Authority in the case of imported electric products and in the case of locally produced electric products, respectively.

**Answer 3**

**Section 14 of the NRCS Act, No 5 of 2008, states that no person may import, sell or supply a commodity, product or service to which a compulsory specification applies, except in accordance with the specification. The objective is to protect the South African consumer against unsafe products.**

**Processing of LoAs requires detailed attention especially on imports as the products are imported as finished goods, the complexity of the test reports coupled with incorrect and misrepresented information has necessitated NRCS to become more rigorous in assessing the applications before approval is granted.**

**The maximum turnaround time for issuance of Letters of Authority for both locally produced and imported products is 120 days.**

**Question 4**

Page 302, Paragraph 3.28

It is considered that the spot check in the product retail market is effective to verify the actual compliance to regulations to achieve the fair market competition. Does the South African government have any plan to implement such periodical spot checks in the near future?

**Answer 4**

**Periodical spot checks/inspections at retail outlets form part of the NRCS market surveillance and enforcement strategy which includes: inspection at source and retailer, sampling, sanctions, confiscation and destruction.**

**Inspection at source is still considered the most effective method of market surveillance as it identifies non-compliant products prior to it been placed on the market, thus reducing the risk to the safety of the South African consumer.**

**Periodical spot checks/inspections at retail outlets form part of the NRCS market surveillance and enforcement strategy which includes: inspection at source and retailer, sampling, sanctions, confiscation and destruction.**

**Inspection at source is still considered the most effective method of market surveillance as it identifies non-compliant products prior to it been placed on the market, thus reducing the risk to the safety of the South African consumer.**

**Question 5**

Page 302, Paragraph 3.28

With regard to the initial registration of agrochemicals, it takes a long period of time for registering newly developed agrochemicals because of the long-lasting review process. It prevents South African farmers from using high quality agrochemicals to deal with harmful insects. How does your government see this situation?

**Answer 5**

**Registration of agrochemicals takes about 14 months from the date of submission. This timeframe is in line with other countries for newly developed agrochemicals. We are of the view that the 14 months period is reasonable to allow South African farmers to have access to new products.**

**Question 6**

Page 302, Paragraph 3.28)

In the process of applying for initial registration of agrochemicals, especially the preparation of "summary of toxicity report" which is required to be submitted for the review process takes long time. Could you specify the legal basis for requiring the submission of the report? We would be grateful if you could accept the original data of exporting countries instead of the summary.

**Answer 6**

**South Africa relies on scientific data to support registration. Original toxicological data is accepted to support the registration. Summary toxicity reports from the regulatory authorities and independent toxicologist(s) enable us to register the products to be registered quicker.**

**Question 7**

Page 302, Paragraph 3.28

Please explain the measures of any for shortening or simplifying the review period and process by the NRCS in the near future.

**Answer 7**

*This maximum turnaround time was recently reduced by the Minister as an interim measure, from 120 working days (effectively 6 months) to 120 calendar days (effectively 4 months).*

*The NRCS is in the process of developing a risk-based approach to LoAs. The aim is to maximise its resource utilisation by calculating the risk of an application. The risk-based approach will be used to determine risk levels based on product, company and country of origin.*

*The target date for rolling out the risk based approach is mid-2016 as it would be contained in regulations.*

## 3.3 Measures Affecting Production and Trade

## 3.3.1 Incentives

Question 8

Page 311, Paragraph 3.77

In the article 6 of revised BBBEE (Act No.46 of 2013), the new paragraph "(e) determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment" which was added to the Article 10 of (Act 53 of 2003) seems unrelated to the rule pertaining to government procurement (previous Article 10 (1) (b) of Act 53 of 2003) which was regarded as part of the exception permitted under the paragraph 8 (a) in GATT Article 3. Rather, the revision appears to pertain to general rules of investment. Please explain the consistency of this revision with WTO rules on national treatment (Article 2 of WTO TRIMS).

**Answer 8**

*Section 6 of the Broad Based Black Economic Empowerment Act 2013 amends Section 10 of the Broad Based Black Economic Empowerment Act 2003 by providing that "every organ of state or public entity must take into account and as far as possible, apply any relevant code of good practice in terms of this act in... "(e) determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment". Reference to investment schemes in paragraph (e) is made in the context of Government's procurement policy process and not in the context of establishment of business operation. The investment scheme referred to in paragraph (e) would therefore qualify as subsidy in terms of paragraph 8 (b) of GATT Article 3 which allows for "payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products". The investment scheme in question is therefore not a trade related investment measure but a procurement measure which falls under the exception in Article 8 (b) of GATT Article 3.*

## 3.3.4 Public Procurement

Question 9

Page 318, Paragraph 3.110)

Several cases have been reported where proposed programs were dismissed without substantial reasons. Japan is concerned about the operation of NIP. In order to ensure transparency, we request a mechanism to enable NIP obligators to request for disclosure of the rejection reasons and appeal against the correspondence and guidance from the NIPP Secretariat when necessary. Please explain the view of the government regarding the possibility and necessity of developing such a mechanism to ensure transparency.

**Answer 9**

*The South African Constitution provides for fair administrative action and allows affected parties to approach the High Court in South Africa where they are of the view that the administrative process was not fair.*

Question 10

Page 318, Paragraph 3.110

Please disclose the method for penalty calculation method with specific numerical information in case the NIP obligation has not been fulfilled because the guideline does not provide such method.

**Answer 10**

*There is the industrial participation secretariat (IPS) that is charged with the responsibility of administering the programme. The powers and functions of the IPS are set out as follows:*

- a) Monitor all relevant procurement transactions in South Africa that do attract NIP obligation;*
- b) Assist, guide and advise obligors in the fulfilment of their NIP obligations;*
- c) Conclude NIP contracts to secure strict compliance;*
- d) Evaluate NIP business concepts prior to submission to the ICC for adjudication;*
- e) Submit recommendations regarding NIP business plans to the Industrial Participation Control Committee (IPCC) for approval;*
- f) Administer and audit the performance of all NIP projects;*
- g) Prepare status/performance reports for the IPCC for the allocation of credits; and*
- h) Assist the IPCC with its functions and where possible disseminate all decisions of the latter to all relevant parties.*

*In addition to a response provided above, it has to be noted that the powers and functions of the IPCC are to:*

- (a) Provide strategic guidance and propose amendments to NIP guidelines, where necessary;*
- (b) With the assistance of the Industrial Participation Secretariat (IPS), ensure that all relevant government departments and SOCs are aware and enforce their obligations related to NIP;*
- (c) Adjudicate on recommendations made by the IPS regarding NIP business proposals;*
- (d) Evaluate the performance reports, as supplied by the IPS, and award credits or invoke penalties where it is justified;*
- (e) Ensure that all relevant NIP agreements are monitored and audited by the IPS on a regular basis; and*
- (f) Report regularly to the Director-General, the Minister and the Portfolio Committee on Trade and Industry.*

Question 11

Page 318, Paragraph 3.110

The Department of Trade and Industry provides NIP reports 2003 – 2008 but has not provided NIP reports since 2009 on its website. We request to provide NIP reports from 2009 to the latest one.

**Answer 11**Question 12

Page 318, Paragraph 3.110

On the web site of the Department of Trade and Industry, it explicitly says that the NIP contract will be signed approximately four weeks after the program approval. However, in fact, it has been reported that suppliers are first forced to sign the NIP contract at the stage of public procurement tenders, then discuss and negotiate the content of the program for approval, sometimes for as long as several years. Is the government aware of such inverted process of NIP? If so, please explain the rationale. The government of Japan requests a proper implementation of the NIP process where the signing of NIP contracts should take place only after agreement on the program content is reached, and that approval period of the program content shall be expedited, observing the standard of approximately four weeks.

**Answer 12**Question 13

Page 318, Paragraph 3.110

NIP is the obligation on the import of goods and services for public procurement above a certain amount. Please explain the specific laws and regulations stipulating the legal grounds of the NIP obligation.

**Answer 13**

*NIP forms part of the four-tier system of public procurement levers approved by Cabinet in December 2012.*

## 4 TRADE POLICIES BY SECTOR

Question 14

Page 324

Please express the views of your government on the background and policy reasoning of raising import tariffs on some steel products.

**Answer 14**

*South Africa has made binding commitments on its tariffs. However, where there is policy space between the applied and the bound rate, South Africa is entitled to use that policy space through a process of investigations. The outcomes of these investigations are made public through reports that are published on the ITAC website. Report No: 505 provide the details of the investigation covering some steel products.*

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Question 15

Page 324

In terms of additional steel products under consideration for raising tariffs, kindly share the list of products as well as the envisaged process and schedule for consideration and implementation.

**Answer 15**

*The list of steel products currently under consideration includes flat-rolled products of iron or non-alloy steel, semi-finished products of iron or non- alloy steel, cold rolled products of iron or non-alloy steel, angles, shapes and sections of iron or non-alloy steel, bars and rods. The normal process for tariff investigations takes 6 months and the investigations are conducted within the relevant legislative framework.*

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Question 16

Page 324

If import tariffs of high-quality steel products which are not produced locally are raised, while other steel products falling under the same HS code, there is little effect of protecting the domestic steel industry in this light, but there are considerable effects in terms of eradicating the global competitiveness of the downstream industry such as motor vehicles. Kindly indicate how your government is going to keep these cases to the minimum.

**Answer 16**

*The rationale for amending tariffs on steel including the high quality steel is contained in report No: 505, which is published on the ITAC website.*

## 4.2 Mining and Energy

## 4.2.1 Mining

## 4.2.1.1 Overview

Question 17

Page 331, Paragraph 4.60

Is the draft amendment bill of the Mineral and Petroleum Resources Development Act (MPRDA) under deliberation consistent with WTO rules particularly the Article 11.1 of GATT?

**Answer 17**

*In our opinion, the MPRDA is in keeping with GATT article 11.1.*

#### 4.3 Manufacturing

##### 4.3.1 Key Subsectors

###### 4.3.1.1 Automotive Industry

###### Question 18

Page 336 and 337, Paragraph 4.96 and 4.97)

Please reveal the policy objective and background to launch the review process of the APDP in 2014. Please implicate the major changes to the current APDP as well as the time schedule of publication and implementation of those changes.

###### **Answer 18**

***The APDP was announced in September 2008 for implementation by January 2013. During 2008/ 2009 the world economy was hit by a financial crisis whose impact is still felt today and therefore it became necessary to evaluate whether the APDP's objectives would still be achieved under the prevailing economic environment with a view to make amendments where appropriate such that the most optimal economic benefits would still be realized.***

***The outcomes of this review will be published during November 2015 for implementation thereafter.***

###### Question 19

Page 336 and 337, Paragraph 4.96 and 4.97

It is observed that the condition of assembling over 50,000 CBU units to enjoy the benefit of VAA (Volume Assembly Allowance) stands as an entry hurdle for potential new investors to assemble CBUs (completely built units), who would contribute to the expansion of the automotive industry in South Africa. Please explain the rationale to set such a condition despite such an observation.

###### **Answer 19**

***The idea behind setting a minimum volume threshold was to steer the industry towards high volume production leading to providing better economies of scale for component suppliers.***

###### Question 20

Page 336 and 337, Paragraph 4.96 and 4.97

The current APDP will be valid up to 2020. Does the South Africa government intend to keep supporting the automotive industry by policy incentives to the similar degree as it is, and what kinds of policy incentives are envisaged? Please also explain the policy planning process and schedule of the post-2020 policy framework.

###### **Answer 20**

***The South African government intends to sustain an environment that supports the existence and growth of automotive production into the future through a variety of policy measures that will be developed at appropriate times. The publication of the outcomes of the recent APDP review should provide a sense of direction and timelines for the development of a post 2020 policy framework.***

###### Question 21

Page 336 and 337, Paragraph 4.96 and 4.97

Does the South African government have any intention/plan to develop a master plan of the national automotive industry in South Africa, to set the vision and the growth scenario which will guide all the relevant stakeholders and policy planning process?

###### **Answer 21**

***Please refer to the response to question 20 above.***

***The South African government will continue to work with key stakeholders and partners in sustaining and growing the automotive industry as it is an important contributor to the local economy regarding investment, exports, employment and general development.***

###### Question 22

Page 336 and 337, Paragraph 4.96 and 4.97

The APDP incentive earned by a car manufacturer, namely the Production Rebate Credit Certificate, is resalable to any other companies including pure importers of CBU (completely built unit). Please explain the rationale to allow the resale of the APDP incentive to importers of CBU, which seems to contradict the intended policy objective to stimulate production in South Africa.

**Answer 22**

***The APDP and its predecessor also sought to encourage competition in the market for the benefit of consumers. Thus those who earn the benefit will realize the value through selling the certificates, and thus share it with importers otherwise they might fully lose that value if they have no duties to off-set with the earned rebate certificates.***

**Question 23**

Page 336 and 337, Paragraph 4.96 and 4.97

While the APDP incentive is applicable to offset the import duty of CBUs by 100% of PRCC value, which has a secondary effect to reduce the ad valorem tax on CBUs, it is applicable to offset the import duty of components only by 80%. This could imply that the CBUs import is more rational and encouraged implicitly rather than the components import for local assembly. Please explain the rationale of the applicable percentage of the APDP incentive for offsetting import duty in the case of CBUs import and in the case of components import.

**Answer 23**

***PRCCs earned on CBUs offset import duty on CBUs by 100%. PRCCs earned on Components offset import duty on Components by 100% but offset import duties on CBUs by 80%.***

**KOREA, REPUBLIC OF**PART I: Questions Regarding the Secretariat Report  
Page 25 (Para 3.25)

All tariff bindings are ad valorem, including lines to which specific, mixed, or formula duties apply. Therefore, the imposition of non-ad valorem duties, including specific, mixed, and formula does not ensure compliance by the countries with their binding commitments (Table 3.5). Tariff quotas were included in the commitments made by South Africa and apply to imports of selected agricultural products.

Question 1

Tariff bindings by all SACU members are at ad valorem rates. The imposition of non-ad valorem rates on some tariff lines creates a risk of non-compliance by SACU Members with their individual tariff bindings, and the use of formula duties based on reference prices does not ensure conformity with obligations under the WTO Agreement on Customs Valuation.

What measures does SACU intend to take to ensure its tariff regime is WTO compliant?

**Answer 1**

***In consideration of applications for increase in the duty where the bound rate is an ad valorem duty whilst the applied rate is a formula or specific duty, the Commission calculates the ad valorem equivalent of the proposed applied duty to ensure that it does not exceed the ad valorem bound rate.***

Page 317 (Para 3.107)

In evaluating a tender, out of 100 points, government agencies must allocate 90 to the reference price submitted by the tenderer. This is in line with what procurement seeks to achieve, namely getting best value for money. The 10 remaining points are allocated in respect of previously disadvantaged persons in accordance with the Black Economic Empowerment (BEE) programme depending on ownership, management, and employment goals. Where the contract is below a prescribed threshold value (currently 1 million rand), the preference system operates on the basis of 80/20 split. The award of preference points is tied to a supplier's certified broad-based black economic empowerment (BBBEE) status in accordance with the Broad-Based Black Economic Empowerment Act. The higher the BBBEE rating of a supplier, the higher the number of preference points awarded. The regulations to the PPPFA give guidance on how to calculate the points for price and categories of preference. The regulations then require the tender to be awarded to the bidder that scores the highest number of points. Exemption from provisions of the PPPFA might be justified on grounds of public or national security interests..

Question 2

For investors with plans to invest in South Africa, regulations on ownership and possible restriction from participation in the Government Procurement market as a result of the "Broad-Based Black Economic Empowerment (BBBEE)" policy have been identified as sources of major concern.

In particular, it has been pointed out that BBBEE regulations are quite complex and are difficult to understand.

Taking this into account, could South Africa clarify whether foreign companies are subject to more stringent restriction on ownership?

**Answer 2**

**All investors, namely domestic and foreign based, are treated equally. In addition, the South African government has mechanisms in place to assist potential investors in addressing the difficulties in meeting the requirement in BBBEE.**

In addition, could South Africa clarify whether companies which have received foreign investment will be denied access to the public procurement market?

***See response provided above.***

**SINGAPORE**

Page 12 (Para 2.6)

Question 1

We understand from the WTO Secretariat report that SACU member states decided in 2012 to make trade in services a priority area in the Union's work programme. Could SACU elaborate on the elements for trade in services in the work programme?

**Answer 1**

*The issue of trade in services is treated as priority area in SACU work programme. However, in order to avoid a duplication of efforts, SACU Member States decided to negotiate service under the SADC Trade in Services Protocol and work programme.*

Question 2

Annex 4, Page 296 (Para 2.18)

We understand that South Africa has terminated some Bilateral Investment Treaties, following a review in 2010. What is South Africa's policy towards negotiating new BITs?

**Answer 3**

*The decision to terminate early generation BITs was itself informed by an extensive three-year review of South Africa's BITs that concluded in early 2010. The review revealed several important conclusions. First, South Africa had entered these treaties in the immediate post-apartheid period to provide confidence to foreign investors at a time when democratic South Africa's economic policy was untested and before the adoption of the new Constitution in 1996 that was to provide safeguards to protect private property and investment. It also noted that since the mid-90s, South Africa has steadily built up a robust legal framework protecting all investment, domestic and foreign.*

*Second, the review demonstrated that early generation BITs were deeply flawed in that provisions were poorly drafted, ambiguous and, in some cases, may be in conflict with existing national legislation in South Africa. Further, the early BITs did not establish a balance between protection of investor rights and the right of government to regulate. This state of affairs imposes unacceptably high risk to governments as they seek to regulate in public interest.*

*The review also revealed profound inconsistencies in the outcomes of international arbitration as they relate to investment disputes. Of particular concern is the risk that three arbitrators reach decisions that overturn national policies and measures that are arrived at through legitimate and fully democratic processes at a national level. In short, BITs may be unconstitutional in South Africa.*

*Third, the review observed the empirical analysis on the relationship between BITs and investment flows and found there was no clear evidence that BITs lead to investment inflows. Indeed, South Africa's own experience shows we continue to receive large investments from countries with whom we have no BIT (USA, Japan and India) and little or no investment from countries we do (Austria).*

*Finally, the review observed that major countries around the world had abandoned their early generation treaties in favour of updated and modern forms of protection for investment and investors.*

*In short, the review showed that BITs had served their purpose at the time of transition in the mid-1990s and were no longer necessary as South Africa has developed a robust regime for the protection of investment. Further, risks of early generation BITs outweigh the benefits as shortcomings in the treaties themselves are compounded by inconsistencies in international arbitration.*

*In this light, one dimension of modernising the investment protection regime involves terminating existing BITs, and South Africa has initiated the process in consultation with partners.*

*The second leg of modernising South Africa's investment regime involves work towards establishing a new Protection of Investment Bill. In this respect, the policy guidance is clear. The Bill seeks to ensure that South Africa remains open to foreign investment and should not impose new obligations on investors. It strikes an appropriate balance between the rights and obligations of investors and of Government, particularly in respect of the Government's right to regulate in the public interest. Further, provisions ordinarily found in BITs should be accommodated in the Bill and brought in line with South Africa's Constitution and our existing legal framework.*

Question 4

Annex 4, Page 295 (Para 2.16)

We note that under the dispute resolution section of the Promotion and Protection of Investment Bill, the Government may consent to international arbitration, subject to the exhaustion of domestic remedies. How would the exhaustion of domestic remedies be established?

**Answer 4**

*Local remedies would be deemed to have been exhausted when an investor has taken his case up to the highest court in the Republic that have jurisdiction over the investor's dispute. If an investor is still dissatisfied with the outcome of such process then an investor can then approach his home State with a view to instituting a state to state arbitration process against the South African government.*

Question 5

Annex 4, Page 339 (Para 4.117)

1. We note that South Africa's Financial Sector Regulation Bill (FSRB), due to be adopted in 2015, seeks to establish a new regulatory oversight system in South Africa. How would these changes affect foreign investors in South Africa's financial services sector?

**Answer 5**

*The Africa's Financial Sector Regulation Bill (henceforth the bill) is intended to protect consumers and make the financial system safer. The Bill includes recommendation to improve its legal enforcement and clarifies the role of regulators. Under the "twin peaks" model, regulation of the financial sector will be split into prudential and market conduct. The former will be the responsibility of the South African Reserve Bank while the later will fall under a new financial sector conduct authority that will replace that will replace the Financial Services Board.*

Question 6

Annex 4, Page 342 (Para 4.147 to Para 4.149)

2. We note that South Africa is looking to provide a clear framework for investors in maritime services. Could South Africa elaborate on the policies put in place to facilitate greater investment in maritime services, including port operations?

**Answer 6**

*The Department of Transport has in place the National Commercial Ports Policy (NCPP), among others, with the view to facilitate greater investment in maritime services, particularly port operations. The objectives of the NCPP include, but are not limited to, encouraging fair competition based on transparent rules applied consistently across the transport and port system; ensuring safe affordable, effective and efficient port services; facilitating and enhancing the expansion of international trade and tourism in general, and export in particular; and ensuring proactive communication and consultation with port stakeholders early on in the port planning stages.*

## ANNEX 5

### SWAZILAND – TPR RESPONSES TO QUESTIONS RECEIVED AFTER THE DEADLINE

#### THE RUSSIAN FEDERATION

#### QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/324 ANNEX 5 - SWAZILAND)

##### 3 TRADE POLICIES AND PRACTICES BY MEASURE

##### 3.1.6 Sanitary and phytosanitary requirements (SPS)

##### 3.60. p 387

Swaziland is a member of the Convention on Biological Diversity and a party to the Cartagena Protocol on Biosafety, which entered into force for the country in April 2006. The Biosafety Act 2012 was passed into law by Swaziland's Parliament and received royal assent in December 2012. The draft regulations of the Biosafety Act are currently awaiting approval. Imports of genetically modified organisms (GMOs) require an import permit issued by the Swaziland Environmental Authority.

#### Question

*Please provide more detailed information on the regulatory principles of the issuance of import permits for GMOs and approved activities for each type of GMOs. How many import permits have been issued? Please indicate an internet website or any other available sources where the Sanitary and phytosanitary requirements of Swaziland could be found?*

#### **Response**

***The Cartagena Protocol on Biosafety as well as the Biosafety Act, 2012 adopts the "Precautionary Principle", which actually embraces the benefits that could be brought by GMOs, but ensures that safety to human health and the environment is maintained at all time.***

***In issuing import GMO permits, there has to be a "Prior Informed Consent" from the Competent Authority of the country of export to the Competent Authority of the importing country. Upon receiving the PIC, along with the import application, the importing country will conduct a risk assessment of that particular GMO and then issue an import permit or alternatively decline permission to import.***

***The Competent Authority (SEA) has been issuing monthly permits for the importation of yellow maize by millers which include:***

- 1. Swaziland Milling***
- 2. Arrow Feeds***
- 3. Crane Feeds***
- 4. Ngwane Mills***
- 5. National Maize Corporation (sometimes also imports white maize)***

***These permits have been categorized as import for "Food, Feed & processing", and the maize has to be milled upon arrival.***

***There has been only a single application for the importation of Cotton Seed by the Swaziland Cotton Board, and they were granted a permit in September 2014.***

***In summary, The Swaziland Environment Authority is currently only issuing permits for the importation of yellow maize, on monthly basis, to local grain millers who use the yellow maize as "Food, Feed or for Processing" (FFPs).***

***The Draft Regulations outlines a clear application procedure for GMO activities in the country, as well as all the components of the Biosafety Act, 2012.***

## FOLLOW-UP QUESTIONS BY SWITZERLAND AND THE UNITED STATES

### SWITZERLAND

Report by the secretariat

P. 65 of the SACU answers, regarding Para 3.120 of the Secretariat's Report:  
South Africa answered that the process of developing its IP policy is ongoing.

#### Question 1

Could the South African authorities specify where this process currently stands and what will be the next steps?

#### **Answer 1**

**South Africa answered that its IP once implemented will take due consideration of all its international commitments related to intellectual property.**

Could the South African authorities specify how and at what stage of its internal legislative procedure this compliance will be assessed?

P. 66 of the SACU answers, regarding Para 3.121 of the Secretariat's Report:

South Africa answered that the procedure which can lead to the grant of a compulsory licence will be addressed in the development of the IP policy.

#### Question 2

Could the South African authorities specify the procedures under the patent act which is *currently* in force according to the initial questions by Switzerland? For easy reference you find hereunder these questions:

Could the South African authorities specify the procedure which can lead to the grant of a compulsory licence?

#### **Answers 2**

**Section 55 of the Patents Act provides that where the working of a patent (hereinafter referred to as a dependent patent) without infringement of a prior patent is dependent upon the obtaining of a licence under that prior patent, the proprietor of the dependent patent may, if agreement cannot be reached as to such licence with the proprietor of the prior patent, apply to the commissioner for a licence under the prior patent, and the commissioner may grant such a licence on such conditions as he may impose, but including a condition that such licence shall be used only for the purpose of permitting the dependent patent to be worked and for no other purpose.**

**Under section 56(1) of the Patents Act, any interested person who can show that the rights in a patent are being abused may apply to a commissioner in the prescribed manner for a compulsory licence.**

Please explain how this procedure and the steps required to be taken by an applicant for a compulsory licence are consistent with article 31 TRIPS?

**The applicant in terms of section 55 must show that reasonable efforts have been made to obtain the consent of the right holder before the application can be granted. Section 55 further states that the commissioner shall grant not a licence unless—**

**(a) the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the prior patent;**

**(b) the proprietor of the dependent patent granted the proprietor of the prior patent on reasonable terms a cross-licence to use the invention claimed in the dependent patent; and**

**(c) the use authorised in respect of the prior patent is not assignable except with the assignment of the dependent patent.**

*(a) the patented invention is not being worked in the Republic on a commercial scale or to an adequate extent, after the expiry of period of four years subsequent to the date of the application for the patent or three years subsequent to the date on which that patent was sealed, whichever period last expires, and there is in the opinion of the commissioner no satisfactory reason for such non-working;*

*(c) the demand for the patented article in the Republic is not being met to an adequate extent and on reasonable terms;*

*(d) by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry or agriculture of the Republic or the trade of any person or class of persons trading in the Republic, or the establishment of any new trade or industry in the Republic, is being prejudiced, and it is in the public interest that a licence or licences should be granted; or*

*(e) the demand in the Republic for the patented article is being met by importation and the price charged by the patentee, his licensee or agent for the patented article is excessive in relation to the price charged therefor in countries where the patented article is manufactured by or under licence from the patentee or his predecessor or successor in title.*

Article 31(b) TRIPS requires that the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time.

How is this implemented in practice and assessed on a case-by-case basis?

***South Africa to date has never issued a compulsory license. Where the demand has not been met for patented medicines, the government has tended to negotiate with patent holders through the National Department of Health.***

## **UNITED STATES**

### **(Follow-up Question for South Africa)**

Intellectual Property Rights

-South Africa's replies to several IPR related questions note that it is still developing its IP policy.

#### Question 1

When does South Africa expect to release a draft of its IP policy? What is the timeline for completion? Will there be opportunities for public input in the process before the policy is adopted?

#### **Answer 1**

**South Africa is still developing its IP Policy so it is difficult to indicate how long it will take. There will be an opportunity for the public to make input.**

### **(Follow-up Question for Namibia)**

Namibia indicated that it would provide response to many questions "at a later stage". We remain interested in responses to our original questions.

#### Question 1

Will Namibia submit the complete set of answers within the timeline established by the WTO? If not, when?

#### **Answer 1**

**Please refer to the document with the additional questions.**

### **(Follow-up Question for Swaziland)**

On page 54 of the responses, Swaziland notes that the Copyright and Neighbouring Rights Bill has been Presented to the Portfolio Committee of the House of Assembly in Parliament.

#### Question 1

Is a copy of the Bill that has been presented to the House of Assembly in Parliament publicly available? If so, where?

#### **Answer1**

**The Bill is publicly available in the Government Gazette from the Government Printer and not in soft copies. Furthermore, a soft copy can be provided on request.**

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## RESPONSES TO THE SPANISH QUESTIONS

### ARGENTINA

Points 4.3 to 4.61 of Annex 3 of the Secretariat's report WT/TPR/S/324:

#### Question 1

What are the greatest challenges identified when selling your fishery products on foreign markets?

#### **Answer 1**

*Some of the main obstacles would relate to the importing country regulations with regards to their domestic SPS regulations, however, Namibia would be able to comply with such regulations. Another issue is Standards set that would relate to technical barriers to trade (TBT's) by the importing country to be used as a protectionist measure for local products in the local market.*

#### Question 2

Could you provide further details pertaining to the tendering process followed for the granting of licences?

#### **Answer 2**

*Namibia does not have a bidding system to grant licences, however, our fisheries management system are based on the granting of harvesting/fishing rights, setting of Total Allowable Catch (TAC's) and the allocation of quotas as outlined in the Marine Resources Act, 27 of 2000.*

#### Question 3

Please explain how permits are granted between Namibian nationals and foreigners?

#### **Answer 3**

*Namibia does not have a distribution system of licenses between Namibian nationals and foreigners, however we have rights based fishing system that are based on the granting of harvesting/fishing rights. Section 33 of the Marine Resources Act, clearly states procedures, when the public may apply for fishing rights for commercial purposes.*

#### Question 4

Could you provide more details with regard to measures taken to protect the marine environment and systems for monitoring foreign vessels?

#### **Answer 4**

*Measures adopted to protect the marine environment includes fishing effort restrictions, spatial and temporal closures such as for the hake fishery the month of October is closed for hake fishing and in addition there are different depth restrictions for catching hake fish by hake wet-fish trawlers and hake freezer trawlers. In addition no fishing is allowed within the 200 metre depth contour by long lining and trawling. The Ministry has also declared "The Namibian Islands" a Marine Protected Area (MPA) that lies off the coast between Meob Bay in the North and Chamais Bay in the South which is 400 km's long and 30 km's wide, it consist of all of the country's islands, and surrounding sea areas, up to the high water mark along the country's coast.*

*The control systems in place for foreign vessels in Namibian Waters, is that no foreign vessels can be licensed to fish in Namibian Waters, unless the licensee holds a valid right for that resource, and if a quota has been allocated, holds a quota for that resource.*

#### Question 5

Which have been the most frequent irregularities with which you have had to deal?

***Answer 5***

***Any transgression by a holder of a right shall be dealt with, within the confines of the fisheries law.***

## CHILE

Trade agreements and arrangements

### Question 1

What is SACU's trade expansion strategy for the next 5 to 10 years?

### **Answer 1**

**SACU does not have a trade expansion strategy for the next 5 to 10 years. However, SACU's trade relations with third parties are governed by Article 31 of the SACU Agreement 2002.**

### Question 2

Does SACU have a methodology to assess possible or future trading partners?

### **Answer 2**

**SACU undertakes trade analysis for trading partners requesting to negotiate a trade arrangement for consideration and decision by the SACU Council of Ministers.**

### Question 3

Were joint feasibility studies carried out with trading partners with whom agreements were signed to determine the benefits of signing such a trade agreement?

### **Answer 3**

**No. As in response to question 2 above, SACU undertake its own trade analysis on the feasibility of negotiating trade agreements.**

### Question 4

Does the SACU carry out surveys to assess the trade relations with each partner? If yes, how often?

### **Answer 4**

**SACU annually assesses the trade flows for trade agreements that are in force.**

### Question 5

Which body is responsible for carrying out the assessment and / or processing this information?

### **Answer 5**

**The SACU Secretariat with inputs received from Member States.**

## COLOMBIA

Not only is South Africa the main partner of Colombia in SACU, but also the main trade partner and investor in Colombia from the African continent. In general, in terms of commitments in the WTO, the panorama of the SACU does not present significant changes since 2009, excluding institutional trends identified within a Customs Union, especially regarding what will be the implementation of policies and decisions in tariff matters, after the reforms of 2013 of the 2002 Treaty.

There remains a persistence of strong protection, both from South Africa and from the other countries of the SACU, some sectors including agricultural products and manufacturing, through mechanisms such as the application of specific, mixed or variable tariffs (resulting from the application of certain formulas).

The report by the Secretariat (WT/TPR/324-01) in its summary states that:

9. The simple average applied MFN tariff (SACU CET) rate is 8.3% in 2015, slightly up from 8.1% in 2009. The tariff remains complex, still comprising ad valorem, specific, mixed, formula (variable) duties, and their combination; non-ad valorem duties represent about 3.8% (up from 3.2% in 2009) of total tariff lines. Tariff rates display relatively high dispersion from zero to 624% (an ad valorem equivalent). The modal rate (the most frequently applied) is zero and applies to about 57.5% of all tariff lines on, inter alia, live animals, products of animal origin, ores, fertilizers, cork, pulp of wood, silk, some minerals (e.g. nickel, lead, and zinc), and other base metals. The highest ad valorem rate (96%) applies to 14 tariff lines, including mainly dairy products; and the highest ad valorem equivalent (624%) applies to worn clothing and worn textile articles.

10. Agriculture (WTO definition) remains the most tariff-protected sector (9.9% on average, slightly down from 10.1% in 2009), while tariff protection for non-agricultural goods is 8% (slightly up from 7.8% in 2009). Under ISIC (revision 2), manufacturing is the most tariff-protected sector (8.7%, slightly up from 8.5% in 2009), followed by agriculture (3.5%, slightly down from 3.7% in 2009), and mining and quarrying (0.1%, down from 0.8% in 2009). The presence of tariff escalation indicates higher effective protection for processed products.

### Question 1

What is the relationship of agriculture and industrial policies laid down by the SACU agreement in 2002 with the policy implemented during the period 2009-2015 in tariff matters, especially with regard to the persistence of certain treatments of exception - application of mixed specific or variable duties in certain sectors and products?

### **Answer 1**

***The articles relating to agriculture and industrial policies have not been fully implemented. Tariff setting was therefore not based on SACU wide policies during the period 2009-2015.***

El informe de la Secretaria (WT/TPR/S/324-01) plantea:

1.9 The core mandate of all the central banks in SACU is price stability, which implicitly contributes to coordinated monetary policies within the region. There is no formal consultation framework in place between monetary authorities; however, they meet from time to time at SADC level.

1.10 The SACU agreement does not provide for the harmonization of members' fiscal policies. However the revenue-sharing arrangement has important fiscal implications for BLNS countries, as payments in this respect account for over half of total government income in Lesotho and Swaziland, while the corresponding figures for Namibia, Botswana, and South Africa are on average in the order of 33%, 30%, and 3%, respectively.

### Question 2

There is a common monetary area between the four countries of the SACU (Lesotho, Namibia, South Africa and Swaziland). What difficulties does SACU encounter to advance the harmonization of fiscal and investment policies?

**Answer 2**

***The harmonization of fiscal and investment policies falls outside the scope of the SACU Agreement.***

## 2 RÉGIMEN COMÚN

## 2.2 Unión Aduanera del África Meridional (SACU)

## 2.2.1 Estructura institucional

2.7 The 2002 SACU Agreement provides for the establishment of certain designated institutions essential for the implementation of the Customs Union: the Council of Ministers; the Customs Union Commission; the Secretariat; the Tariff Board; the Technical Liaison Committees; and the ad hoc Tribunal. The SACU Agreement was amended during the review period to institutionalize the SACU Summit, through a decision of the Council of Ministers. The amendments were signed by the heads of state and government of SACU on the 12 April 2013, in Gaborone, Botswana.

Question 3

Will these institutions be formed by government officials or will they be independent from government?

**Answer 3**

***With the exception of the Tariff Board, Tribunal and the Secretariat, all the other institutions comprise of government officials of the five SACU Member States.***

El Informe de la Secretaria (WT/TPR/S/324-02) Botswana plantea:

## 2 RÉGIMEN DE COMERCIO E INVERSIÓN

## 2.1 Marco institucional y jurídico

2.5. Botswana's legal system consists of Roman-Dutch and customary law; the latter is administered by the customary courts. Botswana's legislation may take one of three forms: acts of parliament, delegated or subsidiary legislation, and autonomic legislation. Acts of parliament are the principal source of law in Botswana; they must be consistent with the Constitution, the supreme law of the country.<sup>5</sup> Acts are initiated through a bill drafted in the National Assembly at the request of the relevant ministry; thereafter the draft is submitted for discussion and if necessary amended. Once approved by the National Assembly, bills are presented to the President for assent, which he or she may withhold. If sanctioned it becomes an Act, but it needs to be gazetted to have the force of law.<sup>6</sup>

2.6. Subsidiary or delegated legislation is issued under the direction of subordinate bodies under specific powers delegated to them by Parliament. Subsidiary legislation is usually in the form of proclamations, regulations and orders. Autonomic legislation is issued by an autonomous, specialized body that has been given the power to create laws to regulate itself, for instance, the Law Society of Botswana.

Question 4

In Botswana, subsidiary or delegated legislation and the autonomous legislation must be compatible with the laws of the Parliament or be at the same level of hierarchy?

**Answer 4**

***Yes, it must be compatible with the laws of Parliament, principle legislation takes precedence over subsidiary or delegated legislation where there is inconsistency between the two, the principal legislation shall prevail.***

<sup>5</sup> Constitution of Botswana Chapter 01:01, sections 87(7) and 86.

<sup>6</sup> Constitution of Botswana Chapter 01:01, section 87(5).

El Informe de la Secretaria (WT/TPR/S/324-03) Lesotho plantea:

## 2 RÉGIMEN DE COMERCIO E INVERSIÓN

### 2.1 Marco general

2.1. There has been no major change in the legal and institutional framework for the formulation of Lesotho's trade and investment policy since its last Review in 2009. The framework is based on the Constitution of 1993<sup>7</sup>, the SACU Agreement and several laws and regulations, which are in part shaped at the SACU level.

#### Question 5

What relation exists between the SACU agreement and the Constitution of Lesotho of 1993? Is the Constitution first?

#### **Answer 5**

***The constitution of Lesotho is the supreme law of Lesotho. All national policies will in effect be based on the constitution. On this regard any multilateral agreement negotiated on behalf of the people of Lesotho, will have to be based on the constitution.***

El Informe de la Secretaria (WT/TPR/S/324-04) Namibia plantea:

## 2 RÉGIMEN DE COMERCIO E INVERSIÓN

### 2.1 Marco general

2.1 Namibia gained independence from South Africa in 1990, thus becoming one of Africa's youngest republics. The President, who is the head of state and the commander-in-chief of the army, is elected every five years. Under the Constitution the President is limited to serving two five-year terms. In November 2014, a new President was elected in Africa's first electronic ballot, in which voters made their choice using e-voting machines at the 4,000 polling stations across Namibia. The President assumed office in March 2015.<sup>8</sup> Following a constitutional amendment in 2014, Namibia also has a Vice-President for the first time. The President chooses a member of the National Assembly to become Vice-President.

2.2 Following the 2014 constitutional amendments, the National Assembly has increased in size and now consists of 96 elected members and 8 non-voting members appointed by the President (up from 72 members and 6 non-voting members). National Assembly MPs are elected every five years through a system based on proportional representation. Non-voting members are appointed by the President for their special expertise, status, skill or experience. The second chamber of Parliament, the National Council, is made up of representatives from the 13 regions, elected in separate elections on the basis of "first past the post" in each regional constituency.

#### Question 6

Why does the National Assembly of Namibia have members appointed by the President?

#### **Answer 6**

1. ***The doctrine of separation of powers dictates that the same person should not be a member of both the legislature and the executive. Simply put, the executive should not make laws and the legislature should not execute laws. The doctrine means that specific functions, duties and responsibilities are allocated to distinctive branches of government with a defined means of competence and jurisdiction.***
2. ***In the Namibian context this implies the separation of three main branches of government, namely, Legislative, Executive and Judiciary<sup>9</sup>. Within the constitutional framework each has the following competencies:***
  - Legislative authority – makes, amends and repeal rules of law.***
  - (b) Executive authority – execute and enforce rules of law.***
  - (c) Judicial authority –determines what the law is and how it should be applied in the disputes.***

<sup>7</sup> The Constitution of Lesotho was adopted on 2 April 1993, and has been amended five times since (1996, 1997, 1998, 2001 and 2004).

<sup>8</sup> In March 2015, the outgoing President was awarded the US\$5 million Mo Ibrahim prize for African leadership. The award is given to an elected leader who governs well, raises living standards and leaves office.

<sup>9</sup> Article 1(6) of the Namibian Constitution.

3. *According to a strict interpretation of the separation of powers, none of the three branches of government may exercise the power of the other in order to safeguard liberties and guard against tyranny.*
4. *Modern constitutionalism leaves room for a legitimate variation and allows for a departure which accepts that the formal distinction between the three powers is a compulsory minimum for a democratic constitutional order, as long as there are functional separations. Provided that the overlap, does not lead to actual, potential or demonstrable abuse of power, which cannot be curbed by the existing rules for checks and balances.*
5. *This variation to the classical application and implementation of the doctrine of separation of powers is justified on grounds of expediency. It was also held that an overlap makes the executive more directly answerable to the legislature.<sup>10</sup>*

**CONSTITUTIONAL CONSTRAINTS ON THE EXERCISE OF EXECUTIVE POWER IN NAMIBIA**

6. *Article 32 (1) of the Namibian Constitution subjects the exercise of the of the Presidents' executive functions to the overriding objectives of the Constitution as the supreme law of the country<sup>11</sup>, and the laws of Namibia.*
7. *The constitution also empowers Parliament to subject the President to impeachment and have him removed from Office, as President. In terms of Article 25 and 18 of the Constitution, executive powers are also subjected to judicial review, where the same contravenes any fundamental rights and freedoms or if such amounts to an administrative injustice.*
8. *The Constitution impose similar checks and balances on Parliament as court is granted authority in terms of Article 25 (1)(a) to declare an Act of Parliament , which is inconsistent with the Bill of Rights, invalid or to refer such Act back to Parliament to correct a particular piece of legislation.*
9. *The fact the President appoints members to and from the national Assembly should therefore be understood, as a measure to enhance expediency in governance, the Executive implements the very laws passed by the Legislature, who is more qualified to implement such laws then the one who have been part of its process of formation, who understands the objectives and the mischiefs the laws are directed at, then the one who shall be held responsible for its implementation<sup>12</sup>. The fact the eight members appointed are non-voting members, does not eat away at our democracy, but simply enrich the legislative process with their expertise and experience.*

El Informe de la Secretaria (WT/TPR/S/324-05 (Sudáfrica) plantea:

4.90 South Africa's New Growth Path (NGP) and the Industrial Policy Action Plan (IPAP) are the main policy actions with significant focus on the manufacturing sector. Administred by the DTI, IPAP is at the core of South Africa's industrial policy. It is implemented on three-year basis. The current IPAP covers the period from 2014 to 2017. It places greater emphasis (increased incentive packages) on competitiveness of manufacturing exports, especially for industries with high expansion potential. South Africa maintains an extensive list of incentive schemes in the manufacturing sector (Table A3.2).

<sup>10</sup> Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996), it was argued that an overlap between the executive and legislature resulted in the final Constitution not complying with Schedule 4 of the Constitutional Principle VI, which requires Act 108 of 1996 (the Constitution) to comply with the doctrine of separation of personnel. The Court stated as follows:

'... the separation of powers doctrine is not fixed or rigid constitutional doctrine; it is given expression in many different forms and made subject to checks and balances of many kinds'. In the First Certification case it was argued that an overlap between the executive and legislature resulted in the final Constitution not complying with Schedule 4 of the Constitutional Principle VI, which requires Act 108 of 1996 (the Constitution) to comply with the doctrine of separation of personnel. The Court stated as follows

'... the separation of powers doctrine is not fixed or rigid constitutional doctrine; it is given expression in many different forms and made subject to checks and balances of many kinds'. It was also held that an overlap made the executive more directly answerable to the legislature'.

<sup>11</sup> Article 1(6) of the Namibian Constitution.

<sup>12</sup> Article 40

3.70. The IDZ regime in South Africa offers the following incentives:

- Tax incentives: Investors in the zone are permitted to import inputs and equipment duty-free and exempted from value added tax (VAT). In addition, no VAT is payable on electricity and water.
- Provision of reliable infrastructure and utilities: water, electricity, roads, sewerage, and telecommunication.
- Streamlined administration and less bureaucracy for investors.

#### Question 7

What are the achievements by South Africa in the implementation of this policy? Which are the sectors and investment projects prioritised in these areas?

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2.5. According to the authorities, consultations were undertaken to review the evolution of South Africa's tariff structure and its trade effects since 1994. In light of this, a Trade Policy and Strategy Framework (TPSF) was adopted in 2010 and revised in 2012. It specifies trade-related measures that can contribute to the Government's broad economic development objectives outlined in the NGP and the NDP, with a view to diversifying the economic base, as well as producing and exporting high-value-added products.

2.6 The Framework recommends a "strategic tariff policy" approach, whereby tariff policy is decided primarily on a sector-by-sector basis, and dictated by specific sectoral strategies. For instance, it recommends that tariffs on inputs be reduced or removed to lower production costs for labour-creating manufactures. Furthermore, tariffs on goods produced by South Africa's strategic industries (from an employment or value-addition perspective), may be raised to ensure long-term sustainability and job creation "in the context of domestic production capabilities/potentialities and the degree of trade and production distortions on these products at the global level".<sup>13</sup>

#### **Answer 7**

***In line with the sector priorities as articulated in the Industrial Policy Action Plan (IPAP) and the New Growth Path(NGP), the SEZs in South Africa aim:***

***To promote the acquisition and development of targeted industrial capabilities within the framework of the IPAP, New Growth Path and the New Development Plan,***

***To promote beneficiation and value addition to the country's minerals and other natural resources,***

***To develop world-class infrastructure required to support the development of the targeted industrial activities,***

***To attract relevant foreign and domestic direct investment,***

***To accelerate exports and economic growth and the creation of much needed jobs,***

***To contribute to balanced regional development.***

***Our success since the inception of the IDZ programme - From 2002 to 2015, a total of 59 investors are on site and operational in the IDZs with more than R5.2 billion private investments leveraging 8500 direct jobs and approximately 43 thousand jobs created through backward and forward linkages. 50 investors (including eight new expansions in Coega) with an investment value of more than R15.9 billion have signed agreements to locate in the designated zones and are expected to create more than 4 000 direct jobs and ninety-one pipeline investors are at different stages of negotiation with the designated zones; 68% are at advanced-stage negotiation. Our zones have successfully attracted diverse sectors ranging from automotive, agro-processing, chemicals, renewable energy, aquaculture and horticulture, ICT, steel and general manufacturing.***

#### Question 8

What sectors would eventually increase tariffs? What are the main features of the program of tariff reform which intends to achieve an industrial modernization in the Republic of South Africa.

<sup>13</sup> Online information. Viewed at:  
<http://www.itac.org.za/upload/Trade%20Policy%20and%20Strategy%20Framework.pdf>.

**Answer 8**

***In line with the sector priorities as articulated in the Industrial Policy Action Plan (IPAP) and the New Growth Path (NGP), the SEZs in South Africa aim:***

***To promote the acquisition and development of targeted industrial capabilities within the framework of the IPAP, New Growth Path and the New Development Plan,***

***To promote beneficiation and value addition to the country's minerals and other natural resources,***

***To develop world-class infrastructure required to support the development of the targeted industrial activities,***

***To attract relevant foreign and domestic direct investment,***

***To accelerate exports and economic growth and the creation of much needed jobs,***

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El Informe de la Secretaria (WT/TPR/S/324-05 (Sudáfrica) plantea:

### 3 POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS

#### 3.1 Medidas que afectan directamente a las importaciones

##### 3.1.4 Prescripciones sanitarias y fitosanitarias

##### 3.1.4.1 Marco jurídico e institucional

3.33. South Africa's SPS regime pursues the objectives of enhancing and strengthening its ability to satisfy its obligations under the WTO SPS Agreement; providing adequate protection against risks threatening human, animal and plant life and health; and enhancing its competitiveness to fully benefit from market access opportunities. A comprehensive strategy was rolled out in 2014, with a view to providing an overarching framework that aims to support those objectives.

### Question 9

How will South Africa comply with the SPS agreement? Will it be incorporated into the domestic law?

**Answer 9**

***All the relevant South African laws and regulations are in full compliance with the SPS Agreement. The SPS Agreement and the other agreements of the Uruguay Round have been ratified by the South African Parliament. Under the South African legal system, it is not necessary to incorporate the SPS Agreement into South African legislation in order to comply with the provisions of such agreement.***

El Informe de la Secretaria (WT/TPR/S/324-05 (Sudáfrica) plantea:

4.14. Agriculture also remains central to several other development plans in South Africa.

4.15. Tariff protection of agriculture, hunting, forestry, and fishing (ISIC Rev.2, 1) stood at 3.7%, down from 5.5% in 2002, with tariffs ranging from zero to 44%. Both ad valorem and specific tariffs (and a combination of both) are applied to agriculture and agro-food products; however, most tariff lines 95.7% bear ad valorem duties. Variable (formula) duties are still levied on cornflour, preserved tomatoes, cherries, and two kinds of tobacco (Main Report, Section 3.1).

1.1. Tariff quotas apply to agricultural products, including animal products, potatoes, vegetables, fruit, cereals, coffee, tea, oil seeds, sugar, food preparations, wine and spirits, vinegar, tobacco, and cotton (Section 3.1). The TDCA preferential agreements concluded with EFTA include preferential tariff quotas covering cheese products (Table 4.2).

Question 10

Will South Africa have flexibility of this policy in the future?

**Answer 10**

***A preferential cheese quota is provided under the TDCA agreement with the EU. The EFTA agreement does not have a cheese quota. The quota under the TDCA is in addition to the WTO market access quotas. "Additional flexibility" would be dependent on various policy considerations and it is not possible to respond to this question in isolation.***

Question 11

There is a common monetary area between the four countries of the SACU (Lesotho, Namibia, South Africa and Swaziland). What difficulties does SACU encounter to advance the harmonization of fiscal and investment policies? (See Q2)

**Answer 11**

***The harmonization of fiscal and investment policies falls outside the scope of the SACU Agreement.***

El Informe de la Secretaria (WT/TPR/S/324-06 Swazilandia plantea:

## 2 RÉGIMEN DE COMERCIO E INVERSIÓN

## 2.1 Marco general

2.1. Swaziland is an absolute monarchy, where a modern and a traditional state co-exist. The King is head of state and holds executive, legislative and judicial powers, but no longer rules by decree. The modern state, based on the Constitution of 2006, consists of a democratic parliamentary system with separation of powers between the executive, legislature (bicameral) and judiciary. The Constitution does not recognize political parties. Election of the members of the House of Assembly is done through a non-party traditional system (Tinkhundla). The King directly appoints 10 of the 65 representatives to the House and 20 of the 31 members of the Senate.<sup>14</sup>

Question 12.

What relation is there between the separation of powers in Swaziland and the appointment of 20 of the 31 members of the Senate by the King?

**Answer 12*****The Executive;***

***The primary function of the Executive arm of government is to execute the decisions of the judiciary, to implement the laws made by the Legislature and see to the overall administration of the country. Furthermore, it is the Executive's role to defend the Constitution of the country. The Executive authority of Swaziland vests in the King as the Head of State. The King may exercise the executive authority either directly or through the Cabinet or a Minister. In His capacity as the Head of State the King has authority to sign and assent to Bills, summon and dissolve Parliament, receive foreign envoys, reprieve or commute sentences, declare State of emergency, confer honours, establish any commission or vusela and order a referendum.***

***The Executive arm consists of the Cabinet and civil servants. The Cabinet is made up of the The Prime Minister, the Deputy Prime Minister and 18 Ministers. They are responsible for policy making, administration and executing the functions of government. The Prime Minister is the Chairman of the Cabinet and the leader of Government in business. He is appointed by the King with the recommendation of the Kings Advisory Council (Liqoqo) from the House of Assembly. The King appoints Ministers from both chambers of Parliament and on the recommendation of the Prime Minister. At least half of the Ministers are appointed among the elected members of the House.***

***The Legislature******The main function of the Legislature is to make laws for the peace, order and good governance of Swaziland. The power of the King and Parliament to make laws is exercised through bills. A bill may be introduced into either chamber for debate or passage into law except for a money bill, which must only be introduced in the House of Assembly before it proceeds to the Senate. The Parliament of Swaziland is a bicameral chamber consisting of the Senate and the House of Assembly. Section 94 (1) of the***

<sup>14</sup> African Development Bank (2013).

*Constitution states that the Senate shall consist of not more than thirty one members. Currently, the Senate consist thirty (30) members. Ten (10) Senators, at least half of whom must be female, are elected by members of the House of Assembly so as to represent a cross-section of Swazi society. Twenty (20) Senators, at least eight of whom must be female are appointed by the King acting in His discretion after consultation with such bodies as He may deem appropriate.*

*In terms of section 95 (1) of the Constitution the House of Assembly shall consist of a maximum of seventy six members. The House currently consists of sixty-six members, fifty-five of whom were elected from tinkhundla areas serving as constituencies and ten members were nominated by the King, as provided for by the Constitution. The sixty-sixth member is the Speaker of the House who was elected from outside the House as sanctioned by section 102 of the Constitution.*

*The Judiciary*

*The main function of the Judiciary is to adjudicate and to interpret Acts of Parliament and the common law. Additionally the Judiciary has the power to issue out orders or directions as may be necessary to ensure law, peace and order is maintained. The Judiciary is independent and subject only to the Constitution. The country's judiciary comprises of the Courts of general jurisdiction, the Supreme Court, High Court and Magistrate Courts and other specialized courts, such as Swazi or Customary Courts. In addition there is the Industrial Court and the Industrial Court of Appeal which are specialist tribunals whose jurisdiction is confined to Labour disputes. The judges of the superior courts (Supreme and High Courts) and the specialist tribunals are appointed by the King on the advice of the Judicial Service Commission ("JSC") and Magistrates are appointed by the JSC. Officers (President) of the Swazi Courts which administer Swazi law and custom are appointed by the King independently of the Judicial Service Commission.*

*NOTE: Each of these organs is independent from other arms.*

*The Electoral System*

*Swaziland practices a Tinkhundla-based electoral system of government. The Tinkhundla system is a democratic participatory system which emphasizes devolution of power from central government to Tinkhundla (constituencies) areas and individual merit as a basis for election or appointment to public office.*

**COLOMBIA****(ADDITIONAL QUESTIONS)**

Intellectual property:

With regard to number 3.4 which states that, "The Companies and Intellectual Property Authority was established in 2011 as an autonomous entity with the aim, among other things, of improving the business environment , reducing the time needed to start a business and protecting and effectively managing intellectual property rights."

Question 1

Does this entity manage both patent rights and copyright and related rights?

**Answer 1**

***Yes. One of the functions of the Companies and Intellectual Property Authority is registration of Companies, Co-operatives and Intellectual Property Rights: trademarks, patents, designs and copyright and maintenance thereof.***

Question 2

Document WTTPRS324-01

With reference to paragraph 2.4.4 stating that "The agreement also covers cooperation in other trade-related matters, such as the protection of intellectual property rights."

Does the agreement with the European Union contain a chapter on intellectual property rights?

**Answer 2**

***The Agreement with the EU covers cooperation on intellectual property rights but it has not been signed yet. It may therefore be inappropriate to confirm the provisions of the Agreement at this stage.***

Question 3

With regard to cooperation on intellectual property rights, which issues are addressed?

**Answer 3**

***Cooperation covers myriad of issues including geographical indication.***

Question 4

Document WTTPRS324-02

Under number 3.125: "The Act on Copyright and Related Rights (chapter 68:02) requires that all sound and audiovisual recordings made available to the public for commercial purposes in Botswana carry a safety device or hologram, which costs 0.30 Pula and which the duly accredited owner of the recording or importer can buy from the Gaborone and Francistown copyright offices (the accreditation cost is 40 Pula). The Copyright Office may only issue an accreditation certificate to an importer who has valid permission from the copyright holder to import these works into Botswana". There are several questions:

What is the reach of this safety device or hologram? What is the purpose of this requirement? What statistics are available from the time of entry into force of this law, which make it possible to prove the effectiveness of this requirement? Why is this measure only imposed on musical or audio-visual works?

**Answer 4**

***The purpose of the security device/hologram serves to authenticate sound and audio-visual works. It is meant to curb piracy in that any sound or audio-visual work availed to the market without a security device is deemed to be pirated. This is required on this category of works mainly because they are more prone piracy and that in most countries where similar practices exist the device is applied to sound and audio-visual works.***

***Since the entry into force of this law, about 2 365 380 holograms have been sold. The office occasionally conducts raids to confiscate works that do not bear the hologram. Sound and audio-visual works that do not bear the hologram are confiscated. The estimated value of confiscated works is US\$ 65 814.00***

**ECUADOR**

WTO Secretariat Report

1. In accordance with page 4, paragraph 6 of the Summary:

"[...] The SACU countries have regional trade agreements with the members of the European Free Trade Association (EFTA) and have signed a reciprocal trade agreement with the MERCOSUR countries, which is not yet in force." [...]

Question 1

Could the Southern African Customs Union (SACU) explain in greater detail what the reciprocal trade agreement with the MERCOSUR countries consists of?

**Answer 1**

***The agreement is a Preferential Trade Agreement (PTA) and covers trade in goods - both agricultural and industrial - based on agreed tariff preferences and rules of origin that were agreed by both parties for the importation of negotiated products.***

***Mercosur offered SACU 1 051 product lines while SACU offered 1 064 product lines. The reduction in tariffs or margin of preferences for all products by both SACU and MERCOSUR ranges from 10 % to 100 %.***

***The SACU-MERCOSUR PTA is currently in the final stages of ratification.***

Question 2

On page 12, paragraph 2.3 pertaining to the general review of the SACU Common System, the following is mentioned:

"Article 31 of the SACU Agreement allows Member States to maintain existing preferential trade arrangements; therefore some SACU members are individually party to other preferential trade arrangements."

Could the SACU indicate whether the individual negotiation of trade agreements has been detrimental to trade flows within the customs area? Was there triangulation?

**Answer 2**

***There is no detrimental impact on trade flows because intra-SACU trade has increased by an average of 12.5% over the last 5 years.***

**Question 3**

On page 20, paragraph 3.6 pertaining to Customs procedures and customs evaluation, it is stated that:

"In December 2011, during its 25th meeting, the Council of Ministers of the SACU approved a "Regional Customs Policy document". This policy develops and applies some common strategic objectives, which are to facilitate legitimate trade; protect the fiscal interests of the Member States of the Customs Union by optimizing revenue and providing accurate business data; and protecting the societies of Member States. The policy document continues to guide the SACU countries in their efforts to implement their various customs projects.

Could SACU explain whether, on the basis of facilitating legitimate trade as per the "Regional Customs Policy document", programmes or strategies have been incorporated to comply with the Trade Facilitation Agreement?

**Answer 3**

***The policy focuses on Customs Legislation; Risk Management; Trade Partnerships; Standard Operating Procedures (SOPs); and Customs IT connectivity. The main developments include work towards conclusion and implementation of the SACU Preferred Trader Programme (a step towards Authorised Economic Operator (AEO), conclusion of the draft SACU Regional Customs Risk Management Strategy, and IT connectivity between SACU Member States (encompassing electronic data and***

**information sharing mechanisms) and legislative reforms to incorporate international best practices. These developments cover largely Article 7 of the WTO TFA.**

4. On page 31, paragraph 3.29 on excise duties, reference is made to the following:

"The excise duties are aligned within the framework of the SACU. Specific excise duties are applied to prepared foodstuffs, alcoholic beverages and spirits, tobacco, mineral products and products from the chemical or allied industries; and ad valorem duties are applied to perfumes and certain electronic devices (Table A3.2). Excise duties calculated [according to] a specific formula are applied to motor vehicles and their components."

Question 4

Could the SACU, in this regard, explain what the formula is and the aim thereof?

**Answer 4**

***A policy decision undertaken in SACU takes into account differences in Member States economic developments in line with the SACU Agreement, 2002. These relate to amongst others the establishment of the development component of the revenue sharing formula which aims to compensate the least developed economies. Further, there is infant industry protection which applies mostly to the least developed economies.***

Question 5

On page 32, paragraph 3.35 on concessions and exemptions from duties and taxes, it is mentioned that:

"The only discounts not applied by all the SACU Member states are those for wheat (SA 1011) and dairy products (SA 04), which are only granted by Botswana, Lesotho, Namibia and Swaziland. The Motor Industry Development Programme (MIDP) was stopped in 2012 and replaced by the Automotive Production and Development Programme (APDP)."

Could the SACU provide greater detail on the Automotive Production and Development Programme?

**Answer 5**

***The APDP and its predecessor also sought to encourage competition in the market for the benefit of consumers. Thus those who earn the benefit will realize the value through selling the certificates, and thus share it with importers otherwise they might fully lose that value if they have no duties to off-set with the earned rebate certificates.***

ANNEX 1 - BOTSWANA

6. On page 85, paragraph 3.52 on sanitary and phytosanitary requirements, reference is made to the following:

"The Ministry of Agriculture is the national enquiry point and the authority responsible for notifications on sanitary and phytosanitary issues. During the period under review, Botswana did not notify the adoption of any SPS measure, and was not actively involved in the WTO SPS Committee either. According to the authorities, this is due to capacity constraints in Botswana in this area. However, the country recognizes the importance of protecting human, animal or plant life or health, which explains its extensive legislation. It is important to properly enforce these laws and to follow practices which improve the health conditions of Botswana so that it can achieve food security, one of its main objectives, and take full advantage of the opportunities generated by international trade, especially for an exporter of meat products. In this regard, one of the greatest achievements of Botswana since the previous review is that in 2013 the OIE declared that certain areas were free of FMD".

Question 6

Due to the limited trade that Ecuador has with Botswana, it is not possible to demonstrate the clarity of procedures and phytosanitary implications that could arise with this country through trade exchange experiences; however, from reading the documents it can be seen that the NPPO

of Botswana has not updated its framework and procedures in accordance with new international regulations. Could Botswana explain whether there is a plan or programme to update these in accordance with international regulations?

**Answer 6**

**No.**

ANNEX 2 - LESOTHO

7. On page 188, paragraph 3.53, reference is made to the following:

"Lesotho has at least four entities that deal with sanitary and phytosanitary issues: According to the authorities, their powers may overlap in many cases and could therefore give rise to the duplication of work carried out. The four main institutions are: a) the Ministry of Agriculture and Food Security, which is responsible for controlling the import and export of plants and plant and animal materials, as well as cross border diseases<sup>40</sup>; b) the Ministry of Forestry, responsible for forest and wildlife products; c) the Ministry of Health, responsible for inspections; and d) the Ministry of Trade and Industry, responsible for developing standards and food testing laboratories.

Question 7

Could Lesotho consider reorganizing the activities, functions and responsibilities of each entity, and thus have a specific organization dedicated to SPS control and regulation?

**Answer 7**

***Lesotho has at least four entities dealing with SPS issues. According to the authorities, their functions overlap in many instances thus resulting in the duplication of work. The main four institutions are: (a) the Ministry of Agriculture and Food Security (MAFS), which is responsible for controlling the imports and exports of plants, plant material and animals, as well as transboundary diseases<sup>15</sup>; (b) the Ministry of Forestry, responsible for forest and wildlife products; (c) the Ministry of Health, responsible for inspection activities; and (d) the MTI, responsible for the development of standards and food testing laboratories.***

***Lesotho has no legislation dealing specifically with SPS matters and its institutional framework is not clearly defined. Notwithstanding, during the period 2008-15 Lesotho took some steps towards developing SPS legislation by issuing various policy papers.***

***Lesotho prohibits the export of certain drugs and chemicals, and may prohibit the export of munitions or any good that could be converted into or used to manufacture munitions.***

**Clarification:**

***In 2014, the Ministry of Agriculture drafted a phytosanitary policy and a sanitary policy, and the Ministry of Trade and Industry (MTI) drafted a food safety policy and a quality policy. These policy papers sought in particular to identify the direction to move forward and clarify the functions of the different institutions involved in the policy making of SPS measures.***

***In 2014, the Ministry of Health also completed the draft of a food safety bill which is aimed at improving the food safety situation in the country and at establishing a food authority. This bill if enacted will complement the Public Health Order 12 of 1970. Some work has also been undertaken to develop food standards with the establishment of the Committee for food products. However, the publication of any final outcome by this Committee will have to wait the implementation of the Standards Bureau.***

***According to Internal Security Arms & Ammunition Act No 17 of 1966, Lesotho prohibits the export of certain drugs and chemicals, and may prohibit the export of munitions or any good that could be converted into or used to manufacture munitions.***

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***To make provision in the interests of public safety and public order for regulating and controlling firearms, imitation firearms and other weapons and ammunition, and for related purposes.***

The phytosanitary policies of Swaziland (p. 1, point 3.61) and Lesotho (page 34, point 3.50) are not yet completely aligned or are being developed.

#### ANNEX 4 - SOUTH AFRICA

8. On page 327, paragraph 2.18 on the Investment regime, reference is made to the following:

"Following a Study carried out in 2010, South Africa notified the following countries that it would be ending its bilateral investment treaties with them: the Belgo-Luxembourg Economic Union, Spain, the Netherlands, the United Kingdom, France, Germany, Denmark, Switzerland, Austria, Italy and Greece. Sweden and Finland were also notified of South Africa's intention to end its bilateral investment treaties with these countries once they expire".

#### Question 8

Could South Africa explain in greater detail what the reasons were for the decision to end the bilateral investment treaties? Have new alternatives been considered to lay down rules in this regard at bilateral level?

#### **Answer 8**

***The decision to terminate early generation BITs was itself informed by an extensive three-year review of South Africa's BITs that concluded in early 2010. The review revealed several important conclusions. First, South Africa had entered these treaties in the immediate post-apartheid period to provide confidence to foreign investors at a time when democratic South Africa's economic policy was untested and before the adoption of the new Constitution in 1996 that was to provide safeguards to protect private property and investment. It also noted that since the mid-90s, South Africa has steadily built up a robust legal framework protecting all investment, domestic and foreign.***

***Second, the review demonstrated that early generation BITs were deeply flawed in that provisions were poorly drafted, ambiguous and, in some cases, may be in conflict with existing national legislation in South Africa. Further, the early BITs did not establish a balance between protection of investor rights and the right of government to regulate. This state of affairs imposes unacceptably high risk to governments as they seek to regulate in public interest.***

***The review also revealed profound inconsistencies in the outcomes of international arbitration as they relate to investment disputes. Of particular concern is the risk that three arbitrators reach decisions that overturn national policies and measures that are arrived at through legitimate and fully democratic processes at a national level. In short, BITs may be unconstitutional in South Africa.***

***Third, the review observed the empirical analysis on the relationship between BITs and investment flows and found there was no clear evidence that BITs lead to investment inflows. Indeed, South Africa's own experience shows we continue to receive large investments from countries with whom we have no BIT (USA, Japan and India) and little or no investment from countries we do (Austria).***

***Finally, the review observed that major countries around the world had abandoned their early generation treaties in favour of updated and modern forms of protection for investment and investors.***

***In short, the review showed that BITs had served their purpose at the time of transition in the mid-1990s and were no longer necessary as South Africa has developed a robust regime for the protection of investment. Further, risks of early generation BITs outweigh the benefits as shortcomings in the treaties themselves are compounded by inconsistencies in international arbitration.***

*In this light, one dimension of modernising the investment protection regime involves terminating existing BITs, and South Africa has initiated the process in consultation with partners.*

*The second leg of modernising South Africa's investment regime involves work towards establishing a new Protection of Investment Bill. In this respect, the policy guidance is clear. The Bill seeks to ensure that South Africa remains open to foreign investment and should not impose new obligations on investors. It strikes an appropriate balance between the rights and obligations of investors and of Government, particularly in respect of the Government's right to regulate in the public interest. Further, provisions ordinarily found in BITs should be accommodated in the Bill and brought in line with South Africa's Constitution and our existing legal framework.*

9. On page 330, paragraph 3.10 on trade policies and practices according to measures, reference is made to the following:

"All imports entering South Africa are subject to the SACU's Common External Tariff (CET). SACU's excise duties apply to wine, spirits, beer and other fermented drinks, tobacco and fuel, among other products (Main Report, Section 3.3). Levies are charged on certain agricultural products (Section 4) and there is also an environmental levy on certain products. There is also a fuel levy and the Road Accident Fund (RAF) levy."

Question 9

Could South Africa explain what the environmental levies are and on which products they are applied?

**Answer 9**

***The environmental levies that are currently in place in terms of the Customs and Excise Act are:***

- *Incandescent globe tax*
- *Motor vehicle emissions tax*
- *Plastic bag levy*

***Imports are also subject to these levies.***

***There is also an electricity generation levy which is classified as an environmental levy. This applies only to domestically produced electricity.***

10. On page 345, paragraph 3.77 concerning measures affecting production and trade, it is stated that:

"Incentives are mainly granted within the framework of the Plan for micro, small, and medium-size enterprises (SMME) and the Industrial Development Financial Assistance Plan (IDFA). The programmes included in the SMME Plan mainly contribute towards the implementation of the Broad-based Black Economic Empowerment Act. This Act seeks to address the lack of participation of historically disadvantaged communities in the economy".

Question 10

Could South Africa provide further detail on the plans and incentives for SMMEs and industrial development?

**Answer 10**

***South Africa is in the process of reviewing our incentive programs and will notify these to the WTO in due course.***

11. On page 4, paragraph 3.81 pertaining to the Competition Policy, the following is stated:

"The Law is widely applied throughout the economy, including the public sector; however, the Competition Commission has the right to exempt companies from applying the Competition Law. Waivers are granted by the Commission if agreement or practice contribute to achieving the following objectives: promoting exports; assisting SMEs and historically disadvantaged persons to become competitive; halting the deterioration of an industry; or protecting the stability of any industry indicated by the minister responsible for this industry".

Question 11

Could South Africa explain what the parameters are that are used to measure the competition exemption objectives?

**Answer 11****Competition Commission**

*Firms may apply to the Commission to be granted exemption if such a firm aims to participate in prohibited practices as set out by Chapter 2 of the Act (Restrictive practices and Abuse of Dominance). Firms may be granted exemption by the Commission if the prohibited practices which they intend on engaging in, contributes to the following objectives:*

*The maintenance and promotion of exports;*

*The promotion of the ability of small firms controlled or owned by historically disadvantaged persons to become competitive;*

*The improvement of productive capacity which is necessary to stop the decline of an industry; and*

*The improvement of an economic industry designated by the Minister, after consulting the Minister responsible for the industry*

*The Competition Commission must give notice in the Government Gazette of South Africa of:*

*Any application it has received for exemption;*

*Must allow interested parties to make written representations as to why the exemption should not be granted;*

*Must also give notice before exemptions are granted, refused or revoked.*

*Notices in the Government Gazette are publically available for interested parties to access, with the motivations for the exemptions included in the published notices. In addition, the Commission has over the years expanded on the detail of exemptions which it has granted in its Annual Reports and also publishes information on exemptions in its Quarterly Newsletter. Before granting an exemption, the Commission contacts market participants (industry players) and government agencies during the investigation phase. All interested parties are able to provide information that will assist the Commission in making its decision.*

12. On page 324, paragraph 3.119 pertaining to Intellectual Property Rights, the following is stated:

"The main legislative developments recorded in the period under review was the approval by the President of the Act on the Amendment of the Intellectual Property Act of 2013 (Act No. 28 of 2013), which was published in the Official Gazette on 10 December 2013. It amends the Performers' Protection Act of 1967 (Act No. 11 of 1967), the Copyright Act of 1978 (Act No. 98 of 1978), the Trademarks Act of 1993 (Act No. 194 of 1993) and the Industrial Designs Act of 1993 (Act No. 195 of 1993), with the aim of establishing effective protection mechanisms for indigenous knowledge as a form of intellectual property in South Africa".

Question 12

Could South Africa explain the content and extent of the mechanisms for the protection of indigenous knowledge?

**Answer 12**

***South Africa is still in the process of developing its IP policy and once finalized the implementation thereof will be addressed.***

Question 13

The following comprehensive texts of the Namibia Review are requested:

Law no. 36 of 1947 on fertilizers, feed and chemical products in the agricultural and livestock industries (Provides for the registration of fertilizers, feed and chemical products for the agricultural and livestock industries, sterilisation plants and pest control, among other things);

The Medicines and Related Substances Control Act - Act No. 101 of 1965 (provides for the registration of medicines for human and veterinary use.)

The documents referred to in ANNEX 4 - SOUTH AFRICA Page - 339 - (Doc. WT/TPR/S/324 · South Africa) Table 3.4 "List of applicable sanitary and phytosanitary laws";

- Animal Health Law; and
- Law on the Safety of meat and meat products

**Answer 13**

***Kindly see attachment for the required Law.***

**MEXICO**Report by the SecretariatQuestion 1

WT/TPR/S/324 • Southern African Customs Union; Report by the Secretariat; Summary;

Paragraph 13 (page 5) In addition to the tariff and tax concessions (discounts, refunds and rebates) laid down in the SACU Agreement, specific national discounts for wheat and dairy products are given in Botswana, Lesotho, Namibia and Swaziland (BLNS). During the review period, the Automotive Production and Development Programme replaced the Motor Industry Development Programme and the Clothing and Textiles Competitiveness Improvement Programme was suspended. National legislation provides for the granting of investment incentives to diversify the economy and exports in the BLNS countries, as well as promoting exports and responding to social concerns in South Africa.

What is the SACU's current aim in terms of sectors and foreign trade outside the customs union?

**Answer 1**

***Foreign Trade outside the Customs Union is governed through Free Trade Agreements that SACU may wish to negotiate. SACU countries negotiate these as a block. Sectors covered mainly Trade in Goods, with cooperation in other areas such as Services and Investment. Currently, SACU has ongoing negotiations with India, the COMESA-EAC-SADC Tripartite Countries and the Continental Free Trade Area Countries. SACU has concluded EPA negotiations with the European Union, Free Trade Agreements with EFTA and SADC and a Preferential Trade Agreement with Mercosur. SACU also has a Trade and Development Cooperation Agreement with the US.***

Question 2

WT/TPR/S/324 • Southern African Customs Union; Report by the Secretariat; Summary;

Paragraph 15 (page 6) During the review period, Botswana, Namibia and Swaziland fully applied its national competition system. With the exception of Lesotho, all the SACU countries now have a national competition policy. However, a regional competition system still has to be adopted.

What steps are planned for the region to adopt such a regional competition system?

**Answer 2**

***The 2002 SACU Agreement calls for cooperation by Member States on competition policies in terms of the enforcement of competition laws and regulations in Member States. The Agreement does not provide for the adoption or development of a regional competition system.***

Question 3

WT/TPR/S/324 • Southern African Customs Union; Report by the Secretariat; 2 Common System.  
2.1 Overview.

2.5. (page 12) SACU Agreement of 2002 requires Member States to develop common policies and strategies for industrial development (Article 38), to cooperate in the development of agricultural policies (Article 39), to assist in the implementation of laws and regulations on competition (Article 40) and to develop policies and instruments to combat unfair trade practices between Member States (Article 41). According to the Authorities, the Agreement also calls for the alignment of technical rules and regulations applied to products (Article 28).

In this regard, how do you envisage regulating the telecommunications market?

**Answer 3**

***The scope of the SACU Agreement is limited to trade in goods only, hence the technical rules and regulations referred to in Article 28 apply to goods.***

Question 4

WT/TPR/S/324 • Southern African Customs Union; Report by the Secretariat; 2 Common System.  
2.1 Overview.

2.6. (page 12) The SACU Member states have started drafting a regional industrial development policy as well as the Annexes to the Agreement regarding the competition policy and unfair trade practices. So far, the areas aligned under the SACU Agreement generally relate to customs: mainly tariffs and trade remedies. The non-tariff measures have not been aligned. Although the SACU Agreement of 2002 recognises the need for the customs union to reflect the development of international trade, the provision is limited to liberalising the trade in goods. The Agreement does not contain provisions on the trade in services. However, the SACU Member states decided in 2012 to make the trade in services a priority interest area in the Union's work programme. Work in this area is still in an early phase.

Could you explain how and when the next step of the Union's work programme in terms of the trade in services will be implemented?

**Answer 4**

***The region has not yet agreed on a fixed programme and timeframe, this will be guided by the preliminary assessment on the scope and need for developing a legal framework.***

Question 5

WT/TPR/S/324 • Southern African Customs Union; Report by the Secretariat; 2 Common System;  
2.2 Southern African Customs Union (SACU).

2.2.2 (page 14) Common revenue fund and distribution formula. 2.19. Under the current formula for the distribution of revenue, South Africa receives approximately 45% of all customs revenue and excise duties and the other four countries receive the remaining 55%. Approximately 80% of the revenue received by South Africa from the SACU come from excise duties and approximately 85% of the revenue received by the four other SACU countries come from the customs component, which leaves Botswana, Lesotho, Namibia and Swaziland in a vulnerable situation with regard to fluctuations in the customs component of their share of the common revenue.

Can the vulnerability of Botswana, Lesotho, Namibia and Swaziland change in the short to medium term so that their economies can gradually be strengthened through increased revenue collection?

**Answer 5**

***The vulnerabilities will remain in the short to medium term due to sluggish global economic performance which will have a negative impact on the Common Revenue Pool. However, Member States have individually started to put in place buffers and contingency funds in order to cushion against the effect of the decline.***

Question 6

WT/TPR/S/324 • Southern African Customs Union; Report by the Secretariat; 3 Trade policies and practices, according to measures 3.4 Duties and other taxes. 3.4.6 Concessions and exemptions from duties and taxes.

3.35. (page 32) The only discounts not applied by all the SACU Member states are those for wheat (SA 1011) and dairy products (SA 04), which are only granted by Botswana, Lesotho, Namibia and Swaziland. The Motor Industry Development Programme (MIDP) was stopped in 2012 and replaced by the Automotive Production and Development Programme (APDP). Could you indicate the main differences between these two programmes and the improvements and benefits of the latter?

**Answer 6**

***The APDP and its predecessor also sought to encourage competition in the market for the benefit of consumers. Thus those who earn the benefit will realize the value through selling the certificates, and thus share it with importers otherwise they might fully lose that value if they have no duties to off-set with the earned rebate certificates.***

Report from the Southern African Customs Union (SACU)Question 7

WT/TPR/G/324, Report of the Southern African Customs Union (SACU); Lesotho; 3 results of the main sectors; 3.3 Service sector

3.3. The agricultural sector is expected to grow by an average of 2.4% between 2014/2015 and 2017/2018, as the authorities address problems in the sector, such as the fragmentation and limited size of land, seeds and fertilizers, irrigation, erosion, the marketing of products, storage and transport, as well as the need to implement reforms that encourage farmers in Lesotho to move from subsistence farming to commercial farming.

Could you mention which reforms could encourage farmers in Lesotho to move from subsistence farming to commercial farming?

**Answer 7****Partial Credit Guarantee Scheme**

***In order to encourage commercial farming in Lesotho, the government through Lesotho National Development Corporation (LNDC) introduced Partial Credit Guarantee Scheme. The scheme covers a number of sectors and agriculture is one of them. It is through this scheme that the government attempts to address issues relating to inaccessibility of funds for investment.***

**1. Intensive Crop Production (ICP):**

***It is the programme that was introduced in 2012/13. In this programme the government procures seeds and fertilizers and sells them to farmers, majority of whom are subsistence farmers, at subsidized prices. The subsidy is meant to encourage commercial farming.***

**2. Land Act of 2010 (amendment in 2012)**

***Gives right of land ownership to Lesotho nationals who are 18 years and above irrespective of gender. Foreign investors may also own land on which investment is going to take place. This makes it easy for those who have ability and are willing to invest in agriculture to do so without fear of being deprived of land.***

Question 8

WT/TPR/G/324, Report of the Southern African Customs Union (SACU); Lesotho; 3 results of the main sectors; 3.3 Service sector

4.4. (page 17) In 2013 Lesotho drew up a Consumer Protection Policy to improve consumer welfare through the empowerment and protection of the consumer and promoting effective competition and the safe participation of the consumer in markets. Since the last review of the trade policies, Parliament has adopted the following laws to promote investment and business activity: Industrial Licensing Act (2014), the Lesotho Standards Institute (2014) and the Land Act (2010).

In this regard, do these policies specifically consider the telecommunications and broadcasting market?

**Answer 8**

***That is correct, Lesotho Communications Authority, the Regulator, regulates its own specific sector to ensure that there is no anti-competitive behaviour by businesses operating in that sector.***

Question 9

WT/TPR/G/324, Report of the Southern African Customs Union (SACU); Lesotho; 6 AID FOR TRADE; E. Trade agreements between the EU and SADC.

e. (page 20) Lesotho has allocated a budget of 2,600 million Euro to effectively implement its commitments under the SADC Trade Protocol and the Economic Partnership Agreements (EPAs) between the EU and SADC). However, in Annex 2, it is stated that Lesotho does not have a law on competition, nor does it have institutions responsible for this field. In this regard, is it envisaged that the mandate to regulate and monitor the economic competition of the telecommunications market be given to its Communications Authority?

**Answer 9**

**Yes, Lesotho Communications Authority is mandated to regulate and monitor the economic competition of the tele-communications market.**

**Question 10**

WT/TPR/G/324, Report from the Southern African Customs Union (SACU); Namibia. 2 New trade reforms; 2.1 Industrial policy;

2.1. (page 30) Namibia finalized its strategic framework for the implementation of its industrial policy at the end of 2013 and has built into it the results of the conference on national growth (Growth at Home), which must be understood within the context of its industrial policy. The framework is aligned with Vision 2030 and the current Fourth National Development Plan, and provides a roadmap for the implementation of the industrial policy, which was approved by Cabinet.

Could we have specific information about the features of the roadmap for the implementation of Namibia's industrial policy?

**Answer 10**

**Key Features of Growth at Home**

***Growth at Home is Namibia's execution strategy for industrialisation. It is rooted in Namibia's Industrial Policy, Vision 2030 and the Fourth National Development Plan. Some of the central tenets of Growth at Home include: local value addition; targeted and phased approach; promotion of regional value chains and bilateral cooperation; infant industry protection, including safeguarding of policy space; export promotion and continuous reform of the business environment including investment attraction. These are elaborated upon below.***

**Local value addition**

***Promotion of local value addition is perhaps the most important feature of Growth at Home. Namibia is well endowed with numerous raw materials and this presents a tremendous opportunity for value addition, job creation, accelerated economic growth and reduction in inequalities. Growth at Home therefore says, whatever raw materials Namibia has, whether minerals; agricultural commodities or any other commodity, local value addition should take place before it is exported. This is because the export of raw materials equates to the export of job opportunities. Value addition will be achieved by strengthening the local and national value chains, and even regional value chains by creating more and efficient back and forward linkages to our raw materials. The key point is to make the most of available natural resources and to add as much as possible value to raw materials before they are exported. Central to value addition is the manufacturing sector.***

**Targeted and phased approach**

***In line with Namibia's industrial policy, Growth at Home advocates a targeted approach towards industrialization. In the first phase of Growth at Home, sectors in which Namibia already has some sort of comparative advantage will be targeted. These include in particular mining and mineral beneficiation; agriculture and agro-processing and fish and fish processing. Other sectors that will be targeted during the initial phase of Growth at Home will include: chemical industries linked to locally available minerals; steel manufacturing and components of automotive industries. It is envisaged that Growth at Home will be rolled out in four phases of 5 year each, stretching to 2030 and beyond. The first phase of Growth at Home will cover the period 2015 to 2020 and the remaining phases will kick in at five intervals. As earlier mentioned phase one will focus on sectors where Namibia has already a comparative advantage and will be called laying a strong foundation. During phase two emphasize will shift increasing towards becoming a regional player, while phases 3 and 4 will position Namibia towards***

*becoming a player at global level in selected areas of specialization and expertise. Project pipelines will be identified and studied under each phase of Growth at Home to determine which sectors will be promoted in each of the stages of Growth at Home.*

***Regional value chains, African approach and bilateral cooperation***

*Growth at Home acknowledges the importance of regional economic integration and the opportunities linked to it. Therefore, a strong feature of Growth at Home will be to latch on to and promote the development of regional value chains as much as possible. Value chain analysis, research and our own comparative advantage at any point in time will determine where in the regional value chain Namibian products will be pitched. For example, in the initial phase of Growth at Home pitching of the regional value chain for the automotive industry may be confined to accessories and spare parts, whereas at a later stage may move to steel and machines. Pitching of value chain entry will not only be confined to merchandise trade but also to trade in service, where Namibia will from time to time have a competitive advantage, for example in the logistics value chain. Consideration will also be given to the development of value chains in the context of special initiatives with countries deemed sympathetic to Namibia's developmental aspirations. These include but are not limited to South-South Cooperation with countries such as India, Brazil, and Cuba; on the African continent with our immediate neighbouring countries such as South Africa, Angola, Botswana, Zambia and Zimbabwe; and further afield with global players such as China, and South Korea.*

***Infant industry protection and safeguarding of policy space***

*As advocated by our Industrial Policy, Growth at Home will also promote infant industry promotion where deemed feasible. In this regard, all available instruments, including tariff protection, quantitative restrictions, incentives and other appropriate supportive measures will be deployed to nurture infant industries. Related to industry protection will be the safeguarding of policy space for Namibia in an increasingly globalized world. As was shown with the Economic Partnership Agreements, policy space is important and must be protected as much as possible. Therefore despite embracing regionalism and openness, a key aspect of Growth at Home will remain protection of policy space as allowed by the Constitution of the Republic of Namibia and International Agreement.*

***Continuous reform to promote competitiveness***

*Industrialization is not an end in itself. Countries that are on top of the value chain and competitiveness today maybe at the bottom tomorrow. Often it is not because such countries are not good at what they are doing, but because other countries are becoming better at what they are doing. Therefore, a central tenet of Growth at Home will be continuous business reforms to ensure that Namibia remains ahead of the curve in terms of competitiveness. Some of these reforms will include skills development, process reviews, review of incentives, labor market reforms and others.*

***Increased value added export***

*Vision 2030 and Namibia's Industrial Policy stipulates that by the year 2030 the export value of value added products should account for 70% of total export values. As of 2013, value added exports account for 40% of total exports. The idea is to ramp up the portion of valued added exports to 50% during the first phase of Growth at Home to reach 70% by the end of 2030. In subsequent phases contribution of value added exports should increase by 10 percent over every ten year interval to reach 70% by the year 2035.*

Question 11

WT/TPR/G/324, Report of the Southern African Customs Union (SACU); Lesotho; 4 REGIONAL AND BILATERAL AGREEMENTS; 4.3. Free Trade Agreement between the EU and SADC.

4.12. (page 36) The Agreement came into force on the 1<sup>st</sup> of May 2008. When the Agreement entered into force, the European Free Trade Association (EFTA) granted SACU Member states duty-free access for all products, while progressively reducing its tariffs until 2014 on almost all industrial products.

As part of the SACU-EFTA free trade agreement, were there negotiations on a chapter on the technical barriers to trade? If yes, what measures are included in this chapter?

**Answer 11**

**Please refer to Article 13 of the SACU-EFTA Agreement available on [http://www.sacu.int/docs/agreements/2014/sacu\\_fta\\_agreement.pdf](http://www.sacu.int/docs/agreements/2014/sacu_fta_agreement.pdf).**

**Question 12**

WT/TPR/G/324, Report of the Southern African Customs Union (SACU); Swaziland; 3 ECONOMIC DEVELOPMENT AND REFORM INITIATIVES; 3.3 Industrial and agricultural development as catalyst for economic growth

3.12. (page 52) Work continues on the development of an industrial policy in Swaziland pursuing strategic policy objectives aimed at establishing a framework for carrying out specific interventions and policy measures to overcome many of the underlying difficulties and negative trends that the country is facing. This initiative will also assist the country in advancing on a path of sustainable social and economic development.

Could you indicate the main guidelines of the industrial policy and also its priorities?

**Answer 12**

**The National Industrial Development Policy has been approved (17 November 2015) by Cabinet is for the period 2015 – 2022 which is aligned to the National Development Strategy (NDS) towards the attainment of Vision 2022 in terms of key macro and sectoral strategies. The NDS identifies industrialization as key for economic growth through diversification and maximization of value addition on agricultural and mining products as well as the liberalization of services to ensure that there is clear promotion of strong backward and forward linkages. The vision of the Industrial Development Policy is to achieve structural change in Swaziland's growth path through value addition and diversification for a globally competitive industrial base by 2022. The objective of the Industrial Development Policy is to enhance manufacturing and services sectors contribution to GDP to over 50% and increase manufactured exports by 5%; to promote diversification and increase employment in the manufacturing sector by 5% per year; to promote the utilization and beneficiation of local and regional raw materials by 50% and to increase the participation of Small Medium and Micro Enterprises in the manufacturing sector by 10%. The effectiveness of the Industrial Development Policy is guided by the principles for industrialization such as a conducive environment in the form of a stable macroeconomic framework and regulatory environment, infrastructure development, human resource/skills development, information technology and communication, innovation and an inclusive sustainable environment for industrial development.**

**The National Industrial Development Policy prioritizes value addition and beneficiation of primary products (resource based-industrialization) in comparative and competitive advantage sectors such as agriculture – agro processing, mining and mineral beneficiation, pharmaceuticals and other economic sectors that determine key areas for the development of value chains such as the services sectors (financial, transport, communication, education, construction, energy, business, health). Therefore, industrialization acts as the catalyst for transformation and strengthening inter-industrial links which promotes technological upgrading and innovation thus creating quality employment.**

**The National Industrial Development Policy is also aligned to the industrialization regional integration agenda by the Southern African Development Community (SADC) to enable the implementation of the SADC Industrial Policy and the SADC industrialization Strategy and Roadmap 2015 – 2063 which identifies the necessity for the structural transformation of the SADC region through industrialization, modernization, upgrading and a deeper regional integration. Regional integration agenda for industrialization promotes cross-border regional value chains and promote intra-trade creating a regional economic environment which is competitive at global value chains.**

**Moreover, the National Industrial Development Policy is guided by the Southern African Customs Union Agreement 2002, Part Eight "Common Policies" Article 38 - Industrial Development Policy which recognises the importance of industrial development in the Customs Union as being key for economic development as well as the development of**

*common policies and strategies in regard to industrial development. Therefore, the National Industrial Development Policy incorporates the following identified eight sectors for cross-border collaboration and value addition for the SACU regional industrial development:*

- 1) Textiles, clothing and apparel;*
- 2) Agro-processing (Agriculture)*
- 3) Mineral beneficiation and processing including mining and quarrying (Mining)*
- 4) Leather and leather products (Agriculture)*
- 5) Automotive;*
- 6) Energy, including renewable/alternative energy (Services)*
- 7) Arts and crafts; and*
- 8) Support Services (Information and Communication Technology; Financial; Skills development; Infrastructure, Transport and logistics; and Engineering).*

#### Annex 1 Botswana

##### Question 13

WT/TPR/S/324 • Annex 1 Botswana; 2 TRADE AND INVESTMENT RULES; 2.4 Investment rules;

2.21. (page 70) We understand that Botswana does not have one single law which specifically relates to foreign investment, but that investment is rather regulated by a variety of laws. Broad-based restrictions on investments, reserves, licensing requirements and incentives are governed by various policies and legal instruments.

Does Botswana intend to draft legislation in the short term to increase legal certainty for foreign investors?

##### **Answer 13**

*The development of Botswana's investment facilitation law is still at its initial stage. The Government is working in partnership with UNCTAD to identify way in which investment laws could be consolidated or streamlined.*

##### Question 14

WT/TPR/S/324 • Annex 1 Botswana; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.1 Measures which directly affect imports; 3.1.1 Customs procedures and requirements; 3.1.5 Prohibitions, restrictions and import licences;

3.36. (page 82) In general, a permit is required to import industrial products from outside the SACU, with the exception of goods from Malawi and Zimbabwe. The Ministry of Trade and Industry of Botswana issues these permits, among other things, to promote the development of a specific sector. The sectors are chosen according to Botswana's industrial development priorities and the SADC's Industrial Strategy.

How long in advance is it possible to identify Botswana's industrial development priorities and the Industrial Strategy of the SADC?

##### **Answer 14**

*Currently, the government is offering the following incentives for companies operating within the SEZ. However, plans are at an advanced stage to improve the incentive structure of the SEz.*

- No foreign exchange controls*
- Remittances and full repatriation of profits and dividends allowed*
- 15 % for Manufacturing, Financial services companies & companies registered in the Innovation Hub (22% Corporate tax for other sectors)*
- Low personal income tax, maximum 25%*
- 12% Value Added Tax*
- Possible tax holidays for a period of 5 – 10 years through the Development Approval Order dispensation*
- Duty-free import of machinery and equipment for manufacturing purposes*
- 200% deductible Tax Allowance for Training costs*

- ***IFSC certified companies are exempted from Withholding Tax on interest, dividends, management fees and royalties paid to non-resident director.***
- ***IFSC companies are also exempted from VAT and Capital gains tax.***

Question 15

WT/TPR/S/324 • Annex 1 Botswana; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.3 Measures which directly affect production and trade; 3.3.2 Customs procedures and requirements; 3.3.2 Competition Policy and price controls

3.92. (page 94) The Ministry of Trade oversees the application of Botswana's Competition Policy. In accordance with the Competition Act, a Competition Authority was established to apply the Competition Policy and to enforce the law. This Authority is responsible for preventing anti-competitive practices in the economy, even in areas where there are other regulatory authorities, such as the Civil Aviation Authority, the Communications Regulatory Authority of Botswana, the Regulatory Authority for Non-Bank Financial Institutions (in charge of the non-bank financial institutions) and the Bank of Botswana (financial institutions). These institutions have memoranda of understanding with the Competition Authority and the Law makes provision for the establishment of a consultation mechanism between the Authority and the regulatory authorities of the sectors. The Authority has the final word on any competition-related matter which may arise in sectors under the jurisdiction of their own regulatory authority. The Competition Commission which was established in 2010 is the governing and decision-making body of the Competition Authority.

In this regard, the communications regulator in effect does not have a mandate to protect and encourage economic competition in the telecommunications sector?

**Answer 15**

***Competition Act mandate the Competition Authority (CA) and sector regulators to establish a mechanism through which they can establish regular contact. The CA has signed MoUs with sector regulators which provide for the establishment of Joint Working Committees made of representatives from the Authority and the regulators. The JWCs meet regularly to assess the effectiveness of the MoUs in facilitating cooperation between the MoU Partners and also to identify opportunities for joint initiatives aimed at addressing anti-competitive behaviour in the sectors including telecommunication.***

Annex 2 Lesotho

Question 16

WT/TPR/S/324 • Annex 2 Lesotho; 2 TRADE AND INVESTMENT RULES; 2.2 Trade agreements and arrangements; 2.2.1 WTO

2.7 (page 169) Lesotho has trouble applying the WTO Agreements in areas such as technical barriers to trade, sanitary and phytosanitary measures and intellectual property. As an LDC, Lesotho enjoys special and differential treatment, particularly in the application of the WTO Agreements. For example, the implementation of certain provisions of the Trade Related Intellectual Property Aspects Agreement (TRIPS) can be postponed to 2021 (section 3.3.5.2). Lesotho is not a party to the plurilateral agreements on Government Procurement, Trade in Civil Aircraft or Information Technology; neither was Lesotho involved in the negotiations on financial services and basic telecommunications that took place after the Uruguay Round. No amendments have been made to its schedules annexed to the GATT (1994).

What are the main difficulties encountered in applying the WTO Agreement? Have the pending notifications mentioned in this paragraph been presented to the WTO?

**Answer 16**

***The TBT and SPS measures demand a backing of a strong quality infrastructure, to build a similar quality infrastructure in Lesotho there is a need for financial support which Lesotho had already requested from donor countries.***

***The Lesotho Standards Institution Act has been published and Lesotho is currently working on creating such a Body.***

***Lesotho is also a beneficiary of a trade related facility aimed at assisting the country to establish rudimentary facilities and services in this regard. It is envisaged that by 2016 most aspects of the TBT and SPS agreement will have been met.***

Question 17

WT/TPR/S/324 • Annex 2 Lesotho; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.1 Measures which directly affect imports; 3.1.8 Standards and other technical regulations; 3.1.8.1 Standards and technical regulations

3.44 (page 187) The Quality Assurance and Standards section of the Ministry of Trade and Industry is the TBT enquiry point for the WTO. In addition, the section is responsible for all matters relating to quality, standardization and conformity assessment infrastructure, for example the establishment of the Lesotho Bureau of Standards. The authorities indicated that in 2014, a new TBT enquiry point was established and launched in February of 2015.

Why was the WTO not notified of the new TBT enquiry point?

***Answer 17***

***Indeed Lesotho established the TBT enquiry point and launched in February 2015. The enquiry point will be upgraded to use the E-Ping (Inquiry point communication facility) promoted by UNDESA. When this system is running as envisaged the WTO will be notified accordingly.***

Annex 3 Namibia

Question 18

WT/TPR/S/324 • Annex 3 Namibia; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.4 Measures which directly affect production and trade; 3.4.2 Competition Policy and price controls

3.88 (page 257) Namibia's Competition Act was promulgated in 2003 and came into force in 2008. The Competition Commission (NaCC) was established under this Act. The Competition Act prohibits restrictive trade practices, including agreements between companies to fix prices, agreed collusive tendering, the setting of minimum resale prices or limiting production. The Act also addresses both horizontal and vertical agreements between companies and prohibits the abuse of a dominant position by an entity or group of entities.

In this regard, please confirm whether the CRAN has a mandate which focuses on regulating economic competition in the field of telecommunications; likewise, who acts (and looks into) possible cases of anti-competitive practices?

***Answer 18***

***CRAN is Governed by the Communications Act of 2009.***

***CRAN's main role or function is thus the licensing of Telecommunications and Broadcasting services providers, Spectrum allocation, ensuring quality of services compliance and consumer protection. The other function of CRAN is to make sure that there is a level playing field for all licensees and an environment is created for new investors or licensees to enter the market. CRAN's thus controls and approves all tariffs and rates licensees want to charge for their services. All rates/tariffs or offerings by licensees are gazetted after a rule making process whereby competitors and consumers can give input before CRAN approves new services and rates. CRAN thus keeps an eye on possible anti-competitive behaviours. Also note that CRAN every 3 years is doing a market structure study and here they may and have declared some licensees as dominant players. For now MTC and Telecom Namibia are declared dominant. Being a dominate player puts additional license compliance responsibilities on these licensees – like sharing of infrastructure and roll-out obligations.***

***CRAN is also responsible for approving mergers and acquisitions. For that they have a MoU in place with the NaCC to share views on such transactions before it's approved. Here for example CRAN did have serious concerns on the takeover of Leo by Telecom***

***Namibia and CRAN did make conditions for the transaction to be approved but that was all turned over by a court case.***

Annex 4 South Africa

Question 19

WT/TPR/S/324 • Annex 4 South Africa; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.1 Measures which directly affect imports; 3.1.3 Standards and other technical requirements

3.24 (page 334) South Africa has notified the WTO of about 100 technical regulations since 2009. These regulations encompass products associated with protecting the environment, human health, food standards and product safety. In the same period, some WTO members raised two specific trade concerns regarding: i) South Africa's Liquor Act of 1989 (concern raised by the United States in 2011); and ii) South Africa's requirements regarding the labelling and advertising of pre-packaged foodstuffs (concern raised by the EU and New Zealand in 2014). What is the status of the specific trade concern raised in 2014 on "the requirements regarding the labelling and advertising of pre-packaged foodstuffs?"

***Answer 19***

***South Africa provided responses to the specific trade concerns raised during the TBT Committee meetings were it was discussed. Please see documents G/TBT/M/54 paragraph 121 to 124, G/TBT/M/55 paragraph 270, G/TBT/M/56 paragraphs 217 and 218 and G/TBT/M/64 paragraph 2.50. Since these STCs were not repeated in following meetings of the TBT Committee, South Africa assumes that these have been resolved.***

Question 20

WT/TPR/S/324 • Annex 4 South Africa; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.1 Measures which directly affect imports; 3.1.3 Standards and other technical requirements

3.30 (page 337) If no SAS is available, the South African Bureau of Standards can be requested to develop or adopt one. In this case, the NRCS may develop or amend a mandatory specification to include the administrative requirements of the regulations. The process often involves extensive consultation with all identified stakeholders at all stages.

The draft is published beforehand in the Official Gazette, so that the public can comment before notification to the WTO. Is the same deadline of not less than two months given for WTO members to submit their comments?

***Answer 20***

***Decisions and recommendations of the TBT Committee are communicated to the South African Technical infrastructure and the regulatory government departments. Thus a draft technical regulation or conformity assessment procedures notified provides as far as possible a minimum period of 60 days to WTO members to submit comments and regulators also consider requests for an extension of a comment period favourably.***

Question 21

WT/TPR/S/324 • Annex 4 South Africa; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.1 Measures which directly affect imports; 3.1.3 Standards and other technical requirements; 3.1.4 Sanitary and phytosanitary requirements; 3.1.4.1 Legal and institutional framework; 3.1.4.4 Marking, labelling and packaging

3.54 (page 342) Marking, labelling and packaging activities are governed by various laws, mainly the Standards Act for Agricultural Products, the Liquor Act, the Merchandise Marks Act, the Amendment to the Copyright Act (No 38 of 1997) and the Explosives Act.

Are the Standards Act for Agricultural Products, the Liquor Act, the Merchandise Marks Act, the Amendment to the Copyright Act and the Explosives Act based on the relevant international standards?

**Answer 21**

**South African legislation is not based on international standards, but appropriate international standards are adopted by the SABS as South African National Standards and where possible are technical regulations and conformity assessment procedures based on the appropriate adopted national standards that incorporated international standards as required in TBT Agreement Article 2.4.**

Question 22

WT/TPR/S/324 • Annex 4 South Africa; 4 TRADE POLICIES ACCORDING TO SECTOR; 3.1 Measures which directly affect imports; 4.4 Services; 4.4.1 Telecommunications

3.106 (page 373) The Department of Communications (DoC) is responsible, among other things, for policies and legislation related to information technology and communications (ICT), providing reliable and affordable ICT infrastructure, overseeing state agencies in the ICT industry and meeting South Africa's international obligations in terms of ICT. The Independent Communications Authority of South Africa (ICASA), which is the regulatory body, protects the consumer's interests and monitors competition in the sector.

In this regard, what is ICASA's mandate in terms of economic competition and the importance thereof?

**Answer 22**

**ICASA's mandate is spelled out in the Electronic Communications Act 2005 (ECA). One of the stated objectives of the ECA is to promote competition in the ICT sector and as such is a very important issue.**

Annex 5 SwazilandQuestion 23

WT/TPR/S/324 • Annex 5 Swaziland; 3 TRADE POLICIES AND PRACTICES ACCORDING TO MEASURES; 3.3 Measures which directly affect production and trade; 3.3.2 Competition Policy and price controls; 3.3.2.1 Competition Policy

3.86 (page 433) Matters relating to competition can be addressed at sector level. For example, the Swaziland Communications Commission may, in accordance with the law, impose interconnection and access obligations on telecommunications licensees who have a dominant position.<sup>37</sup> The Swaziland Communications Commission's Law no 10 of 2013 stipulates that the Communications Commission will ensure that all communication services are provided in a way that best promotes economic and social development. The Competition Act of 2007 can be applied to all sectors of the economy, but under the Communications Commission's Law of 2013, the newly established Communications Commission has the power to manage certain aspects of the Competition Act of 2007 and various aspects of the Fair Trade Act of 2001, if they relate to the sectors regulated by the Communications Commission. The Competition Commission intends to sign memoranda of understanding with the various sectoral regulators; although the process has started, none have been signed so far.

In this regard, which aspects of economic competition are regulated by the Communications Commission? In case of possible anti-competitive practices in the telecommunications sector, does the Communications Commission have the power to investigate and sanction the liable parties?

**Answer 23**

**The Swaziland Communication Commission Act:**

**1. Requires SCCOM to act in an objective, transparent, proportionate and non-discriminatory manner (Section 5) and to promote the development of innovative, secure, modern and competitive communications infrastructure and the delivery of related services (section 6(d), as well as to ensuring freedom of provision of communications services and to ensure that those services are not limited, except when strictly necessary (section 6(e)).**

*2. SCCOM must further ensure a wide range and variety of communications services (section 6(f)), that are provided in a manner that will best promote economic and social development (section 6 (g)), while ensuring non-discrimination and equality of treatment in all matters within the SCCOM's remit (section 6(h)).*

*3. SCCOM is further enjoined to administer the aspects of the Competition Act, 2007 as they relate to sectors regulated by it (section 6(k)). This was designed to ensure that SCCOM, rather than the Competition Commission would have primary jurisdiction over competition-related issues in the complex telecommunications sector.*

*4. SCCOM is expressly required to ensure fair competition in all communications services, products, operations and activities which it regulates (section 7(s) and determine issues concerning competition, and discriminatory practices (section 7 (t)).*

*The Communications Commission Act therefore empowers and indeed requires, SCCOM to take measure to ensure fair competition to the local market through a deliberate, consultative and transparent process. Therefore SCCOM power to investigate and sanction parties liable for non-competitive practices and well as for non-compliance with the Act.*

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