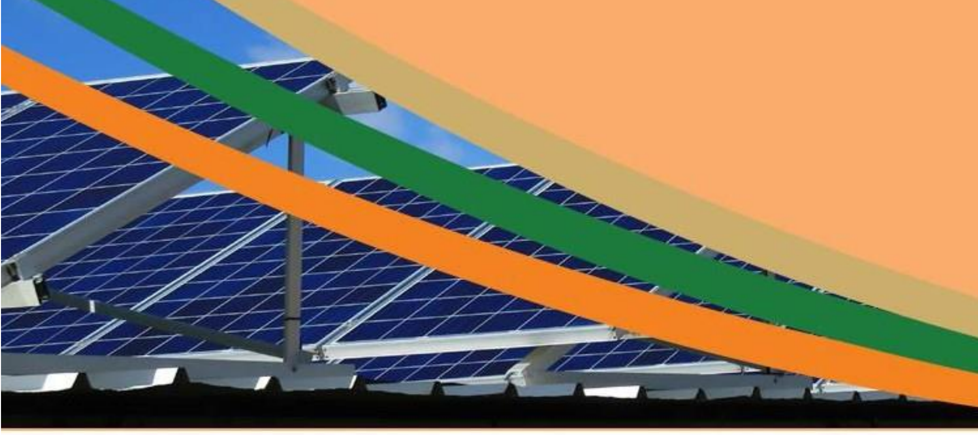
CONTEXTUALIZING THE BAN ON SOUTH AFRICAN VEGETABLES BY NAMIBIA & BOTSWANA WITHIN THE PRISM OF REGIONAL INTEGRATION

Produced by the Chief Directorate: Growth Path and Creation of Decent Work

Contacts

Kaemete Tsotetsi

KTsotetsi@thedtic.gov.za



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Southern Africa Customs Union (SACU) Ban on South African Vegetables

In Africa, South Africa is amongst the top suppliers of food underpinned by century long investments in agricultural finance, irrigation infrastructure, technology and skills development across a number of agricultural commodities and diverse climate. Moreover, the South African government deregulated the sector thus creating a conducive environment for private sector to invest and expand production to service both the local and international markets. Additional to servicing the domestic market, relatively large quantities of South Africa's vegetable products are exported to countries in the SACU region and beyond. According to the Department of Agriculture, Land Reform and Rural Development, South Africa produces about 5.4 million tons of vegetables a year. Nearly 78% of this is made up of potatoes, tomatoes, onions, carrots and cabbages.[1] Early this year, Namibia and Botswana halted imports of certain vegetable produce from South Africa, including tomatoes, carrots, potatoes, cabbage, lettuce, garlic, onions, ginger and fresh herbs. The two countries imposed the bans to encourage the production of local vegetables, and reduce dependency on imports. Both governments have also established farmer-support programmes.

However, the bans on South African vegetable exports destined for Namibia and Botswana will likely have a negative impact as local farmers will potentially plant fewer vegetables, a move that will hurt export revenue and lead to job losses across the vegetable supply chain in South Africa as well as lead to higher prices of vegetables, market inefficiencies and supply shortages in both countries due to lack of competition resulting in significant consumer and producer welfare losses. While countries have a right to protect their economic interests, the prohibition may not in the spirit of the African Continental Free Trade Area (AfCFTA) which seeks to promote intra-Africa trade.

Challenges in Approaching Regional Integration

Customs unions are a form of deeper economic integration as opposed to a free trade area (FTA), and is defined by a common external tariff (CET). The world's oldest customs union is Southern Africa Customs Union (SACU) comprising five (5) Member States (South Africa, Botswana, eSwatini, Lesotho, and Namibia) has been in existence since 1910 and arguably the most successful scheme of regional integration in sub-Saharan Africa. SACU has been through a long period of transition and has survived the independence of its smaller members, the process of democratization and transformation of South Africa. Equally the SACU agreement of 1969 was renegotiated and replaced by the Southern African Customs Union Agreement of 2002 (SACUA 2002) which recognized that the implementation of the 1969 Agreement had been hampered, *inter alia,* by lack of common policies and common institutions.[2]

As a regional integration mechanism, SACU seeks to encourage and facilitate the industrial development of all its member states. Industrialization is the driving force of economic growth and poverty alleviation. The 2002 SACU framework agreement makes it clear that cognizance has to be taken of the unequal distribution of manufacturing value add in the common customs area and that the industrial development of the less developed and small member states is a priority[3]. In noting this policy ideal it can be argued that a symbiosis exists between a growing South Africa and growth of the smaller partner members - Botswana, eSwatini, Lesotho and Namibia (BeLN) and that a stagnant manufacturing sector in South Africa will not serve the mutually beneficial partnership that BeLN may expect from being in a customs union with South Africa. Equally customers

[1] Sifiso Ntombela (2022), What's to be done about the SACU ban of our vegetables, *Farmers Weekly, 14th October 2022.*

[2] Colin McCarthy and Dirk Hansohm (2005), Integration through common policy: challenges for industrial policy in SACU. pg 150

[3] Colin McCarthy (2013), A perspective on common industrial policies for the Member States of the Southern African Customs Union. pg 28

and producers from the member states might benefit from South African imports which could also offer the chance to build-up backward and forward-linkages for niche products and to increase their own domestic value addition of production.

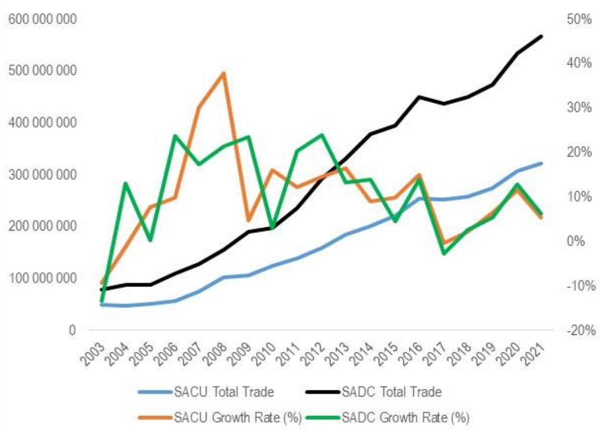
Free Trade in Goods within SACU

Article 18 of the 2002 SACU Agreement denotes the principles of free movement of domestic products. Article 18 (1) highlights as follows: "goods grown, produced or manufactured in the Common Customs Area….. shall be free of custom duties and quantitative restrictions, except as provided elsewhere in the agreement". Article 18 (2) further notes that "notwithstanding the provisions of 18(1) Member States have the right to impose restrictions on imports or exports for the protection of; health of humans, animals or plants, the environment, treasures of artistic, historic or archeological value, public morals, intellectual property rights, national security and exhaustible natural resources".[4]

Integration of free movement of domestic products as described in Article 18 in a world of nation-states is not an organic process but requires a deliberate plan for integration supported by a political vision and action. It usually involves different stages and is a process aimed at breaking down barriers and the costs associated with duplication, complying with the formalities of trans-boundary transactions and forcing firms to deal with different national procedures regarding the movement of goods.

Thus, figure 1 below indicates that total agricultural trade[5] (exports + imports) amongst the SACU member states has been on an upward movement since 2003 in aggregate terms following harmonization of a number of factors that previously hampered effective trade exchange. However, save for the period 2003-2008, total trade growth within the SACU group has been minimal and declined to lower levels in 2017. It can be inferred that the post-2008 slump somehow links to the financial crisis during the period that crippled world economies, as well as trade with other regional blocs, in particular the European Union. Nevertheless, figure 1 shows that SACU trade in agriculture goods grew amongst its member states. In 2002, total agriculture trade within the SACU group recorded R53,6 billion and two decades later (2021), this figure jumped to R322,2 billion, an exponential 501% increase. On the other hand, inference from figure 1 on SADC total agriculture trade indicates that total trade increased from nearly R77,5 billion in 2003 to R565,5 billion in 2021, thus posting an exponential 629% increase. Furthermore, as with SACU trade growth rate in agriculture goods, SADC total agriculture trade has relatively slowed overtime, recording just 6% in 2021 following a 13% increase in 2020 and a peak of 24% in both 2006 and 2012. .

Fig 1: SADC and SACU Total Agricultural Trade (R'000)



Source: Data (ITC), graph (own)

SACU as a Model for Deeper and Broader Economic Integration

Whilst the 2002 SACU Agreement provides promising signs in particular to common policies and institutions in specific areas, there are concerns that there has been a failure to find a common policy and strategy with respect to a SACU-wide industrialization policy which in part could be attributed to the substantial differences in economic size, level of industrialization and the national policy goals between South Africa and BeLN countries. In fact, SACU has essentially been held together by a CET and a redistributive Revenue Sharing Arrangement. From a South African national policy perspective the National Development Plan (NDP) 2030 as prepared by the National Planning

[4] Southern African Customs Union Agreement 2002. pg 16

[5] Agriculture exports incl. ch 1-24, except ch 3 & 16 on fish & fish products

Commission expresses a view that "South Africa may have to make strategic trade-offs to give effect to regional cooperation and integration. For example it may be necessary to cede certain national opportunities for regional benefit on the assumption that regional growth will benefit the South African economy. But regional growth may benefit only limited sections of the domestic economy, especially in financial and professional services…."[6]. This view in theory should be reciprocated by other member states but also aligns with the objectives of ensuring the sustainability and relevance of SACU as a regional institution within a broader multilateral trading system. The integration of SACU into the global economy requires a clear vision and plan of common policy integration within the customs union itself which stretches beyond the trade in goods.[7] Areas of common policy on matters relating to services, investment and competition will also need to be covered and addressed to avoid areas of duplication, fragmentation and legal uncertainty.

SACU member states are already actively engaging in concluding trade agreements with the Tripartite Free Trade Agreement between three (3) African Regional Economic Communities of Eastern African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), and Southern African Development Community (SADC); and the AfCFTA. The conclusion and implementation of trade integration agreements between and with other custom unions will likely open opportunities for SACU member partner states to expand external market opportunities and diversify exports away from each other.

SACU FTA Catch-22 & the grey area: a case of Botswana & Namibia

As indicted above, Article 18(1) of the Customs Union (CU) provides for the free movement of goods produced within the Common Customs Area. However, it is the exception provided for in Article 18(2) that allows for member states a right to restrict goods on grounds such as human/animal health or environmental reasons that causes much discontent and raise a lot of questions, as the main reason for the recent vegetable ban of SA exports by both Botswana and Namibia. A number of reasons could be advanced but the most ranking ones should be within what context is the ban justified, since it could not be argued it threatened human or animal health, or the environment and others such as public morals. Secondly, the ban has economic significance and consequences, something that Article 18(2) of the SACU Agreement is silent on and does not make economic grounds as reason to impose a ban.

Thus, such grey area is inconsistent with WTO trade rules such as whether the product banned is causing economic damage either because it is alleged to be dumped, subsidised or there is a surge and with all that bound to attract trade remedies of one form or another (i.e. anti-dumping duties, countervailing measures or safeguards).

In both countries' cases, it would appear then that none of those potential economic damage occurrences were argued but rather both just invoked provisions of Article 18(2) in a generic manner. Moreover, analysis of SA vegetable exports to both countries further support the notion that there was no immediate or potential economic threat to those countries. Figure 2 & 3, respectively, shows SA's total agricultural exports to Botswana and Namibia. For instance, total agricultural exports to both countries did not show any signs of acceleration in the past five years, as well vegetable exports remained a tiny fraction of total agricultural exports over the same period (Average: BOT=5% & NAM=4%). Therefore, an economic damage argument notwithstanding the fact that it is not provided for in the SACU Agreement, could not be sustained by both countries.

[6] Republic of South Africa (2012), National Development Plan (NDP) 2030 our Future-make it work. pg. 245

[7] Gerhard Erasmus (2005), Regional Integration through SACU. pg 134

Fig. 2: SA Agriculture Exports to Botswana (R'000)

Fig. 3: SA Agriculture Exports to Namibia (R'000)

Source: Data (ITC), graph (own)

Conclusion

Member States should leverage a more industrialised economy - South Africa – to promote economic development in their own countries by removing non-tariff barriers. While SACU brings together countries with vast disparities in economic size, levels of economic, legislative and institutional development and thus different policy imperatives, the establishment of institutions should be guided by policy, particularly in the area of trade and industrial development, including independent dispute settlement mechanisms.

In the end and in judging the history of SACU as a model for broader and deeper economic integration between Botswana, eSwatini, Lesotho, Namibia and South Africa, this will eventually come down to the union's comparative advantage in sustaining cooperation under difficult conditions. Nonetheless, the mere existence of mutual economic gains from integration is an insufficient tool for regional cooperation.