

# AUDIT REPORT ON THE IMPLEMENTATION OF THE SADC PROTOCOL ON TRDAE

## Executive Summary

### 1. Background

- 1.1 The Southern African Development Community Protocol on Trade was signed in Maseru in August of 1996 by eleven Member States and came into force on January 25, 2000. Tariff phase down commenced on September 1, 2000, and is scheduled to result in a WTO compliant Free Trade Area by January 1, 2008<sup>1</sup>. The Trade Protocol is being implemented by Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. In addition, Madagascar acceded to the SADC Protocol on Trade in 2006 and has submitted a tariff offer that has now been accepted and is ready to commence implementation. Angola also acceded to the Protocol and is expected to submit a tariff offer in 2007. The Democratic Republic of Congo is not yet party to the Protocol on Trade.
- 1.2 In 2004, the Mid-Term Review (MTR) of the Protocol on Trade identified a number of implementation issues including rules of origin constraints, back-loaded tariff liberalization schedules, and inconsistency in executing tariff reductions and made some recommendations to address these issues. The Council of Ministers accepted the key recommendations of the Mid Term Review.
- 1.3 On the basis of this mandate, the SADC Secretariat hired independent consultants<sup>2</sup> to assess the status of Member States implementation of the SADC Protocol on Trade.
- 1.4 In preparation for the site visits, the consultants undertook an in-depth review of the literature on the SADC Protocol on Trade and met with officials from the Directorate of Trade, Industry, Finance, and Investment (TIFI) at the SADC Secretariat. This review included a thorough evaluation of SADC Member States' tariff offers, gazetted statutory instruments, tariff schedules, SADC publications, Summit and Ministerial decisions, decisions of the Sub-Committee on Customs Cooperation (SCCC) and relevant website data. Information gathered during this process was analysed and used to prepare the audit checklist for the site visits. The checklist was prepared on the basis of the following main focus areas:
  - a) Tariff phase down;
  - b) Customs trade facilitation instruments;
  - c) Implementation of the WTO Agreement on Customs Valuation, and
  - d) Capacity building focused on the training of Customs officers

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<sup>1</sup> In terms of Article XXIV (GATT, 1994), interpreted to mean that at least 85 per cent of intra-SADC trade would be duty free and no major sector would be excluded.

<sup>2</sup> The USAID funded Southern Africa Global Competitiveness Hub (SA Trade Hub).

- 1.5 All of the Member States implementing the SADC Protocol on Trade were audited. The consultants prepared an audit checklist, which was submitted to and approved by the SADC Secretariat as part of the Inception Report. The Secretariat then circulated the work plan, travel schedule, and audit checklist to all the SADC Member States' implementing the Protocol on Trade.

## **2. Findings**

- 2.1 The audit of the Implementation of the Protocol on Trade has found significant non-compliance in conjunction with serious compliance constraints, which result in the majority of Member States selecting to trade under alternative preferential trade agreements.
- 2.2 The audit findings found that four Member States – Malawi, Mozambique, Zimbabwe and Tanzania are not up to date on the implementation of their tariff phase down schedules.
- 2.3 Malawi has made only one tariff reduction in 2001. No further reductions have been implemented.
- 2.4 Mozambique and Tanzania made block approvals of their tariff phase down programmes but have not implemented these in accordance with the agreed phase down timetable.
- 2.5 Zimbabwe has not implemented the tariff reduction offer to SADC excluding South Africa. Their tariff reduction for 2007 is the offer to South Africa, which applies to all SADC countries that do not have bilateral or other preferential trading arrangements with Zimbabwe.
- 2.6 The Non-SACU members who heavily back-loaded their tariff preference offers will experience a decline in tariff revenue as they eliminate tariffs on more than 50 percent of their tariff lines in a one year period. However, in all cases the reduction in revenue is expected to be less than 5 percent of total government revenue.
- 2.7 Following unilateral tariff reductions to the MFN rates by some Member States, a number of tariff lines MFN rates are lower than current SADC applied rates. Furthermore Tanzania has implemented concessions to Kenya and Uganda through implementing the EAC CET.
- 2.8 Outside of SACU most of the intra-SADC trade is taking place under either COMESA or bilateral preferences. There has been a very modest increase in trade between the non-SACU members and South Africa except for the recent increase in apparel exports from Mauritius following the removal of the SACU tariffs.
- 2.9 Following the implementation of the SADC Protocol on Trade several non-SACU countries (Malawi, Mozambique and Zimbabwe) renewed 'dormant'

bilateral agreements to incorporate reciprocal preferences.

- 2.10 The new trade being created by the SADC Protocol on Trade is modest-the private sector has complained about the complexity of the SADC rules of origin.
- 2.11 All SADC members were found to be implementing either all or most of the trade facilitation instruments that had been rolled out by SADC, however, there are important trade facilitation instruments governing transit trade and bond guarantees that remain at the pilot stage and have yet to be rolled out to the region. These need to be implemented to enable Member States to maximize the benefits from establishing an FTA.
- 2.12 Member States recognized the need for more capacity building for trade officials, customs officers and the private sector (customs brokers and traders) on the administration of the rules of origin, customs valuation and administrative procedures.
- 2.13 There is a need to publicize the benefits of SADC trade integration more widely. Both traders and government officials at many of the border posts visited were lacking Information on the SADC Protocol on Trade.
- 2.14 Effective implementation of the FTA will facilitate the implementation of the SADC Customs Union implementation Roadmap.

### **3. Recommendations**

- 3.1 Significant commitment and implementation is required in order for the SADC Protocol on Trade to be implemented in accordance with the original schedule.
- 3.2 There is need to ensure that all Member states effect their tariff reductions on the first of January of each year in line with the Mid-Term Review recommendations.
- 3.3 It is recommended that the SADC Secretariat increase efforts to disseminate trade information and distribute SADC publications through its website and through SADC business forums.
- 3.4 Implement a monitoring mechanism in order to ensure that SADC Member States implement agreed programmes and instruments and to provide a facility for resolving problems on a day-to-day basis.
- 3.5 Documents for SADC meetings and publications for distribution to SADC Member to States to be issued in all the three official languages.
- 3.6 SADC Secretariat should distribute all relevant publications (e.g. Trade Protocol, Manuals on Rules of Origin for officers and traders, etc) to the Member States through each Member State's Contact point. Member States

should also ensure the publications are distributed effectively to the relevant stakeholders including border posts.

- 3.7 Complex rules of origin be revised taking into account the key regional objective of promoting increased economic growth and development.
- 3.8 Consider the introduction of simplified Customs declaration documentation and Certificate of origin for use by small scale traders. The SCCC should finalise the simplified procedures and documents prepared by the Working Group on Customs Cooperation as a matter of urgency.
- 3.9 The Multiple Trade agreements signed by some SADC countries are a challenge to SADC Customs Administrations. It is important to continue to build trade analytical capacity.
- 3.10 The SADC Offers (Schedules of Concessions) were negotiated on the basis of the Harmonised system (HS) because it is relevant in interpreting tariff concessions. SADC Member States should align their original tariff offers with the updated HS version each time they update their tariff schedules and subject them to further scrutiny either through negotiations or by the SADC Secretariat.
- 3.11 The delays caused by the number of stops at borders are a cause of concern to the private sector. To facilitate the movement of cargo across borders and reduce transaction costs, it is recommended that the programme to build one-stop border posts be extended.
- 3.12 The current practice of raising a Customs bond in each country of transit is cumbersome, time consuming and costly. It is recommended that the SADC Transit Customs Bond Guarantee system be adopted following the successful completion of the trail runs.
- 3.13 The certification process be decentralised so as to reduce transaction costs and to avoid inconveniencing the business community. Exporters should not have travel far from where they operate to have their SADC Certificates of origin certified by the designated authority.
- 3.14 SADC Customs authorities should have a policy of automatically communicating the reasons for rejecting values declared by importers and also explain how they could determine the value to be applied. This will ensure transparency in the valuation process.