



Report on the Status of the Development of the Competition and Policy Law in SACU

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Member States: Botswana, Lesotho, Namibia, South Africa, and Swaziland
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Introduction

- **SACU is the oldest Customs Union in the world, having been formed in 1910 by the Southern African States of Botswana, Lesotho, Namibia, Swaziland and South Africa. With the advent of a new political dispensation in the early 1990's in the region, the Member States decided on a reformulated customs Union.**

Introduction ctd....

- In pursuit of their common desire to deepen their economic cooperation and integration, the SACU Member States decided to renegotiate the SACU Agreement in 1994. These renegotiations culminated in the signing of the new SACU Agreement on 21st October 2002. Through this Agreement, SACU Member States have reaffirmed their commitment to deepen economic integration through harmonization of policies as well as promote deeper integration into the global economy through trade and investment.

Development of Policies

- The SACU Secretariat started its work programme effectively in 2004 with the ratification of the 2002 SACU Agreement.
- In the spirit of deepening regional integration within the SACU member states, one of the key objectives of the SACU Agreement as indicated in Article 2 (h) is to facilitate, develop and harmonize on common policies and strategies.
- Article 42 of the SACU Agreement makes provision to develop such annexes as may be necessary to facilitate the implementation of the SACU Agreement and further states that such annexes shall form an integral part of the Agreement.

Objectives

- Article 41, dealing with Unfair Trade Practices, requires to develop policies and instruments to address unfair trade practices between SACU Member States. These policies and measures shall be annexed to the SACU Agreement.
- Article 40, dealing with Competition Policies, requires that Member states cooperate with each other with respect to the enforcement of competition laws and regulations.
- Upon implementation of the new SACU Agreement in 2004, SACU Member States took the initiative to start work on the development of an Annexes of the SACU Agreement.

Status

- Initially, in the absence of a Secretariat, the Government of the Kingdom of Lesotho agreed to coordinate the process in cooperation with UNCTAD.
- As a first outcome, a study was undertaken and the findings were presented at Workshops during 2004/05. The study investigated options for SACU, concentrating on the relevant Articles in the SACU Agreement (40, 41 & 42) and highlighted possibilities of how SACU could deal with Competition Policies and Unfair Trade Practices and related issues in future.

Status ctd...

- With the establishment and subsequent staffing of the Secretariat, SACU Member States agreed that work should continue and with the continued support of UNCTAD, work towards developing a draft Annex on Unfair Trade Practices and cooperating mechanisms on competition policy, competition law and regulations was undertaken. The work thus far was realized in the form of UNCTAD document titled ***“SACU’s Regional Cooperation Framework on Competition Policy and Unfair Trade Practices”***.

Progress

- In order to take stock and assess the status on competition and unfair trade practices, the Secretariat in cooperation with the Geneva-based staff of UNCTAD planned visits to Member States to obtain information on identification of the gaps, concerns and policy perspectives from Member States.
- The country visits took place from December 2006 to March 2007 and various stakeholders in each member states were met and the country visits proved extremely useful in terms of gathering practical and operational issues confronting the SACU member states. It also gathered key policy related issues as crucial for the development of the Annex on the Co-operation Mechanism on Competition and Unfair Trade Practices;

Progress ctd...

- A draft Policy Paper is drafted by UNCTAD in cooperation with the SACU Secretariat. This draft policy paper contain the policy perspectives from the Member States on both Article 40 and 41. This draft policy analytically outlines key policy related issues on competition policy and Unfair Trade Practices across the member states.
- A draft Annex on possible Cooperation Mechanism on Competition (Article 40) and draft Annex on Unfair Trade Practices (Article 41) for SACU is in due process of finalization;
- A SACU workshop is planned soon to discuss all of the above.
- The timeframe is to adopt the Policy Frameworks and the Laws before the end of this year.

SACU's Strategic Engagement

- **In conclusion, SACU is very appreciative of being part of this meeting on the development on SADC Competition Law and Policy. It is the strategic intent of SACU to continue cooperating on areas of mutual interest with the Regional Economic Communities such as SADC and COMESA.**
- **SACU is open for more effective interchange of ideas, efforts and initiatives on Common Policy Development and support fully this process of ensuring effective cross fertilization on development of competition policy and law within the REC's.**

THE END