



Since 1910

SACU

SOUTHERN AFRICAN CUSTOMS UNION

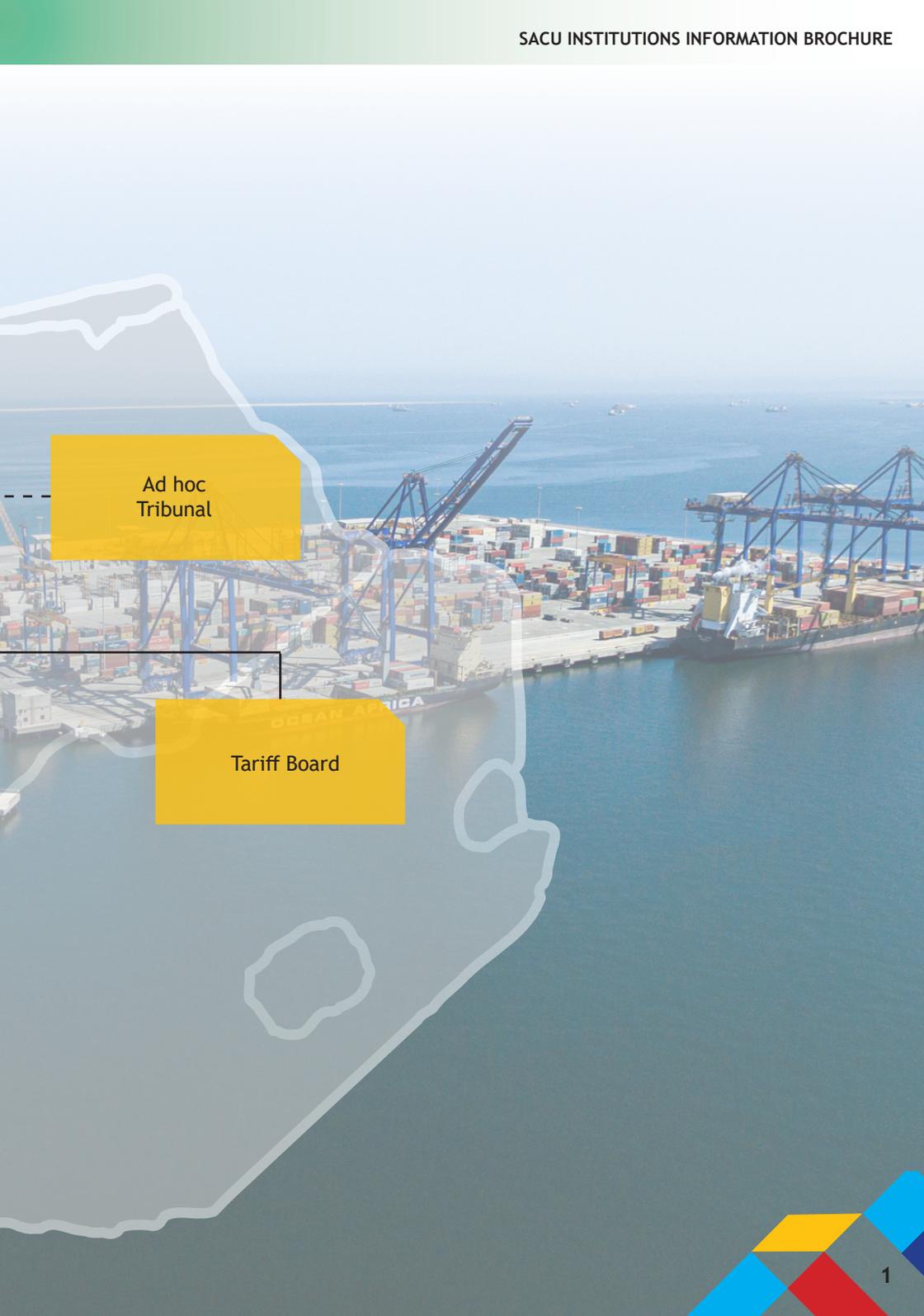


SACU INSTITUTIONS INFORMATION BROCHURE



FIGURE 1: THE STRUCTURE OF SACU





Ad hoc
Tribunal

Tariff Board

1. INTRODUCTION AND BACKGROUND

The Southern African Customs Union (SACU) is the oldest Customs Union in the world, having been established in 1910 between the then Union of South Africa (current Republic of South Africa) and the then British High Commission Territories of Basutoland (now the Kingdom of Lesotho), Bechuanaland (now the Republic of Botswana) and the Kingdom of Swaziland (now the Kingdom of Eswatini). South-West Africa (now the Republic of Namibia) - then a colony of South Africa - was a de facto member of SACU at the time.

The political changes following the independence of Botswana, Eswatini and Lesotho (BEL) in the 1960s necessitated a re-negotiation of the 1910 Agreement. This culminated in the conclusion of the Agreement between the BEL and South Africa in 1969. Further political and economic dispensations in the early 1990s, including Namibia's independence in 1990, and the end of apartheid in South Africa in 1994, warranted a complete renegotiation of the 1969 Agreement. The renegotiations culminated in a new SACU Agreement in 2002, the SACU Agreement, 2002 sets out a broad framework for enhanced integration amongst the SACU Member States.

The SACU Agreement, 2002, ushered in clear mandates, objectives, transparent and democratic institutions, and collective decision-making by the Member States. The Agreement represents a major transformation of SACU from the 1969 arrangement. It introduced a rules-based dispensation and joint decision-making that caters for the needs of all Member States. The Agreement introduced the principle of decision-making by consensus in all institutional structures, except for the ad hoc Tribunal. In addition, provision for a Common Negotiation Mechanism is made in Article 31, which allows external trade policy to be jointly determined by all the Member States.

Although South Africa still manages the tariff setting and the Common Revenue Pool (CRP) on behalf of the SACU Member States as an interim measure, the administration of the SACU day-to-day functions is now the mandate of the SACU Secretariat.

The SACU Agreement, 2002, has resulted in a new Revenue Sharing Formula (RSF), composed of the three Components, namely Customs, Excise and Development. The calculation of each Member State's share of the Customs Component is based on the Cost-Insurance-Freight (CIF) value at border posts of goods imported from all other Member States into the area of each state as a percentage of the total CIF value of intra-SACU imports. The Excise Component share of each Member State is calculated from the value of the Member State's GDP in a specific calendar year as a percentage of total SACU GDP in such a year. The Development Component is set at 15 percent of the Excise Component.

The result is that Botswana, Eswatini, Lesotho and Namibia receive a proportionately higher share of the revenue from the Customs Component because they are net importing countries.

Furthermore, the Agreement provides for protection for infant industries in the Botswana, Eswatini, Lesotho and Namibia (BELN), under Article 26. Under this Article, the BELN can impose duties on imports from South Africa provided the same duties are also imposed on imports from the rest of the world.

In this Brochure, information on the institutions of SACU is highlighted in relations to their mandates, composition and operations. This is in addition to the Vision and Mission and SACU Priority areas. The purpose of the brochure is to provide information to the public on the composition of SACU Institutions and their responsibilities.



2. SACU'S VISION AND MISSION

SACU's Vision is to be “an economic community with equitable and sustainable development, dedicated to the welfare of its people for a common future”. Consistent with this Vision.

SACU's Mission is to:

- (a) Serve as an engine for regional integration and development, industrial and economic diversification, the expansion of intra-regional trade and investment, global competitiveness;
- (b) Building economic policy coherence, harmonisation and convergence to meet the development needs of the region;
- (c) Promote sustainable economic growth and development for employment creation and poverty reduction;
- (d) Serve as a building block of an ever-closer community among the peoples of Southern Africa;
- (e) Develop common policies and strategies for areas such as trade facilitation, effective customs controls and competition; and
- (f) Develop effective, transparent and democratic institutions and processes.

3. PRIORITY AREAS

SACU's Work Programme is underpinned by the following priorities:

- (a) Regional industrial development policy;
- (b) Review of the revenue sharing arrangement;
- (c) Trade Facilitation;
- (d) Development of SACU Institutions;
- (e) Unified engagement in trade negotiations; and
- (f) Trade in Services.

4. INSTITUTIONS

SACU institutions are set out in Article 7 of the SACU Agreement, 2002 (as amended in 2013). These are: the Summit, the Council of Ministers, the Commission, the Tariff Board, the Secretariat, the Technical Liaison Committees and an ad hoc Tribunal.

4.1 Summit

The SACU Summit consists of the Heads of State or Government of the SACU Member States. Its mandate, as set out in Article 7 A of the SACU Agreement, is to define the political and strategic direction, and priorities of SACU. For the period under review, the Summit did not convene as consultations on the Work Programme for the Ministerial Task Teams on Trade and Industry and on Finance, were ongoing.



The SACU Heads of State or Government, together with the Executive Secretary of SACU, at the 6th Summit in Gaborone, Botswana, July 2018.

4.2 Council of Ministers

The SACU Council of Ministers consists of the Ministers of Finance and Trade and Industry from each Member State. The Council is responsible for decision-making and the overall policy direction and functioning of SACU Institutions, including the formulation of policy mandates, procedures and guidelines for the SACU Institutions.

Amongst other functions, the Council appoints the Executive Secretary and Deputy Executive Secretary of SACU as well as Members of the Tariff Board. The Council also approves the revenue shares of the Member States on an annual basis, the budget of the Secretariat and the negotiation mandates for trade negotiations between SACU and third parties.

Furthermore, the Council has the responsibility to oversee the implementation of the policies of SACU and approve customs tariffs, rebates, refunds or drawbacks and trade related remedies. The Council also has the authority to create additional Technical Liaison Committees and other additional institutions; and to determine and amend their terms of reference.

The Chair of the Council is held in turn by each Member State for a period of 12 months in alphabetical order.



Members of the SACU Council of Ministers, together with the Executive Secretary of SACU, at the 38th Meeting in Windhoek, Namibia, December 2019.

4.3 Commission

The Commission consists of Senior Officials at the level of Permanent Secretaries, Director-Generals, Executive Directors, Principal Secretaries or other officials of equivalent rank from each Member State from the Ministries responsible for Trade, Industry and Finance. The Commission reports to the Council and is responsible for the implementation of the SACU Agreement and the decisions of the Council.

The Commission is responsible for overseeing the management of the Common Revenue Pool (CRP) in accordance with the policy guidelines decided by the Council. The Commission also supervises the work of the Secretariat.



Members of the SACU Commission, together with the Executive Secretary of SACU, at the 54th Meeting in Windhoek, Namibia, December 2019.

4.4 Tariff Board

The SACU Agreement, 2002, provides for establishment of the Tariff Board as an independent institution consisting of experts drawn from the Member States. The Tariff Board is responsible for making recommendations to the Council on the level and changes of customs, anti-dumping, countervailing and safeguard duties on goods imported from outside the Common Customs Area as well as rebates, refunds or duty drawbacks based on the directives given to it by the Council as provided for in Article 8 of the Agreement.

The Tariff Board is however not yet established. As an Interim measure, the International Trade Administration Commission (ITAC) of South Africa currently performs the duties of the Tariff Board.

4.5 National Bodies

The SACU Agreement, 2002 also provides for establishment of National Bodies in the Member States. National Bodies are meant to be specialised independent and dedicated entities entrusted with the receiving of requests for tariff changes, carrying out preliminary investigations and recommending any tariff changes necessary to the Tariff Board.

4.6 Ad hoc Tribunal

The SACU Agreement makes provision for an ad hoc Tribunal, which reports directly to the Council. Though the Tribunal is not operational yet, its main role is to adjudicate on any issue concerning the application or interpretation of the SACU Agreement, 2002, or dispute arising there under at the request of the Council. Its determinations will be final and binding. The Tribunal will also at the request of the Council, consider any issue and furnish the Council with its recommendations.

The Tribunal will be composed of three members except as otherwise determined by the Council and assisted by the Secretariat in its work. Decisions of the Tribunal will be made by a majority vote.

In the event of any dispute or difference arising between Member States in relation to or arising out of the SACU Agreement, including its interpretation, the parties shall in the first instance meet and consult in an attempt to settle such dispute or difference before referring the matter to the Tribunal.

4.7 Technical Liaison Committees

There are five Technical Liaison Committees which are part of the SACU Agreement, 2002, but are currently not functional yet under review. They are expected to assist and advise the Commission in its work. They are:

- (a) Agricultural Liaison Committee;
- (b) Customs Technical Liaison Committee;
- (c) Trade and Industry Liaison Committee;
- (d) Transport Liaison Committee; and
- (e) Finance Liaison Committee.

The Terms of Reference of these Committees are determined by the Council. The Committees comprise of technical officials from all the Member States representing specific sectors and areas of work.



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