March 2019

1. INTRODUCTION

The first quarter of 2019 had a number of highlights, some of which spilled over from late 2018. For instance, the United States (US) Security Advisor Ambassador John Bolton announced the US Africa Strategy mid-December 2018. Ambassador Bolton's statements were useful in providing some measure of clarity regarding the South Africa's, as well as the region's future trade and investment relationship with the US.

Meanwhile, South Africa's trade negotiating team had been intensively engaging in trade negotiations with African partners for the Africa Continental as well as the Tripartite Free Trade Agreement (Af-CFTA and TFTA) negotiations, respectively.

On another note, the United Kingdom (UK) has also been negotiating with the South African Customs Union (SACU) and Mozambique for a post-Brexit trilateral transitional arrangement. Currently, the UK is still in the throes of a parliamentary process that will determine if Brexit either occurs on the 12th April or 22 March 2019, if at all.

2. NEDLAC-TESELICO UPDATE

2.2. SOUTHERN AFRICAN CUSTOMS UNION/MOZAMBIQUE SACU(M) – EUROPEAN UNION (EU) ECONOMIC PARTNERSHIP AGREEMENT (EPA)

The SACU-EU relationship has been tested by a number of challenges in the implementation of the EPA. While both the EU and SACU have cited some long-standing tariff and non-tariff barriers that have emerged over the past two years and beyond, indications are that the negotiations to resolve these have been particularly difficult. Issues relating to the automotive industry include:

- **Provisional Safeguard on Steel**

The EU implemented a provisional ruling on the safeguard investigation on steel that saw the imposition of a 25% duty on stainless "hot" as well as "cold" rolled sheets and strips from SACU – a duty which is inconsistent with the tenets of the EPA agreement.

- **Negotiations for the adjustments of tariffs on motor vehicles less than 1000cc**

The Trade, Development and Cooperation Agreement (TDCA) and the EPA inadvertently left out tariff lines under HS Code HS8703 (vehicles below 1000 cc). Therefore, motor vehicles with small engines of less than one litre are imported into South Africa duty free. At the time that the TDCA was negotiated, no one anticipated that technological advancements would see the mass manufacture and demand of small turbo-charged engines. Currently, South Africa imports 25 000 to 30 000 small engine cars from the EU, duty free.

The negotiations between SACU and the EU with regards to automotive lines are as follows:

- SACU is asking for duties of vehicles below 1000 cc imported into SACU from the EU to be increased from 0% to 18%. SACU importers of these vehicles can effectively reduce duties through rebates under the production incentive schemes.

- The EU is asking for duties of electric vehicle imports into SACU from the EU to be reduced to duty free, from 18% as found with all other SACU vehicle import duties.

South Africa will continue to have duty free access of the above-mentioned motor vehicle lines into the EU if the vehicles fulfil the Rules of Origin (RoO) conditions.

Overall, the approach to negotiations has been to consider everything as a package, rather as individual industry items within a broader agenda. This means that the negotiations on the automotive sector are jointly considered with other industries such as agriculture (e.g. poultry, ostrich, and citrus, etc). Indications are that negotiations are not making sufficient progress, mainly due to lack of agreement on various agricultural-related issues. This will therefore, by extension, likely negatively affect progress on other sectors such as the automotive industry.

There is a Joint Council Meeting which was held on the 19th February 2019, in which the EU and SACU countries agreed on, and adopted Rules of Procedures on how to implement the EPA. Also adopted are codes of conduct and dispute settlement. The agreement on appointing an independent legal person and a dispute resolution process is expected to assist in resolving some of the on-going issues that seem to have led to a deadlock.

2.3. BREXIT[1] & SACU-MOZ-UK TRADE NEGOTIATIONS

To avert the negative impacts of a potential no-deal Brexit scenario, a SACU-Mozambique-UK “roll-over” agreement is being negotiated, which over time, would eventually lead to a standalone trilateral trade agreement outside of the Economic Partnership Agreement (EPA). The purpose of the rollover agreement would be to ensure uninterrupted trade between the UK and SACU(M) after the UK leaves the EU, presumably at the end of March 2019. Assuming that there is a "no-deal Brexit", the roll-over agreement can immediately enter into force from 1st April 2019, such that:

- The SACU(M)-EU EPA is residually in place for a period of 6 months, under the auspices of an MoU[2],
- This will occur concurrently with the finalization of the SACU-Moz-UK EPA, with the necessary domestic legislative processes for ratification of the SACU, Mozambique and UK EPA being concluded.

The Department of Trade and Industry (the dti) published a statement on the 13th March 2019, to provide information regarding the progress of the negotiations thus far. Minister Rob Davies noted that the efforts discussed are meant to preserve existing cross border manufacturing activities and supply chains.

[1] On 26th November 2018, The UK and the EU agreed on a finalized text of the UK Withdrawal Agreement, which will ensure that the UK will leave the EU on the 29th March 2019. The UK Withdrawal Agreement includes a transitional period of 21 months ending 21st December 2020. However, the withdrawal agreement was rejected in the House of Commons in January 2019, casting further doubt and uncertainty on whether the UK will leave the EU with a deal. The week of the 12th March 2019 saw the British Parliament rejecting a revised withdrawal agreement, and subsequently, put further amendments to extend Article 50 – which would effectively push the exit date beyond the 29th March. The EU granted the UK an extension to the 12th April 2019 – if the House of Commons reject a deal – and 22nd May 2019, if the House of Commons opt to leave with a deal. A series of indicative votes are being held in the British Parliament to explore support on a range of “softer” Brexit options. It is not clear, at the time of writing, which form Brexit will likely take, if at all.

[2] This MoU likely involves a transitional arrangement which would allow, for example, EU certificates of origin, certificates of compliance etc. to remain valid - under the SACU-Moz-UK bilateral. This would also allow for an administrative window to manage the transition.

However, several scenarios may play out depending on what happens during the course of March 2019, and these are outlined in Figure 1 below.

UK's deals with EU and SACU-Mozambique		***With SACU-Mozambique***	
		Deal	No Deal
With EU	Deal	Scenario 1 • SADC-EU EPA continues until December 2020 • The rollover agreement kicks in on 1st April 2019, which gives both parties more time to negotiate the SACU-Moz-UK EPA	Scenario 2 • SADC-EU EPA continues until December 2020 • This gives more time to negotiate the SACU-Moz-UK EPA, with specific transitional arrangements part of a built-in agenda
	No Deal	Scenario 3 • MoU kicks in for 6 months, continue with SADC-EU EPA effects while roll over agreement is ratified by SACU and Mozambique • Roll-over agreement enters into force soon after ratification, while negotiations for an SACU-Moz-UK EPA are on-going	Scenario 4 • Temporary MFN Tariffs enter into force for a period of 12 months[3] • Period of MFN tariffs contingent on how soon the MoU and the SACU-Moz-UK EPA can be concluded

Figure 1: Scenario matrix of possible Brexit process outcomes

Meanwhile, discussions on how to deal with cumulation are still on-going, i.e. whether the UK can cumulate with EU for products sold to South Africa, and whether South Africa can cumulate with the EU for products exported to the UK. With a no deal Brexit, there will be no bilateral cumulation between the UK and EU. The proposal from SACU is that a transitional arrangement for derogation be incorporated into the SACU(M) - UK Bilateral agreement, to allow for the UK to cumulate with the EU, and for SA to cumulate with UK. This proposition entails accepting bilateral cumulation for a period of three years on products that both the EU and UK either have the same tariffs, or zero-rated duties.

2.4. SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC) FREE TRADE AREA (FTA) – TRADE PROTOCOL

Zimbabwe's currency reforms (Statutory Instrument (SI) 32 of 2019) have seen an upward surge of customs and excise duties, by up to 300%. This follows Zimbabwe's declined request for derogation in August 2018, which would have allowed delay its tariff phase-down commitments to allow for the implementation of tariffs under its published statutory instruments (SI) 64 and 122. Unfortunately, the hike in customs and excise duties cannot be challenged within the framework of the SADC FTA rules.

[3] The UK has already published a temporary tariff schedule of 469 dutiable goods (68 of which are automotive vehicles) should the country leave without a withdrawal agreement. The temporary tariff schedule will apply for a transitional period of 12 months.

Meanwhile, there is an on-going assessment currently underway of SADC's readiness to become a Customs Union. The dti facilitated a meeting between Business and the SADC Secretariat on the 5th February 2019 at NEDLAC to discuss Business' views on a SADC Customs Union. Business noted that it was still too early for SADC to transition to a Customs Union due to various fundamental implementation challenges. Business are of the view that SADC should rather focus on consolidating the FTA first, before transitioning into a Customs Union.

2.5. AFRICA GROWTH OPPORTUNITY ACT (AGOA)

There are no new major updates on AGOA. However, there was a policy pronouncement on the 13th December 2018 – which was the US Africa Strategy – which came two years after the Trump Administration came to power.

The Africa Strategy reaffirms the US' vision of reciprocity – underlined by a desire to terminate preference programmes such as the Africa Growth Opportunity Act (AGOA) and the Generalized System of Preferences (GSP) towards what they call "modern and comprehensive bilateral trade agreements". The US' take on "modern and comprehensive bilateral trade agreements" includes a number of "new generation" issues such as Trade in Services, Trade in Environmental Goods, aspects of the Agreement on Government Procurement, and immediate (tariff) liberalization on almost all forms of trade.

While the Obama Administration pushed these issues through mega-regional and plurilateral trade agreements, the Trump Administration has adopted for a more selective approach, opting for bilateral agreements with specific countries. The differences between the Obama and the Trump Administrations is nuanced, and it is not in policy content but more in the approach. The latter is adopting a more overtly aggressive approach, while the former pursued more diplomatic ways of conveying US interests in the continent.

Overall, the substantive content of the US' Africa Strategy remained unchanged. However, the only new initiative that stood out is the Prosper Africa programme, which appears to be an extension to AGOA in terms of its goals and ambitions, but more focused on investment. The goal of Prosper Africa is to support sound and transparent governance and improving the "ease of doing business environments" across the continent.

In that sense, Prosper Africa will most likely leverage AGOA to implement the Trump Administration's vision of reciprocity in trade and investment ties with Africa. In that regard, indications are that the US is looking to target key markets such as Kenya, South Africa, Nigeria and Egypt, among others. Government has noted that it does not have a position yet on the US Africa Strategy. With respect to AGOA, Government has adopted a "wait and see" approach, based on evaluating the costs of concessions based on the US' demands that would be presented in various negotiations.

2.6. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) - EAST AFRICAN COMMUNITY (EAC) - COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA) TRIPARTITE – FREE TRADE AGREEMENT (TFTA)

By the start of 2019, the Annexures of the TFTA were concluded, legally scrubbed, and adopted. It was also reported that the only outstanding issue under the RoO of the TFTA is the completion of the combined matrixes for the three Regional Economics Communities (RECs), namely, the EAC, SADC and COMESA. These were discussed from 3rd to 21st December 2018.

Subsequent meetings were supposed to be held in March 2019 but could not be convened. The expectation was for progress to be made on a number of outstanding issues – particularly tariff agreements with the EAC and Egypt. Without tariff agreements in place with the two aforementioned partners, there is a likelihood that the deadlines will be missed.

According to the timeline agreed by Heads of States, the TFTA is supposed to come into force by 1st April 2019. The outstanding TFTA work schedule suggests that an extension might be needed to concluded outstanding areas of negotiation.

2.7. THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

The Af-CFTA held its 10th and 11th Technical Working Group (TWG) took place during the first two weeks of December 2018, and between 18th Feb to 1st March 2019, respectively. There are two more TWG meetings left before the work programme on Rules of Origin (RoO) can be finalised. However, there are on-going debates around the definition of "value added" – with some countries insisting on ex-works or ex-factory price systems rather than the FOB.

Other issues arising include Tanzania and Burkina Faso's view of excluding goods manufactured in special economic zones from enjoying preferential market access in the Af-CFTA region. This is a position that Government has disputed given that some of the country's major exports (such as automotive vehicles) are located in special economic zones.

In January 2019, the key discussion point was centred around the level of ambition for liberalisation of trade within the AfCFTA. The option that was adopted by Heads of State was that 3% of products will be in the exclusion list, and 7% in the sensitive list. The latter would either be liberalised immediately after the agreement comes into force, or after a 5-year period. This is far less than what Business and Government desired. Therefore, some work will need to be done in identifying sectors that can be considered for the exclusion and sensitive lists.

END.

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Everything has been done to ensure the accuracy of this information, however, NAACAM takes no responsibility for any loss or damage incurred due to the usage of this information.

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Tinashe is a trade economist with a decade of experience in trade policy and advocacy. He was previously a Trade Specialist at the Southern Africa Trade and Investment Hub and a Trade Advisor at Genesis Analytics. He was also Head of International Trade and Investment Intelligence at the Agricultural Business Chamber, having also previously worked for the Trade and Industry Policy Strategies (TIPS) early on in his career. He served as the Deputy Chair of the Trade Policy Committee within Business Unity South Africa (BUSA) and continues to play a critical role as an Advisor to BUSA on trade related issues. He is deeply involved in NEDLAC workstreams, where he represents Business, both in various Task Teams and within the Technical Liaison Committee (TESELICO).