

CRS Report for Congress

Received through the CRS Web

United States-Southern African Customs Union (SACU) Free Trade Agreement Negotiations: Background and Potential Issues

Danielle Langton
Analyst in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Summary

Negotiations to launch a free trade agreement (FTA) between the United States and the five members of the Southern African Customs Union (SACU) (Botswana, Lesotho, Namibia, South Africa, and Swaziland) began on June 3, 2003. A potential agreement would eliminate tariffs over time, reduce or eliminate non-tariff barriers, liberalize service trade, protect intellectual property rights, and provide technical assistance to help SACU nations achieve the goals of the agreement. This potential agreement would be subject to congressional approval. This report will be updated as negotiations progress.

On November 4, 2002, United States Trade Representative (USTR) Robert B. Zoellick notified Congress of the Administration's intention to launch negotiations for a free trade agreement (FTA) with the Southern African Customs Union (SACU), comprised of Botswana, Namibia, Lesotho, South Africa, and Swaziland. The U.S.-SACU initiative continues in the context of several concluded FTA negotiations: the President has signed the implementing legislation for FTAs with Chile, Singapore, Australia, and Morocco; and negotiators have reached agreement in the FTA with the Dominican Republic and five Central American nations, but Congress has yet to ratify the FTA.

The first round of negotiations for the SACU FTA began on June 3, 2003, in Johannesburg, South Africa, and there have been five more negotiating rounds, in addition to a meeting in Paris in July 2004 between representatives from the SACU countries and the United States. The negotiations were scheduled to conclude by December 2004, but talks have stalled. U.S. administration officials and SACU country trade ministers have agreed to a mechanism where deputy trade ministers will guide the negotiations, and to impose no deadline for concluding the negotiations. Renewal of trade promotion authority (TPA) by Congress in 2005 may affect prospects for a completed agreement.

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 03 JAN 2005		2. REPORT TYPE		3. DATES COVERED 00-00-2005 to 00-00-2005	
4. TITLE AND SUBTITLE United States-Southern African Customs Union (SACU) Free Trade Agreement Negotiations: Background and Potential Issues				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service, The Library of Congress, 101 Independence Avenue, SE, Washington, DC, 20540-7500				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 6	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Several possible rationales exist for the negotiation of an FTA with SACU. One impetus derives from Sec. 116 of the African Growth and Opportunity Act (AGOA) (Title I, P.L. 106-200), in which Congress declared its sense that FTAs should be negotiated with sub-Saharan African countries to serve as a catalyst for trade and for U.S. private sector investment in the region. Such trade and investment could fuel economic growth in Southern Africa, by creating new jobs and wealth. SACU member countries have achieved the most robust export growth under AGOA, and an FTA may be seen as a way of expanding their access to the U.S. market. An FTA may also encourage the continued economic liberalization of the SACU members, and it could move SACU beyond one-way preferential access to full trade partnership with the United States.

A potential U.S.-SACU FTA is of interest to Congress because: (1) Congress will need to consider ratifying any agreement signed by the parties; (2) provisions of an FTA may adversely affect U.S. business, especially in import-competing industries, and may affect employment in those industries; and (3) an FTA may bolster the effectiveness of AGOA and bolster its implementation. On January 9, 2003, a bipartisan group of 41 Representatives wrote to Ambassador Zoellick to support the beginning of FTA negotiations with SACU.

A U.S.-SACU FTA has also received interest from the U.S. business community. The U.S.-South African Business Council, an affiliate of the National Foreign Trade Council, announced the creation of an FTA advocacy coalition in December 2002. The Corporate Council on Africa, a U.S. organization dedicated to enhancing trade and investment ties with Africa, also supports the negotiations. For these business groups, a primary benefit of an FTA with SACU would be to counteract the free trade agreement between the European Union and South Africa, which has given a price advantage to European firms. Some U.S. businesses have reportedly expressed skepticism about an FTA with SACU, citing concerns over corruption and inadequate transparency in government procurement, particularly in South Africa.¹

On December 16, 2002, the interagency Trade Policy Staff Committee, which is chaired by the USTR, held a hearing to receive public comment on negotiating positions for the proposed agreement. Several groups representing retailers, food distributors, and metal importers supported the reduction of U.S. tariffs on SACU goods that an FTA would bring. Others representing service industries and recycled clothing favored negotiations to remove tariff and non-tariff barriers in the SACU market. Yet other groups opposed the additional opening of U.S. markets to SACU goods or sought exemptions for their products. They included the growers and processors of California peaches and apricots, the American Sugar Alliance, rubber footwear manufacturers, and producers of silicon metal and manganese aluminum bricks.

Some U.S. civil society organizations have expressed concern that a SACU FTA could have negative consequences for poor Southern Africans, citing potential adjustment costs for import-competing farmers, poor enforcement of labor rights, privatization of utilities, and increased restrictions on importing generic drugs to treat HIV/AIDS.

¹ "South Africa Trade Pact Meets Business Skepticism," *Inside U.S. Trade*, January 17, 2003.

Background

The South African Customs Union consists of Botswana, Lesotho, Namibia, South Africa, and Swaziland: five contiguous states with a population of 51.9 million people encompassing 1.7 million square miles on the southern tip of the African continent. Although this figure represents less than 1% of the population of sub-Saharan Africa, SACU accounts for one-half of the subcontinent's gross domestic product (GDP). Wide differences exist among the economies of SACU. While South Africa has developed a significant manufacturing and industrial capacity, the other countries remain dependent on agriculture and mineral extraction. The grouping is dominated by South Africa, which accounts for 87% of the population, and 93% of the GDP of the customs area. SACU member states had combined real GDP of \$201 billion in 2003.²

SACU is the United States' second largest trading partner in Africa behind Nigeria—whose exports are almost exclusively petroleum products. In 2003, SACU was the 32nd largest trading partner of the United States with two-way trade equivalent to \$7.3 billion.³ Merchandise imports from SACU totaled \$5.6 billion in 2003, a 17.3% increase from 2002 and a 126% increase from 1996. They were composed of minerals such as platinum, diamonds, and titanium, textiles and apparel, vehicles, and automotive parts. U.S. exports have been relatively steady since 1996, however, the 2003 total of \$2.8 billion represented an 8.6% increase from 2002. Major U.S. exports to the region include aircraft, vehicles, computers, and construction and agricultural equipment. The 2003 merchandise trade deficit widened to \$2.8 billion from \$2.2 billion in 2002.

The United States ran a services trade surplus with South Africa (the only member of SACU for which service data are available) with exports of \$1.19 billion and imports of \$977 million in 2003.⁴ Services trade between the United States and South Africa has increased dramatically for both countries, with U.S. exports increasing 154% since 1992, and service imports from South Africa increasing by 383% during the same period. The stock of U.S. foreign direct investment in South Africa totaled \$3.9 billion in 2003 and was centered around manufacturing, chemicals and services. The stock of South African investment in the U.S. stood at \$376 million in 2003.⁵

FTA negotiations with SACU may result in the first U.S. trade agreement with an existing customs union. SACU is the world's oldest customs union; it originated as a customs agreement between the territories of South Africa in 1889. The arrangement was formalized through the Customs Agreement of 1910 and was renegotiated in 1969. In 1994, the member states agreed to renegotiate the treaty in light of the political and economic changes implicit from the end of the apartheid regime. The renegotiated agreement was signed on October 21, 2002 in Gaborone, Botswana, and it is now being implemented.

² The World Bank, *World Development Indicators*. In constant 1995 U.S. dollars.

³ Goods data compiled by U.S. International Trade Commission. U.S. imports for consumption calculated as customs value; U.S. domestic exports as FAS (free alongside ship) value.

⁴ *Survey of Current Business*, October 2004. Services figures are calculated from current account data and thus are not directly comparable to goods data above.

⁵ *Survey of Current Business*, September 2004. Figures are historical-cost basis.

The 2002 Agreement. The 2002 Agreement provides for greater institutional equality of the member states. Its three key policy provisions are: the free movement of goods within SACU; a common external tariff; and a common revenue pool. It also provides more institutional clout to Botswana, Lesotho, Namibia, and Swaziland (BLNS) in decision-making by creating a policymaking Council of Ministers. The agreement enhances the existing Customs Union Commission, and it creates a permanent Secretariat to be based in Windhoek, Namibia. The Agreement also renegotiated the terms for disbursement of the common revenue pool, which accounts for a large portion of government revenue in the BLNS countries. There is concern that certain countries may receive less revenue as a result of the renegotiated agreement, and are improving their tax collection to make up the lost revenue. Recent estimates indicate SACU payments accounted for 62% of government revenue in Lesotho, 53% in Swaziland, 33% in Namibia, and 16% in Botswana in 2000.⁶

SACU Tariff Structure. The 2002 Agreement expands BLNS policy influence by the creation of a Tariff Board to recommend changes on customs levels and policy, using the current SACU tariff schedule as a starting point. A 2003 WTO Trade Policy Review⁷ of SACU member states examined the tariff structure and trade posture of the customs union. It noted that the South African tariff structure, which was still the basis of the SACU tariff, was relatively complex, consisting of specific, *ad valorem*, mixed compound and formula duties. However, the South African government has embarked on a tariff rationalization process to simplify the tariff schedule, to convert tariff lines to *ad valorem* rates, and to remove tariffs on items not produced in the SACU. According to the USTR, the complexity of the tariff regime has made it necessary for some U.S. firms to employ facilitators to export to South Africa.⁸ The WTO found applied MFN tariffs averaged 11.8% in manufacturing, 5.5% in agriculture, and 0.7% in mining and quarrying. These average tariffs represent a reduction from the previous WTO review in 1998, when MFN tariffs averaged 16%, 5.6%, and 1.4%, respectively. However, tariffs are often bound⁹ much higher, with some bindings as high as 400%.

Progress of the Negotiations

The negotiations have not progressed at the expected pace, and are currently in a deadlock. There are several possible reasons for this deadlock. First, the United States and SACU may be focused on different negotiating interests. Per their mandate to pursue comprehensive FTAs, U.S. negotiators have attempted to proceed with negotiations on intellectual property rights, government procurement, investment, and services. However, SACU officials have reportedly argued for these issues to be excluded from the negotiations. They have been more focused on locking in AGOA benefits and achieving

⁶ *Africa South of the Sahara, 2003 Edition* (London: Europa Publications, 2002), pp. 83, 532, 704, 1020.

⁷ World Trade Organization, "Trade Policy Review: Southern African Customs Union, Report by the Secretariat," (WT/TPR/S/114), March 24, 2003, pp. ix-xi.

⁸ U.S. Trade Representative, *2002 Foreign Trade Barriers*, p. 381.

⁹ A bound tariff rate is a rate which a country agrees not to exceed because of trade commitments, such as those made in the WTO. An applied tariff rate is a rate that is actually imposed on goods.

deeper market access. Now that Congress has extended the AGOA benefits to 2015 through the AGOA Acceleration Act of 2004 (P.L. 108-274), there may be less incentive for SACU countries to complete an FTA with the United States. Also, the United States and SACU have different views on the inclusion of certain industrial sectors in the negotiations. The United States prefers what is called a negative list, where all industries are negotiable unless specifically excluded. Meanwhile, SACU prefers a positive list, where the industries to be included in the negotiations are specified in advance, and additional industries may be included in the agreement over time. Finally, the United States and SACU have differed on issues concerning labor rights and environmental regulations.

The Black Economic Empowerment (BEE) program of South Africa may be another significant hurdle to the negotiations. The BEE program involves criteria for companies to increase opportunities for non-white business partners through equity ownership and executive board positions.¹⁰ The BEE program may constitute a trade barrier; U.S. businesses have indicated that they may have difficulty meeting the BEE criteria, and alternate ways of addressing BEE goals have been proposed by U.S. negotiators.

USTR Robert Zoellick has stated that the United States recognizes that SACU is still an emerging entity. It has not developed coordinated policies on many of the issues that would be included in an FTA, which may add to the challenges of negotiating an FTA.¹¹ Despite these challenges, there is reportedly a renewed political will among SACU countries for the FTA.¹² The United States may seek to build on this new political will and address the negotiating difficulties, including contentious issues, through further trade capacity building support.

¹⁰ “Slow Pace of SACU FTA Negotiations Raises Doubts Among Supporters,” *Inside U.S. Trade*, May 7, 2004.

¹¹ “U.S.-SACU Free Trade Negotiations Put on Hold; New Mechanism Being Created,” *International Trade Reporter*, December 16, 2004.

¹² “Administration, Business Pressure SACU for Comprehensive FTA,” *Inside U.S. Trade*, December 10, 2004.

Appendix 1: U.S. Merchandise Trade with SACU Countries, 2003

U.S. Imports		U.S. Exports	
2 digit HTS Category	Imports	2-digit HTS Category	Exports
Precious Metals, of which, -Platinum -Diamonds	\$1,999 million -\$1,272 million -\$640 million	Machinery and Mechanical Appliances (includes construction equipment and computers)	\$568 million
Vehicles and parts	\$776 million	Vehicles and Parts	\$369 million
Knitted Apparel and Clothing	\$381 million	Aircraft and Parts	\$339 million
Iron and Steel	\$323 million	Electrical Machinery, Equipment, and Parts (includes telecommunications equipment.)	\$173 million
Apparel and Clothing, not knitted	\$327 million	Optical, photographic, cinematographic, measuring, precision, medical, and surgical instruments and parts	\$158 million
Ores Slag and Ash	\$229 million	Organic Chemicals	\$143 million
Machinery and Mechanical Appliances (primarily catalytic converters)	\$195 million	Special Classification/ Low value	\$137 million
Organic Chemicals	\$136 million	Mineral Fuels and Oils	\$87 million
Inorganic Chemicals	\$130 million	Plastics	\$83 million
Special Classification/ low value exports	\$102 million	Miscellaneous Chemicals	\$74 million
Aluminum Products	\$99 million	Cereal (primarily rice, wheat, corn)	\$74 million
Edible Fruits and Nuts	\$62 million	Pharmaceutical Products	\$49 million
Articles of Iron and Steel	\$45 million	Paper and Paperboard	\$44 million
Fish and Aquaculture	\$39 million	Toiletries and Cosmetics	\$31 million
Beverages, Spirits, and Vinegar	\$29 million	Toys, Games, and Sports Equipment	\$31 million
All Other	\$591 million	All Other	\$403 million
Total*	\$5,580 million	Total	\$2,763 million

Source: U.S. International Trade Commission.

* Figures do not add precisely due to rounding.