

**COOPERATION
BETWEEN
THE EUROPEAN UNION
AND SOUTH AFRICA**

The Cooperation Council

Brussels, 1 October 2012

UE-ZA 4904/12

NOTE

Subject: Trade report

Statistical Trade Data

The parties noted the work done by Eurostat and the South Africa Revenue Service (SARS) in exchanging data and preparing a preliminary analysis of the discrepancies between the trade data of both sides. During a recent videoconference held in early July the two sides agreed that the data should be further investigated and to that effect methodological information and 2011 data will be exchanged by July 2012. The two organisations will carry out parallel studies by the end of September and a follow-up videoconference to discuss the results will be held in October.

Sanitary and phytosanitary issues

Exports of fruit

The parties took note of a bilateral meeting that had taken place on the margins of the SPS committee in Geneva on 9 July 2012. A number of concerns raised by EU Member States on the export of fruits from the EU into South Africa had been addressed. It was agreed that bilateral contacts between experts concerned in the Plant and Animal Health Unit in DAFF and DG SANCO and consultations at technical level would be strengthened to resolve such issues quickly and to facilitate cooperation to avoid future trade disruption.

Porcine, Reproductive and Respiratory Syndrome (PRRS)

SA confirmed that it had received the EU comment on the PRRS measure, and discussed the matter with EU SPS experts in Geneva and agreed to hold a video conference between the two countries experts. SA also confirmed the measure was suspended pending the outcome of a court decision, but ongoing consultations with trading partners should be maintained. The EU reiterated the points made in its WTO submission and invited SA to share its scientific analysis on the risk and the source of contamination. SA confirmed that pork and pork product cuts that can be certified and are recognisable may not be covered by the measure and that work was ongoing to identify consumer ready-cuts, which could be imported. SA underlined the need for certification by the authorities of exporters and that SA was ready to talk to all exporting partners concerned. The TCC urged the expert services to continue their bilateral exchanges.

Implementation of the canned fruit Gross/Net weight

This issue is a long standing agreement reached between South Africa and the EU; captured in Article 1 of Decision No 1/2009 of the SA-EU Joint Cooperation Council which provides for a new definition for “gross weight” for canned fruits in Annex IV List 6 of TDCA. This agreement has been implemented since April 2010. South Africa has since requested the EU to provide clarity regarding the practical application of new “Gross weight”. The issue was raised with the EU in May 2012. The EU has discussed the question in detail with experts from the Directorate General for Taxation and Customs Union and assured SA that the quotas are calculated correctly, using the new “gross weight” definition. It assured SA that there is no need to change the export declaration forms and explained the practical implementation of the new “gross weight” definition. SA was also informed of the online TARIC tariff quota calculation application where the utilisation of each quota can be followed on a regular basis.

Way Forward

SA requested the EU to outline in writing the practical implementation of the gross weight, especially the application of the co-efficient which is used to convert the normal gross weight to the new one. As such, South African exporters will have further clarity in terms of how their products are drawn down against the quota when they enter the EU.

SA Cheese Imports from the EU under TDCA Tariff Rate Quota (TRQ)

The decision has been implemented since April 2010. SARS manages the TDCA TRQ for cheese imports from the EU on behalf of SA. SARS has responded positively to the EU request of May 2012 by publishing the quota utilization balances on their website. The meeting noted the substantial progress made in this area.

Customs classification of fruit puree

This issue was brought to the TCC agenda as a concern by the SA fruit and Vegetable Canning Industry. South Africa expressed great concern about the changes in tariff classifications and the resultant increase in the duties in respect of the fruit purees destined for the EU market. SA put forward the following proposals as a way forward.

- SA fruit puree remains under classification of HS 2008 and enjoy the TDCA preferences
- Alternatively SA fruit puree could be classified under 2007 with the same preferences which were enjoyed under HS 2008
- Fruit puree duties that had to be paid (with effect from 02 June 2012) as a result of the change in the tariff classification must be retrospectively refunded.

South Africa's argument is based on Article 19.3 of the TDCA. The article stipulates that *"No new customs duties on imports or exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in the trade between the Community and South Africa from the date of entry into force of the Agreement"*. In view of this article, SA registered its dissatisfaction and urged the EU to consider the above article and ensure speedy resolution.

The EU explained that there has not been a reclassification of the above-mentioned product but that the deletion of the interpretative note to the Combined Nomenclature applied in June was a clarification to correct the misinterpretation that some EU Members States were making of the binding Chapter Note in force since 2002. This Chapter Note implemented the World Customs Organisation (WCO) harmonised System Committee decision of November 1997 on the definition of heading 2007. The EU assured SA that it is clearly not its intention to withdraw any concession given under TDCA. However it was not clear from TDCA that that was the case as SA had also participated in the WCO discussions where the exact classification of this product was being discussed and adopted and was therefore aware of the issue. Moreover since 2002 the EU classification of the product was clarified in line with WCO and this issue was never raised by SA or its exporters. It is only now when the divergent application of the rule by some EU member states has been clarified and made consistent at EU level that the issue is raised.

Way forward

The EU was fully aware of the importance and the urgency of this matter and was ready to continue working in order to solve this without delay.

EU Enlargement – Croatia Accession to the EU

SA enquired about the implications of Croatia's accession on EU-SA trade relations and specifically the requirement of consultation under the TDCA and the size of EU quotas.

EU informed of the process of reviewing bi-lateral free trade agreements following Croatia's accession on 1 July 2013, to ensure that traditional trade flows are not disrupted and quota volumes are adapted.

SA informed that Parliamentary approval is necessary in order for customs authorities to extend the TDCA tariff preference to Croatia and advised that a timely process will avoid delays.

Notification of the TDCA Protocol on RoO

The Parties agreed to coordinate and further investigate the need to have a separate notification of the TDCA rules of origin to the WTO Committee on Rules of Origin given that the TDCA and all its annexes and protocols, including those covering Rules of Origin, were already notified to the WTO Committee on Regional Trade Agreements.

New EU GSP Regulation (2014) – implications for SA

The EU briefly explained the main features of the new GSP Regulation that once adopted, will enter into force on 1 January 2014. Concerning its implications for SA, the EU explained that GSP preferences will no longer be granted to countries with which the EU has concluded Free Trade Agreement after a transitional period of two years. SA recalled the discussion that took place in 2005 on the inclusion of GSP benefits into TDCA.

Temporary Importation under TDCA

The EU explained its continuing concern with the exclusion from TDCA preferences of goods imported temporarily into SA. While recognising that the calculation of the customs value of goods imported temporarily might be different from that of goods imported permanently, the EU saw no reason why the customs duty applicable to these goods should be the MFN rate and not the TDCA preferential rate. SA recalled that this matter was raised approximately 2 years ago within the context of rental agreements for electricity generators that were brought in from the EU. SA nevertheless undertook to look again at this issue on the basis of the current practice with respect to temporary importation whilst the EU undertook to provide some examples where this incident has occurred.

SA new public procurement policy

EU inquired about the changes in South Africa's procurement rules, particularly in relation to the designation for exclusive local procurement of certain goods and services. Information regarding new sectoral designations and the rationale for the levels of set local procurement was requested. SA noted that it was not a signatory to the Government Procurement Agreement in the WTO and undertook to provide information as requested. EU signalled that there is an internal discussion in the EU on excluding, in a reciprocal manner, countries from its public bidding processes. The EU system is currently transparent and open to operators on a non-discriminatory basis.

SA Market Access Concerns

New wine labelling regulation by the EU

South Africa raised a concern about the EU regulation primarily aimed at implementing new allergen related labelling. South Africa indicated the fact that the European Commission did not provide a reasonable interval between the publication of the adopted technical regulations and their entry into force as prescribed by Article 2.12 of the WTO TBT agreement. Further, SA indicated that they did not have reasonable time to adhere to the regulation. The EU said the allergen labelling obligation had been adopted in 2010 allowing some 18 months of preparation and that the recent regulation had introduced a number of flexibilities including exemption of pre-2012 harvest wines; exemption of all wines bottled prior to 1.7.2012 whether or not shipped to the EU; and had introduced a threshold for detection of the allergens. While acknowledging that the legislation was adopted late, the EU said that had the implementing rule not been introduced, compliance with the 2010 would have presented more difficulties for operators. EU noted South Africa's concern and would pass this on to the commission services in Brussels.

EU Emission Trading Scheme (ETS)

SA indicated its overall concern with the EU ETS; in particular its effects on the aviation industry. EU indicated that it does not see this as a trade issue and proposed that the matter be discussed within the context of the JCC climate group.

UK Private Standards

SA said a British multinational grocery and general merchandise retailer had specified that wine from South Africa should be supplied in bulk. This was said to be in compliance with the “Waste and Resource Action Programme (WRAP)”, which SA said was a UK government funded initiative that has encouraged a switch from bottled wine to bulk wine exports to the UK. SA considered this to be non-governmental standardizing bodies and questioned whether it had complied with the code on Good Regulatory practice as contained in Annex 3 of the TBT agreement. The EU took note of the concerns expressed by SA of which it said it had not had specific notice. The EU underlined that contractual conditions, such as requiring product to be supplied in a particular form, were a matter for the private buyers, and that the suppliers equally had the freedom to choose whether or not the agreed to the terms offered.

EU Raw Material Initiative

In 2008, the EU launched the Raw Materials Initiative (RMI). The initiative is built on 3 main issues: management of EU consumption of raw materials to boost resource efficiency; develop domestic production; ensure sustainable supply of raw materials. Based on a holistic approach the initiative aims at minimizing dependency. Upon EU request to outline its raw material strategy, South Africa explained that it has adopted a new growth path and new industrial policy. A central platform of South Africa’s comparative advantage lies in the beneficiation of its mineral wealth. This is aimed an upgrading the industrial base, placing the economy on a sustainable development trajectory that will address its employment objectives. South Africa faces extreme challenges such as high unemployment, thus South Africa is advancing the beneficiation strategy to address these challenges. Both parties agreed on further discussions and exchange of information regarding the matter.
