

PO Box 76297, Lynnwood Ridge, South Africa, 0040

Grain Building, 1st Floor, 477 Witherite Street
The Willows, Pretoria, South Africa, 0184

Tel. +27 12 807 6686, Fax. +27 12 807 5600
admin@agbiz.co.za, www.agbiz.co.za

Vat nr. 4920204684

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Agbiz attends the Fifth Annual International Economic Law Update

On 14th October 2016, Agbiz attended the 5th Annual International Economic Law updated that was hosted by the Mandela Institute at Webber Wentzel in Sandton, Johannesburg. The meeting tackled three main issues, namely:

- (1) The COMESA-EAC-SADC Tripartite Free Trade Agreement
- (2) The governance issues within the WTO Appellate Body
- (3) Trade and Regulation issues related to Brexit

Is the COMESA-EAC-SADC Tripartite Free Trade Agreement Feasible?

Mr Fudzai Pamacheche Mr Yash Ramkolowan and Dr Malebakeng Forere deliberated on the state of play in the T-FTA and noted three important emerging concerns. Firstly, the issue regarding the unbalanced outcomes of the agreement, given that the least developed countries will likely become the bigger losers, given that most of them will sacrifice tariff revenue that is essential to their fiscal budgets. Analysts suggested that such an outcome could be averted if the T-FTA devises a mechanism in which the winners, or otherwise more developed economies, compensate the losers in order to ensure a more balanced outcome.

Secondly, is the concern regarding inconsistencies that may arise between regional and national legislation, which has been a prevalent scenario within SADC. Analysts noted that considerable political will is needed for member countries to adopt T-FTA tenets through enabling national policy and legislation. Thirdly, was the realisation that the T-FTA outcome will not necessarily lead to the eradication of the complex multiple membership problem, as the nature of the negotiation will lead to a proliferation of other bilateral agreements that will lead to a new set of “spaghetti bowl” like outcomes. However, it has been argued that the T-FTA agreements between various regional groups will converge to a truly single market scenario in the long run

Is the WTO losing relevance?

Professor David Unterhalter discussed two important issues which have bedevilled the WTO. Firstly, is the fact the reservations of the United States regarding the WTO Appellate body, and the general governance issues henceforth. Secondly, the emergence of China as a new centre of power in the WTO since becoming a member in 2001, which shifted the power dynamics away from the United States, leading to the latter’s subdued influence. The need to re-establish dominance and influence in the global trading system has led the United States seeking an alternative, which has seen them taking a lead in two mega-regional trade agreements – the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) – both of which involve higher level rules and new generation issues that had not taken centre-stage within the WTO due to the pre-eminence of the Doha Development issues. Professor David Unterhalter noted that the diminishing relevance of the WTO signified the fact that the institution had become a victim of its own success.

Possible scenarios and likely implications of Brexit on South Africa

Dr Matthew Stern and Mr Stephen Meltzer discussed the potential scenarios and the status of the UK after Brexit, respectively. According to Stephen Meltzer, under Article XI (1) the UK will remain a WTO member after withdrawing from the EU, with full rights and obligations of WTO membership. However, as Stephen Meltzer noted, questions arise in relation to rights and obligations concerning the UK's specific commitments under Article II of the GATT 1994 and Article XX of the GATS – particularly with regards to issues such as tariff quotas and agricultural subsidies, where rights to subsidise agricultural production are limited to certain quantities.

Stephen Meltzer pointed out that in terms of Article 50 of the Lisbon Treaty (TEU), the Treaties shall cease to apply to the UK from the date of entry of force of the withdrawal agreement, or failing that 2 years after the UK notifies the European Council of its intention to withdraw unless extended by agreement. This means that all free trade agreements the UK had under the EU will cease to apply to the UK, and MFN duties will apply to exports to the UK unless new free trade agreements are entered into. In this regard, Dr Matthew Stern provided four possible scenarios that might emerge after Brexit and these are as follows:

- (1) Maintain the status quo
 - a. *Full de facto replication of current EU tariffs*
 - b. *Replicating the Generalised System of Preferences (GSP)*
 - c. *GSP plus EPAs/FTAs*
- (2) An improved UK GSP
- (3) A very liberal MFN trade regime
- (4) A set of free trade agreements

Given the four above-mentioned scenarios, Dr Matthew Stern recommended that South Africa and SACU prepare to negotiate a new trade arrangement with the UK. Agriculture is among the sectors that are critical in this negotiation and these will include wine and fresh fruits (such as grapes, apples, lemons, plums, nectarines, peaches, melons and raspberries). South African wine exports to the UK average \$148 million while fruit exports average \$503 million per year over the past three years.

ENQUIRIES

Tinashe Kapuya, Head: International Trade and Investment

tinashe@aqbiz.co.za