ZIMBABWE'S APPLICATION FOR SPECIAL DISPENSATION ON IMPLEMENTATION OF OUTSTANDING TARIFF COMMITMENTS UNDER THE SADC PROTOCOL ON TRADE SUBMISSION BY BUSINESS UNITY SOUTH AFRICA (BUSA)

27 FEBRUARY 2018

INTRODUCTION

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As the principal representative of business in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

BACKGROUND

The Southern African Development Community (SADC) Protocol on Trade (Trade Protocol) was signed in August 1996 and amended in the years 2000, 2007 and 2008 with the simplification of aspects of Rules of Origin and safeguard measures and integration of new annexes on dispute settlement and trade in sugar. The Trade Protocol aims at liberalising intra-regional trade by creating mutually beneficial trade arrangements and thus improving investment and productivity in the region. SADC Member States committed to eliminate barriers to trade, ease customs procedures, harmonise trade policies, prohibit unfair business practices and to eliminate tariffs by 2012.

Products considered to be sensitive (Category C) were to be phased down between 2009 and 2012. Having failed to implement the commitment, Zimbabwe applied for and was granted a derogation for two years from fully implementing its tariff phase out commitments under the SADC Trade Protocol for Category C products. The 2-year derogation was set to be completed in 2014 but its termination was never enforced. Zimbabwe has in the meantime kept or re-imposed tariffs on a range of South African products and in some cases additionally imposed surcharges on certain products.

Zimbabwe has now applied to the CMT, via the SADC Secretariat, for a special dispensation to apply tariffs on a list of 1 007 tariff lines for a period of eight (8) years. The application was submitted to SADC.

DISCUSSION

In this statement, business is making it clear that both the agriculture and non-agricultural industry do not support Zimbabwe's application for a special dispensation or such a dispensation on certain identified tariff lines.

It is also important to note that the time given for consultation on the application is not sufficient. Business' understanding is that **the dti** has requested and was granted an extension by the SADC Secretariat without a specific target date for submission of the response to the application. As business has previously indicated, the matter is not yet ready for consultation. The arrangement agreed to (and subsequently confirmed to in an email) at the Agricultural Trade Forum is that the industry awaits the analysis compiled by government (**the dti)** which will form the basis for substantive consultations with the industry on the matter.

Clarity Sought

Business seeks clarity from government on:

- Whether Zimbabwe's application for a special dispensation is allowed to be dealt with outside of the detailed provisions of Annex X to the SADC Trade Protocol. Annex X, among others, seems to make no provision in the legal framework for any grace period which any

Member State may require (refer to Article 4.1). No clarity is provided on legal criteria to be followed in evaluating Zimbabwe's application. This is very concerning as no legal grounds exist in the SADC Protocol on Trade/ SADC Treaty for this type of special dispensation.

- Whether the derogation is against South Africa or all SADC countries. Even if applicable to other SADC Member States (*de jure*), given the number of tariff lines under which South Africa is the only exporter of product to Zimbabwe (as per the discussion at the ATF), the measure is matter-of-factly to amount to a *de facto* discrimination against South African exports.
- In fact, quoting from paragraph E.88.1 "..be drown (sic) from the 1007 tariff lines that Zimbabwe was in violation of her SADC commitments to South Africa" it seems that it is a measure aimed at South Africa only
- In Annex 2: Trade Data: What is the monetary unit?
- Whether tariff rates shown are MFN (general) rates or those applicable to South Africa given that the other SADC Member States submitted differential offers to South Africa as compared to the offers made to the other SADC Member States.
- Whether the rates are as per the agreement or include unilateral tariff rate reviews. Zimbabwe seems to apply tariff rates that are even higher than their MFN rates to South Africa, and in some cases, surcharges additional to the applied tariffs.
- Whether there is any commitment to phase out or phase down the tariffs over the 8-year period. The application submitted does not make provision therefor. The closest to that is in the last sentence under 'Conclusions': "The country will be undertaking annual reviews of the list of products and report to SADC CMT on progress."

Business would like to get a sense of what the impact of this 'special dispensation' be on the position Zimbabwe takes with respect to other trade arrangements it is engaged in such as COMESA, the Tripartite FTA, the Continental FTA, etc. Or whether this is a case of targeting/ singling out SADC Member States, in particular South Africa?

It is also important for surcharges and discretionary licensing requirement to also be shown in the schedule (+ the rates of surcharges and nature of licensing requirement), also with other NTB measures as they have done with respect to the list of 112 priority products. Moreover, in the event that South Africa considers the dispensation positively, in part or in total, it must be a pre-condition that Zimbabwe phase out all such surcharges and discretionary licensing requirement within 3-6 months and commit not to institute new surcharges or licensing requirement with respect to products qualifying for the special dispensation.

CONCLUSION

BUSA reiterates that both the agriculture and non-agricultural industries are opposed to Zimbabwe's application for special dispensation on implementation of outstanding tariff commitments under the SADC protocol on trade.

Business appreciates the opportunity provided by government to submit input towards Zimbabwe's application for special dispensation. Should **the dti** require additional information, BUSA is available to engage further.