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USTR Notifies Congress Administration Intends to Initiate Free Trade Negotiations with Sub-Saharan Nations

11/05/2002

The Honorable Robert C. Byrd
President Pro Tempore
U.S. Senate
Washington, D.C. 20510

Dear Senator Byrd:

At the direction of the President, I am pleased to notify the Congress that the President intends to initiate negotiations for a free trade agreement (FTA) with the five member countries of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland, hereinafter "SACU") on or after 90 days from the date of this letter. This notification is in accordance with section 2104(a)(1) of the Trade Act of 2002.

As you are aware, the Administration is committed to bringing back trade agreements that open markets to benefit our farmers, workers, businesses, and families. With the Congress' continued help, we can move promptly to advance America's trade interests.

In pursuing a negotiation with SACU, we are responding to Congress' direction, as expressed in the African Growth and Opportunity Act (AGOA), to initiate negotiations with interested beneficiary countries to serve as the catalyst for increasing free trade between the United States and sub-Saharan Africa and for increasing private sector investment in the region.

A free trade agreement with SACU would deepen our economic and political ties to sub-Saharan Africa and lend momentum to our development efforts for the region. SACU is the largest U.S. export market in sub-Saharan Africa, accounting for approximately \$3.1 billion in exports in 2001. Total two-way trade between the United States and SACU was approximately \$7.9 billion in 2001.

Since 2002, U.S. trade preferences provided to sub-Saharan countries through AGOA have contributed significantly to sustainable economic development and poverty alleviation in the region. By moving from one-way trade preferences to a reciprocal free trade agreement, we will build on the success of AGOA – expanding U.S. access to SACU markets, further linking trade to SACU's economic development strategies, encouraging greater foreign direct investment, and promoting regional integration and economic growth.

We plan to use our negotiations with the SACU countries to strengthen growing bilateral commercial ties and to address barriers in these countries to U.S. exports – including high tariffs on certain goods, overly restrictive licensing measures, inadequate protection of intellectual property rights, and restrictions the SACU governments impose that make it difficult for our services firms to do business in these markets. We also see the negotiations as an opportunity to advance U.S. objectives for the multilateral negotiations currently underway in the World Trade Organization (WTO). We will also seek to level the playing field in areas where U.S. exporters are disadvantaged by the European Union's free trade agreement with South Africa.

In recent years, the SACU countries have made important strides in implementing economic reforms and in lifting their people out of poverty. A free trade agreement will reinforce the reforms that have taken place, and will encourage additional progress where needed. An enhanced framework of rules governing trade and close cooperation between our governments will have a profound effect in promoting stronger economies, greater respect for the rule of law, sustainable development, and accountable institutions of governance.

SACU governments, businesses, and citizens regard a possible free trade agreement negotiation with the United States from a similarly broad perspective, and consider such a negotiation to be an important opportunity to move their societies forward economically, politically, and socially. Our exploratory dialogue with SACU during 2002 about a possible free trade agreement has given strong evidence that these countries are ready, individually and collectively, to be free trade partners. As we move forward, we will focus ongoing bilateral and multilateral development assistance and trade-related technical assistance to support commitments these countries will make as part of the FTA, and to strengthen the government institutions in SACU countries that will be responsible for implementing their commitments.

Since early 2002, the Administration has consulted with Members of Congress regarding the broad concept of a U.S.-SACU FTA. Initial consultations indicate broad bipartisan interest in an agreement with SACU. The Administration will continue to consult closely with Congress in accordance with the letter and spirit of the Bipartisan Trade Promotion Authority Act ("TPA Act"). Moreover, to ensure that interested stakeholders are informed of the negotiations and have ample opportunity to provide their views, the negotiations will be conducted in a way that enhances transparency and accessibility.

Our specific objectives for negotiations with the SACU countries are as follows:

- *Trade in Industrial Goods and Agriculture:*

- Seek to eliminate tariffs and other duties and charges on trade between SACU countries and the United States on the broadest possible basis, subject to reasonable adjustment periods for import-sensitive products.

- Seek agreement by SACU countries to join the WTO Information Technology Agreement.

- Seek to eliminate non-tariff barriers in SACU countries to U.S. exports, including licensing barriers, unjustified trade restrictions that affect new U.S. technologies, and other non-tariff measures identified by U.S. exporters.

- Pursue favorable staging of tariff elimination and other market access commitments from SACU countries that improve the competitive position of U.S. goods vis-à-vis those of the European Union in SACU markets.

- Pursue fully reciprocal access to the SACU market for U.S. textile and apparel products.

- Pursue a mechanism with SACU countries that will support achieving the U.S. objective in the WTO negotiations of eliminating all export subsidies on agricultural products, while maintaining the right to provide *bona fide* food aid and preserving U.S. agricultural market development and export credit programs.

- Seek to eliminate SACU country practices that adversely affect U.S. exports of perishable or cyclical agricultural products, while improving U.S. import relief mechanisms as appropriate.

- *Customs Matters, Rules of Origin, and Enforcement Cooperation:*

- Seek rules to require that customs operations of SACU and SACU countries are conducted with transparency, efficiency, and predictability and that customs laws, regulations, and decisions of SACU and SACU countries are not applied in a manner that create unwarranted procedural obstacles to U.S. exports.

- Seek terms for cooperative efforts with the SACU governments regarding enforcement of customs and related issues, including trade in textiles and apparel.

- Seek rules of origin, procedures for applying these rules, and provisions to address circumvention matters that will ensure that preferential duty rates under the FTA apply only to goods eligible to receive such

treatment, without creating unnecessary obstacles to trade.

- *Sanitary and Phytosanitary (SPS) Measures:*

- Seek to have the SACU countries reaffirm their WTO commitments on SPS measures and eliminate any unjustified SPS restrictions.

- Seek to strengthen collaboration with SACU countries in implementing the WTO SPS Agreement and to enhance cooperation with SACU countries in relevant international bodies on developing international SPS standards, guidelines, and recommendations.

- *Technical Barriers to Trade (TBT):*

- Seek to have the SACU countries reaffirm their WTO TBT commitments and eliminate any unjustified TBT measures.

- Seek to strengthen collaboration with SACU countries on implementation of the WTO TBT Agreement and create a procedure for exchanging information with the SACU countries on TBT-related issues.

- *Intellectual Property Rights:*

- Seek to establish standards that reflect a standard of protection similar to that found in U.S. law and that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPs Agreement) and other international intellectual property agreements, such as the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and the Patent Cooperation Treaty.

- Establish commitments for SACU countries to strengthen significantly their domestic enforcement procedures, such as by ensuring that government agencies may initiate criminal proceedings on their own initiative and seize suspected pirated and counterfeit goods, equipment used to make or transmit these goods, and documentary evidence. Seek to strengthen measures in SACU countries that provide for compensation of right holders for infringements of intellectual property rights and to provide for criminal penalties under the laws of SACU countries that are sufficient to have a deterrent effect on piracy and counterfeiting.

- *Trade in Services:*

- Pursue disciplines to address discriminatory and other barriers to trade in the SACU countries' services markets. Pursue an ambitious approach to market access, including enhanced access for U.S. services firms to telecommunications and any other appropriate services sectors in SACU markets.

- Seek improved transparency and predictability of SACU countries' regulatory procedures, specialized disciplines for financial services, and additional disciplines for telecommunications services and other sectors as necessary.

- Seek appropriate provisions to ensure that the SACU countries will facilitate the temporary entry of U.S. business persons into their territories, while ensuring that any commitments by the United States are limited to temporary entry provisions and do not require any changes to U.S. laws and regulations relating to permanent immigration and permanent employment rights.

- *Investment:*

- Seek to establish rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in

SACU countries, while ensuring that investors of SACU countries in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States, and to secure for U.S. investors in SACU countries important rights comparable to those that would be available under U.S. legal principles and practice.

-- Seek to ensure that U.S. investors receive treatment as favorable as that accorded to domestic or other foreign investors in SACU countries and to address unjustified barriers to the establishment and operation of U.S. investments in those countries. Provide procedures to resolve disputes between U.S. investors and the governments of SACU countries that are in keeping with the Trade Promotion Authority goals of making such procedures expeditious, fair and transparent.

- *Electronic Commerce:*

-- Seek to affirm that the SACU countries will allow goods and services to be delivered electronically on terms that promote the development and growth of electronic commerce.

-- Seek to ensure that the SACU countries do not apply customs duties in connection with digital products or unjustifiably discriminate among products delivered electronically.

- *Government Procurement:*

-- Seek to establish rules requiring government procurement procedures and practices in the SACU countries to be fair, transparent, and predictable for suppliers of U.S. goods and services who seek to do business with the SACU governments.

-- Seek to expand access for U.S. goods and services to SACU government procurement markets.

- *Transparency/Anti-Corruption/Regulatory Reform:*

-- Seek to make the SACU countries' administration of their trade regimes more transparent and pursue rules that will permit timely and meaningful public comment before the SACU governments adopt trade-related measures.

-- Seek to ensure that the SACU countries adopt and apply high standards prohibiting corrupt practices that affect international trade and enforce such prohibitions.

- *Trade Remedies:*

-- Provide a bilateral safeguard mechanism during the transition period.

-- Make no changes to U.S. antidumping and countervailing duty laws.

- *Labor, including Child Labor:*

-- Based upon a review and analysis of their labor laws and practices, establish procedures for consultations and cooperative activities with the SACU countries to strengthen their capacity to promote respect for core labor standards, including compliance with ILO Convention 182 on the worst forms of child labor, building on technical assistance programs administered by the U.S. Department of Labor.

-- Seek an appropriate commitment from SACU countries to the effective enforcement of their labor laws.

-- Establish that SACU countries will strive to ensure that they will not, as an encouragement for trade or

investment, weaken or reduce the protections provided for in their labor laws.

- *Environment:*

- Seek to promote trade and environment policies that are mutually supportive.

- Seek an appropriate commitment by the SACU countries to the effective enforcement of their environmental laws.

- Establish that the SACU countries will strive to ensure that they will not, as an encouragement for trade, weaken or reduce the protections provided for in their environmental laws.

- Seek to assist the SACU countries to strengthen their capacity to protect the environment through the promotion of sustainable development, such as by establishing consultative mechanisms.

- *State-to-State Dispute Settlement:*

- Encourage the early identification and settlement of disputes through consultation.

- Seek to establish fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.

In addition, the FTA will take into account other legitimate U.S. objectives including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests.

We are committed to concluding these negotiations with timely and substantive results for U.S. workers, ranchers, farmers, businesses, and families, by pursuing these specific objectives and the overall and principal U.S. negotiating objectives set out in the TPA Act. We look forward to continuing to work with Congress over the coming weeks and after negotiations with SACU begin. Working together, we can reach a successful conclusion that will benefit the United States and the SACU countries and support our broader objectives.

Sincerely,

Robert B. Zoellick

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