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# **South African Business and Trade Negotiations**

**Findings from a Survey of South Africa Foundation Members**

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## Findings from a Survey of South Africa Foundation Members

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### 1. Why this Report?

In a rapidly globalising world the environment within which business operates is of critical importance. Trade policy is a key determinant of that environment. In an increasingly interdependent world it impinges on ever wider swathes of economic management, determining the architecture of markets. These interdependencies are managed through trade negotiations, in which governments strike reciprocal bargains.

Trade negotiations are of particular, but not exclusive, concern to companies operating in international markets. Traditionally, these agreements were restricted to “border measures” impacting on trade flows, notably tariffs and non-tariff barriers. Over time the net has widened to include “behind-the-border” issues, increasingly of a regulatory nature. Thus trade agreements now include *inter alia*: intellectual property rights, investment, services, government procurement, standards and customs administration. Consequently the trade agenda is firmly connected to domestic regulation, raising challenges for companies operating in domestic markets but also political sensitivities around perceived loss of sovereignty.

One result has been to generate a backlash, led by civil society movements of various stripes, loosely termed the “anti-globalisation lobby”. This lobby, or at least its fringes, would like to turn back the clock and dismantle the multilateral trading system. This alone should be cause for concern, not least because such groups are active in South Africa and our region.

Of more immediate concern to South African business is that agreements currently under negotiation at various levels and in different forums have the potential to substantially alter the playing field: domestically, regionally and internationally. These potential agreements will have major implications for the conduct of business and ultimately may determine who survives and who does not.

The basic framework for setting trade policy rules is the World Trade Organisation (WTO), through its multilateral trading rounds. It is complemented (some would argue undermined) by a plethora of regional

trade arrangements. So the South African government, led by a severely resource-strapped Department of Trade and Industry (the dti), is currently involved in the following actual and potential negotiations:

- a. The “Doha Development Agenda” (WTO)
- b. The Southern African Customs Union (SACU) – United States free trade agreement (FTA)
- c. The SACU-European Free Trade Area FTA
- d. The SACU-Mercosur (Argentina, Brazil, Paraguay, Uruguay) FTA
- e. The proposed SACU-India FTA
- f. The proposed SACU-China FTA
- g. The proposed SACU-Nigeria FTA

And there are various other possibilities in the pipeline. Meanwhile, the major trading powers, notably the EU (Economic Partnership Agreements) and US (extending the SACU FTA), have their own designs for our region and are vigorously implementing them.

Of great concern, not just to business, is South Africa’s capacity to conduct and effectively implement all of these negotiations, and the implications this holds for negotiated outcomes. This particularly applies to FTA negotiations, given that we cannot rely on international coalitions for inputs into negotiations and political support to prosecute them, unlike in WTO negotiations. Furthermore, government’s ability to conduct these negotiations depends on inputs received through consultative processes in which business, as the custodians of key investment decisions, should play a critical role. Yet organized business is in a state of transition.

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With these considerations in mind, in the second half of last year we set out to survey South Africa’s captains of industry, to get a sense of their views on South Africa’s preparedness for international trade negotiations.

## **2. Survey Results**

The survey was constructed to yield preliminary insights into key corporate decision-makers’ views on the importance of trade negotiations for their business processes and “South Africa Inc.’s” preparedness for them. Questions were deliberately open-ended, allowing maximum discretion in answering them. This was necessary to obtain insight into perceptions of these issues, in order to guide subsequent research and activities. Here we present a brief synopsis of key findings.

The 13 companies that responded were heterogeneous. They included multinational corporations with foreign control, and varied widely in terms of their economic activities. Collectively they constitute a significant spectrum of economic activity in South Africa, ranging from resources through manufacturing to services. This was a broadly representative sample.

Reflecting this diversity, management of strategic planning processes varied considerably. Foreign multinational corporation respondents tended to take their direction from corporate headquarters; South

African-based multinationals varied from centralized CEO-driven structures to decentralized division-driven processes. Strategic planning is taken seriously across the board, although its central drivers varied from financial considerations (budget cycles) to industry positioning (value-chain analysis), with differing emphasis placed on each.

Generally most companies indicated that they were aware of government's broad negotiating agenda. Some were aware of the details as they pertained to their company, whilst others clearly did not see the full picture and how trade-offs inherent in trade negotiations might effect them specifically. Most respondents considered trade negotiations to be important to their company's fortunes, but other (generally unspecified) factors were considered equally if not more important. Presumably these would include black economic empowerment and industry charters, amongst other issues.

*Whilst most respondents thought that business was sufficiently organized to advise government on trade negotiations, there was a general view that a more holistic approach is required in order to prevent narrow sectoral interests from dominating such interactions.*

From this standpoint respondents were generally concerned with the course trade negotiations take and recognized the potential impacts, both positive and negative, they could have. Yet most Respondents were concerned that government did not have sufficient capacity to effectively deliver on its agenda and did not consult business sufficiently. Whilst most respondents thought that business was sufficiently organized to advise government on trade negotiations, there was a general view that a more holistic approach is required in order to prevent narrow sectoral interests from dominating such interactions. Some respondents pointed out that this could be achieved by establishing a dedicated government-business structure focused on coordinating trade negotiations inputs.

This brief insight into corporate leaders' perceptions of the importance of trade negotiations to their companies and "SA Inc.'s" preparedness to effectively negotiate our interests fits with generally held perceptions on these matters. Below we reinforce these findings through a more systematic analysis based on an emerging literature on the subject.

### **3. How Effective Is "SA Inc.'s" Trade Negotiating Machinery?**

Effectiveness in trade negotiations is derived from at least four inter-related sources<sup>1</sup>:

- a. Market power
- b. Enrollment power
- c. Commercial intelligence networks
- d. Domestic institutions

We address each in turn below.

#### *Market Power*

Market power refers to a country's economic preponderance, both overall and in particular industries. Clearly South Africa is not a major economic power, although in our region we are significant. Whilst

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<sup>1</sup> See Drahos, P. "When the Weak Bargain with the Strong: Trade Negotiations in the WTO", mimeo.

our government does wield substantial diplomatic power given its dominant economic position in the region, this does not translate into market power abroad. Therefore in multilateral negotiations we are forced to seek alliances. Yet capacity constraints in key government departments, coupled with coordination failures<sup>2</sup>, inhibit our ability to drive such alliances. And in bilateral negotiations we are at a significant disadvantage relative to our larger partners, including big developing countries.

### *Enrollment Power*

“Enrollment power” refers to the ability of the state, ie the South African government, to enlist other actors both domestically and internationally, to its “team” for the purpose of prosecuting a trade negotiation. This does take place to some extent, notably through relations with a few domestic and international civil society organizations.

But there are serious capacity constraints in the lead Department, the dti, to effectively pursue such collaborations. A glaring deficiency is the absence of a strong, well-resourced research capability in the dti. Such state capacity as exists in, notably, the Industrial Development Corporation and the International Trade Administration Commission, is not at the ready disposal of trade negotiators. Nor do strong South African trade negotiations-focused research institutions exist outside the dti.

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### *Commercial Intelligence Networks*

Organs of state traditionally possess some of this capability, notably via networks of foreign economic offices and political missions. Organisation for Economic Cooperation and Development (OECD) countries pay great attention to this aspect of their overseas diplomatic functions<sup>3</sup>. An example is the US diplomatic operation in South Africa, in which approximately 20 US government agencies are represented<sup>4</sup>. Similarly, the Japanese have an extensive commercial intelligence gathering apparatus, notably the Japan External Trade Organisation<sup>5</sup>. The Chinese too have an extensive and active, if ill-understood, diplomatic presence.

Of more importance are corporate intelligence networks and associated market analysis. Given that trade negotiations alter the playing field, generating winners and losers, it is to be expected that companies would actively track them not least as part of a normal intelligence effort. In large multinational companies intelligence work is increasingly being conducted by dedicated intelligence units, underpinned by the rapidly growing discipline of competitive intelligence<sup>6</sup>.

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<sup>2</sup> Last year the dti sought and obtained cabinet sanction to establish an intra-governmental trade negotiations forum. Anecdotal evidence suggests that this forum has yet to really establish itself as the fulcrum for coordinating government positions in trade negotiations.

<sup>3</sup> See Calof, J. and Skinner, B. “Government’s Role in Competitive Intelligence: What’s Happening in Canada?”, mimeo. Also see Ikeya, N. and Ishikawa, H. (2001) “The Japanese Intelligence Culture”, *Competitive Intelligence Review*, Vol. 12(4), pp 51-56.

<sup>4</sup> And arguably supported by the American Chamber of Commerce based in Johannesburg.

<sup>5</sup> Which collaborates closely with the Japanese Chamber of Commerce and Industry in South Africa.

<sup>6</sup> This field is particularly active in the US, but is growing rapidly in other OECD countries. For more details see [www.scip.org](http://www.scip.org). A useful primer is Bernhardt, D.C (2002) “Strategic Intelligence: The ‘Sword and the Shield’ of the Enterprise”, *Competitive Intelligence Magazine* 5(5), September-October.

However, of most importance for this discussion is the extent to which government and business structures cooperate to share intelligence to develop positions for trade negotiations. Organized business has a critical role to play here<sup>7</sup>; whilst government must be both receptive and able to absorb inputs emanating from the business community.

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The unification of organized business was recently completed but remnants of the fragmentation of the past will have to be overcome for business to play its rightful role in this process. Crucially, there is no obvious center of trade policy analysis, reflecting the fact that trade negotiations are low down the priority list. As a first step, this deficiency needs to be urgently corrected.

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Compounding this, government-business collaboration in preparing negotiating positions is haphazard at best. Currently such coordination that takes place is infrequent and focused on inappropriate forums (see “Domestic Institutions” below). It is here that South Africa’s institutional frameworks are weakest and intervention from business is urgently required.

Furthermore, the constant state of flux in the dti’s “customized sector programmes” (CSPs) inhibits development of clinically targeted negotiating positions. The lack of coordination between Export Councils and trade negotiators reflects these problems, although it seems that steps are being taken to address this. Furthermore, it is widely recognized that the South African government’s overseas offices are not operating optimally to fulfill their commercial intelligence function, let alone provide basic services to South African business. In large measure this arises from differences between the dti and the Department of Foreign Affairs over authority and responsibilities abroad. This needs to be urgently addressed, with organized business playing a critical role.

By contrast, in OECD capitals state structures are long-practiced at downloading and synthesizing commercial intelligence emanating from foreign office networks. And they tend to have formalized structures for sharing information and intelligence with business. For example, the United States Trade Representative operates a legally-mandated sectoral advisory system, specifically established to develop positions for trade negotiations. Building on these efficiency advantages, they are also able to devote substantially more resources to trade negotiations. Consequently, they are better placed to prosecute their negotiating agenda than we are.

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<sup>7</sup> See International Trade Centre (2002) “Business Advocacy and Trade Policy-Making – How the Business Community in Developing Countries Can Benefit from the Doha Development Round”, ITC, Geneva, April.

## *Domestic Institutions*

“Domestic institutions” refers to the support structures or frameworks within which mobilization for trade negotiations takes place. Whilst South Africa does have some formal supporting institutions, notably the National Economic Development and Labour Council (NEDLAC) and Parliament, it is our contention that these are not operating optimally from the viewpoint of promoting effective participation in trade negotiations.

Parliament’s constitutional role is to ratify trade agreements. This is an important component of the negotiation process, as failure to ratify could completely undermine carefully constructed international trade treaties<sup>8</sup>. Under section 231 of the Constitution Parliament is not empowered to amend international agreements, which are the Executive’s prerogative. Presumably Parliament could refuse to ratify a trade agreement, but in practice this has not been tested.

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Consequently Parliament does not play a critical role in the formulation of negotiating positions. The nature of parliamentary processes is not conducive to the development of coherent negotiating positions. However, Parliament could make a substantial contribution to encouraging public debate on trade policy and negotiations. Furthermore, Parliament is increasingly interested in interrogating legislation emanating from the Executive, and there have been instances of wholesale change to such legislation. Therefore, organized business should carefully consider how to interact with the parliamentary portfolio committee on Trade and Industry. Hence, there is a serious need to upgrade the existing business advocacy capacity at Parliament.

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NEDLAC’s mandated role is to build consensus on key policy issues, and in pursuit of this to review legislation emanating from the Executive. Its input is generally required before Parliament considers legislation, although this is increasingly questioned by parliamentarians. Given Parliament’s constitutional role in the legislative process this dynamic reinforces the need for business to strengthen its engagement with Parliament.

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Currently plans are in motion to strengthen NEDLAC’s role to extend to formulating positions for trade negotiations. Partly this would be based on aligning the dti’s CSPs with NEDLAC’s sectoral structures, assuming this could be accomplished.

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<sup>8</sup> For an interesting analysis of this issue see Odel, J. S. (2000) *Negotiating the World Economy*. New York: Cornell University Press, Ch 8. In the US this problem led to the establishment of modern institutions charged with building negotiating positions and forging consensus over them. Input from business is central to this legally mandated process.

Yet it is questionable whether NEDLAC is an appropriate forum to source the kind of commercial intelligence required to support trade negotiations. Trade unions, which are very active in NEDLAC, by their very nature seek to protect their members and hence would most likely view market openings via trade negotiations in a dim light. Undoubtedly they have a valuable role to play in the consensus-seeking process on the broad trade negotiations agenda. However, they are not in a position to develop offensive interests for trade negotiations given that they are not in control of corporate strategy. So when it comes to the competitive intelligence detail crucial to formulating negotiating positions business must be in the driving seat, whilst making maximum use of areas of common interest with other constituencies. That cannot be done through NEDLAC's consensus seeking mechanism, which is intended to converge towards the lowest common denominator - an entirely inappropriate process for hard-nosed trade negotiations.

Therefore, business urgently needs its own institutionalized structure with government, especially the Executive but also Parliament, through which to channel such information. After all it is business leaders that decide on corporate strategy.

#### **4. An Agenda for Action**

Based on the analysis developed above, here we summarize the main recommendations put forward in order to proffer an "action agenda" for organized business:

- a. Organised business needs to elevate trade negotiations higher up on its own priority list as a matter of urgency, in view of the extensive negotiations schedule government has embarked upon.
- b. In doing so organized business needs to create one central coordination point to prepare positions for trade negotiations thereby avoiding sectoral fragmentation.
- c. Once organized business has developed appropriate internal coordination mechanisms it must push for the establishment of a dedicated government-business structure focused on developing positions for trade negotiations.
- d. And it should convince government to invest more in research capacity dedicated to trade negotiations, and towards this end support greater alignment of government's existing resources.
- e. Within this business needs to persuade government to improve the operations of its foreign offices and firmly establish roles and boundaries between the two key departments involved in the trade negotiations cycle, the dti and the Department of Foreign Affairs, and relevant intelligence agencies.
- f. Yet organized business must also build its own trade policy research capacity to support its central coordination mechanism, taking care to actively disseminate research outputs with a view to informing the public debate.

- g. Furthermore, organized business needs to carefully consider its international business advocacy networks with a view to using these as instruments to advance “SA Inc.’s” interests. For example, the Indian Confederation of Industry operates offices in many countries around the world including South Africa. Building such links would serve as outlets for South African business positions, as well as conduits for gathering information on positions being formulated by business organizations abroad.
- h. Finally, organized business should review its interactions with Parliament with a view to strengthening the latter’s role in trade negotiations.

## The South Africa Foundation

The South Africa Foundation is an association of South Africa's largest corporations and major multinational companies with a significant presence in South Africa. They are represented on the Foundation's Council at the level of Chief Executive or Chairman. The Foundation is the independent, non-partisan voice of South African business leadership. It is financed entirely by private subscription from its corporate members.

The Foundation believes that business leadership has a collective duty to contribute to the process of policy-making on national and international affairs. It further believes that a strong, independent private sector, operating within a market-orientated economy, is an essential feature of any successful, free and democratic society.

## Objectives of the Foundation

The Foundation seeks to formulate and express a co-ordinated view on macro-economic and other national issues and to promote the interests and further growth of South Africa's private sector both domestically and internationally. The Foundation strives to promote enterprise and an environment conducive to the conduct of business. It is also believed that the development of human capital and the raising of income levels are essential in building a successful nation.

The South Africa Foundation fosters relationships between South Africa and the rest of the world, in the belief that these relationships will improve opportunities for South Africa as well as for the entire southern African region.

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The views expressed in this document are those of the author and do not purport to represent the views of the South Africa Foundation. It is published as a contribution to the public debate on an issue of topical interest.