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Working Party on State Trading Enterprises

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STATE TRADING

QUESTIONS FROM THE EUROPEAN UNION REGARDING SOUTH AFRICA'S NEW AND FULL NOTIFICATION¹

The following communication, dated and received on 27 March 2024, is being circulated at the request of the delegation of the European Union.

The European Union thanks South Africa for its notification [G/STR/N/18/ZAF](#) – [G/STR/N/19/ZAF](#) – [G/STR/N/20/ZAF](#) and would like to request some additional information.

The South African Sugar Association (SASA) is governed by the Sugar Act 1978, the Sugar Industry Agreement, 2000, amended 2018 (SIA) and the SASA Constitution, amended 2018, according to publicly available information (<https://sasa.org.za/sasa-at-a-glance/>). The Powers of the Council of SASA, notably those laid down in Nr. 5 (j) quoted below as well as (k) states: [...] "purchase, sell or deal in any sugar industry products or form any companies or bodies to purchase, sell or deal in any sugar industry products and act as the agent of any company or body in the purchase or sale of any sugar industry products;" [...].

Question 1

In this regard could South Africa explain in what respect SASA differs from the entities covered by the WTO working definition of a state trading enterprise ("Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.")?

Question 2

Point 5 (j) of the SASA Constitution indicates that SASA, among other functions, exercises power regarding the quantity of sugar to be exported each year, and each mill's share of these quantities.

As SASA appears to have special rights and export monopoly and therefore seems to be a state trading enterprise within the meaning of the WTO working definition, could South Africa please provide further information of the operation of SASA?

Question 3

The Powers of the Council of SASA in (j) states: "determine the quantity of sugar required for the local market, the quantity of carry-over stocks, the quantity of sugar to be exported each year, and each mill's share of these quantities, subject only to the provisions of the Agreement and any regulation published under section 10 of the Act". In this regard, the determination of the quantity of sugar to be exported each year, and each mill's share of these quantities, might *a priori* constitute an export restriction in the sense of Article XI:1 GATT, and if so, would arguably have to be justified, e.g. by invoking the exceptions in Article XI:2 (a) or (b).

¹ [G/STR/N/18/ZAF](#) – [G/STR/N/19/ZAF](#) – [G/STR/N/20/ZAF](#)

Could South Africa explain how they respect the relevant provisions of GATT (Articles XI:1 and XI:2) since the determination of the quantity of sugar for each year could constitute an export restriction?

In this context, the text of the note Ad Article XI (Ad Articles XI, XII, XIII, XIV and XVIII) clarifies the following: "Throughout Articles XI, XII, XIII, XIV and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations."
