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**The role of Services Related Trade Policies and
Trade Negotiations for Structural Adjustment**

by

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Speaking Points – South Africa

- Since the GATS became operational in 1995, the services sector has seen dramatic and radical evolution that could never have been foreseen by the architects of the agreement. We currently live in a world characterized by an increasingly seamless integration of traditional manufacturing, services, artificial intelligence and robotics, what is now commonly referred to as Industrie 4.0
- Whilst this new paradigm has spawned vast new streams of economic activity, at the same time, these groundbreaking changes are causing huge social, political and economic dislocations across the globe. However, it is in developing countries that the impact will be the most severe, as they are the ill-equipped to deal with these tectonic shifts.
- We live in an age where the pursuit of greater efficiency is driven by “disruption”, a term that until recently evoked negative connotations. Now the largest corporations in the world are embracing it.
- How do we locate these major shifts within the multilateral trade policy and regulatory landscape?
- As a point of departure it is important to recognize that in SA’s view, domestic regulations per se are considered important and necessary for trade in services. However, we are opposed to the process, nature and scope of the current DR negotiations.
- Domestic Regulation (DR) as it is understood in the context of the GATS can influence the role of services for structural transformation and development in South Africa. DR serves to put the final piece of services liberalization together to ensuring effective market access.
- The efficiencies that can be generated through DR rules depend on the nature of a Member’s services sector, and on its own domestic context and history on how a sector has been regulated in the past. In other words, the benefits are not necessarily automatic; nor can it be sufficiently proven that a one-size fits all model is the most suitable approach to multilateral, horizontally-applied DR disciplines.
- A simple data analysis demonstrates that Africa, taken as a whole is not a major services exporting region. **There is also minimal services export growth forecasted for African countries.** This is not to argue that there is a direct causal link between

imports, exports and trade balance vis-à-vis the proposed DR disciplines, because it mischaracterizes the nature and effect of DR rules, but also perpetuates the misnomer that these rules are about 'trade'. A convincing case can be made that GATS Article VI.4 has been misinterpreted and is aimed at something other than DR disciplines under the GATS.

- The proposals intend to restrict the actual policy-making processes of governments, not just the rules and policies that you can develop, but in terms of how you develop them, who can participate in this process such as corporations and foreign states, and setting the terms by which you go about these decision-making processes.

Defining Africa's Priorities

- If Agenda 2063: The Africa We Want is anything to go by, enormous future potential lies in Africa. Africa shall be a continent where the free movement of people, capital, goods and services will result in significant increases in trade and investments amongst African countries rising to unprecedented levels, and thus strengthening Africa's place in global trade.
- One of the key questions is to what extent the DR disciplines are likely to impact the development of the domestic services sector. The proposals in its present form do not promote "development", nor do they seem to adhere to the tenets of the GATS i.e. to ensure the quality of services under the market access commitments that Members have undertaken.
- The proposed DR rules will reduce the policy space for Africa. For African countries, the Continental Free Trade Agreement heralds our most ambitious trade initiative yet. It is seen as the locomotive for unlocking our industrial, services and trade potential. This will not be easy but the intention is to build from the ground up. Conversely, the current DR negotiations are seeking to impose a top-down approach.
- The developed economies are aiming to gain a competitive advantage and remain the dominant players of services in the market. By imposing restrictive DR requirements on the African continent, and constraining our policy space, these economies are aiming to obtain policy space for themselves. Industrialised economies already have first-mover advantage.
- It is very clear that Africa is a region with huge growth potential and a simple data analysis, without accounting for future exponential growth rate of Africa, shows that the region with its policy space will have the leverage to achieve its industrial policy goals. Without preserving our policy space, and with stringent binding DR rules that would lock us in, Africa's development will be hampered.
- Now, if we look at this from a policy perspective, projections show that in 2050, the bulk of the world's population growth will take place in Africa. Developed countries population growth is declining, and population ageing will steadily increase. Therefore, we will have a robust labour force, and this will certainly contribute to

stronger African economies. However, this can fail if we bind ourselves to what is being proposed.

Clarifying the scope of the DR rules

- The *Bananas* case has given a wide interpretation to the scope of the GATS, and almost any type of state intervention, to the extent that it affects trade in services, falls under it. In the WTO context, there are 14 services sectors, over 50 sub-sectors and hundreds of services falling under the GATS. Therefore, how do you distinguish between what is within the scope of these proposed DR rules, and what is not?
- The proponents need to clarify the scope of the DR rules because what we are seeing is that our capacity to promote policies that facilitate growth, employment creation, investments and industrialisation would be severely undermined if these horizontal DR rules in its current framing are adopted.
- How? They would actually limit our policy space to determine independently why, which and how the measures we want to introduce in our relevant jurisdictions should be taken. This regulatory model will be detrimental to the development interests of Africa. Before we even develop, there are some Members who are imposing horizontal disciplines on an extremely broad scope of measures that will severely restrict our capacity to grow.

Additional info

When the *Development of Measures and Transparency* proposals are read together, it is clear that *too much* emphasis is being placed on the domestic processes involved in developing new domestic measures. Most services sectors are intrinsically related to perform social, cultural and economic functions, for which regulation in the national interest would be the biggest priority. However, what these proposals attempt to do, is grab the only tool that governments have to intervene and seek corrective measures, and consequently erode the minimal policy space that is left to develop a particular sector. It was neither the will nor the intent of GATS Art. VI.4 to multilaterally centralize and cede a government's sovereign regulatory powers to the rest of the WTO Membership.

The African Group has always reaffirmed the 'right to regulate' and that preserving the necessary policy space is critical to Africa's long-term developmental objectives. The African Ministers of Trade restated in the AU Declaration on WTO Issues¹ that any outcome on GATS Article VI.4 disciplines shall not involve the implementation of new and/or onerous administrative requirements or requirements that intrude into the domestic policy-making processes.

What is missing from the new template (TISA) versus the 2009 and 2011 texts?

The proposals depict a reorganisation of headings to include provisions under 'Administration of Measures', 'Development of Measures' and 'Transparency'. Even though a chapter on *Transparency* was contained in the 2009 and 2011 Chairs' texts,

¹ See WT/L/1004 African Union Declaration on WTO Issues adopted by Trade Ministers in Addis Ababa in November 2016.

it is still unclear under which mandate the proponents seek to address ‘transparency’ in DR disciplines.

Further, a closer examination of the proposals reveal that some important substantive provisions that were contained in the previous 2009 and 2011 Chairs’ texts have been removed. The substantive provisions that have been removed include: (i) the recognition of the right to regulate, (ii) recognition of difficulties of developing country members, (iii) definitions of LR, LP, QR, QP and TS², and (iv) the right to use Universal Service Policies.

The substantive elements under Qualification Requirements that have been removed in the current proposals include:

- Verification and Assessment of Qualifications
- Identification of Deficiencies of Qualifications

Both of the above elements were the result of intensive negotiations between 2008-2009, and due to their strong Mode 4 (temporary presence of natural persons) component, were in developing Members interests.

- Mutual recognition of qualification requirements

The lack of mutual recognition or the unwillingness to enter into Mutual Recognition Agreements (MRAs) could constitute an *unnecessary barrier*, and disciplines on the mutual recognition of qualification requirements fall under the DR negotiation mandate.

Linkages to E-commerce and Investment

Prohibition of requirements on data localization, forced tech transfer etc could be interpreted under DR rules to be licensing requirements or technical standards. The new disciplines could seriously hinder the ability of developing countries to impose these requirements, and subject them to onerous and costly dispute settlement proceedings.

Conclusion

Whilst African countries are not opposed to services liberalization and domestic regulations, they do not currently see a sufficient quid pro quo for further liberalising their service sectors and for adoption of onerous disciplines on domestic regulation. The vast and complex technological changes currently unfolding across the global economy, further underlines the need for African countries to approach any new disciplines with analytical and intellectual caution. In making the adjustments that will be required for the 4th Industrial Revolution, African countries will need the necessary policy space to advance their national socio-economic objectives.

² Licensing Requirements, Licensing Procedures, Qualification Requirements, Qualification Procedures and Technical Standards.