



Regional Integration and liberalisation of Trade in Services in SADC

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Record of discussion

1. Background

The liberalisation of trade in services is strongly pursued in the WTO under the General Agreement on Trade in Services (GATS), and through a number of regional and bilateral agreements across the world. Against this backdrop, Southern African Development Community (SADC) countries wish to liberalise their service sectors among themselves in order to deepen their economic integration, and to have co-ordinated positions vis-à-vis third parties, thereby improving participation and influence at the multilateral level.

SADC member states aim to promote regional economic welfare, collective self-reliance, and political and economic integration; in the spirit of equity and partnership. In the services sectors, the common goal is to increase access (availability and affordability) by the regional population to quality services so as to improve the standards of living, create an investor friendly destination, and make the region competitive in global trade. The existing legal and policy framework represented by various Protocols and Memoranda of Understanding (MoUs), does to a large extent promote the liberalization of trade in services though no agreement specifically covers this subject yet. The idea is therefore to build on this framework and to eventually have an agreement on the liberalization of trade in services in SADC.

But what progress have SADC countries made in implementing legal instruments affecting trade in services? How does this tally with multilateral negotiations under the GATS? In particular, what progress has the regional body made in liberalizing the cross-border movement of persons involved in supplying services? How best can regional negotiations on trade in services build on the existing legal and policy framework?

2. Proceedings

Chair: Friede Dowie, Business Unity South Africa

Welcome: Peter Draper, Development through Trade project head, SAIIA

Presentation: Neuma Grobbelaar, Director of Studies and Business in Africa project head, SAIIA:

South African FDI in Southern Africa: Services Issues

- The presentation is based on findings from SAIIA's three-year Business in Africa (BiA) project, whose focus is on the South African companies operating in certain African countries.
- SAIIA's BiA project covered 9 countries, covering north, west, east, and southern Africa.
 - This focuses on the southern Africa research, which covered Botswana and Mozambique.
- Services are critical inputs to creating an enabling environment for private sector development.
- These issues take on added importance in the RI context, where trade-related integration issues require competent and efficient services inputs in order to move ahead successfully.
- SA is now amongst the top 5 investors in Africa, along with US, UK, France, and The Netherlands?
 - R6bn in 1994 up to R24bn in 2004 according to UNCTAD (and likely to be understated).
 - Trend is counter to inflows from elsewhere, which have been declining steadily.
 - SA investors are distinguishing themselves by their interest in non-resource sectors.
 - § To be sure SA companies are investing heavily in resource extraction in Africa, but are also investing in wholesale and retail, financial services, construction, energy, other infrastructure, property development, agriculture.
- Eskom is involved in 33 countries; Transnet in 20 – these two SA parastatals are the biggest outward investors in Africa (by this measure).
 - However, most of SA's investment is private-sector driven, with smaller companies making headway in a variety of regions and countries.
- In general, the BiA project found that SA companies do not view Africa as any less risky as companies from other parts of the world, yet seemingly remain more willing than these companies to invest in Africa.
- Why?
 - Difficult to generalise about drivers of investment by SA firms in Africa.

- Much is resource-seeking (by value); much is also market-seeking (by number of investments).
- Feeling that Africa is the only place left for SA companies with global ambitions, and that the commitment to making a success out of African projects is therefore credible and meaningful? SA companies certainly have not been as successful in OECD markets as they have been in Africa. Nor have they been as successful in other emerging markets (with a few exceptions, including of course mining companies).
- And what has the impact on services sectors been?
 - Seems to have had positive impacts on economic development and growth in Botswana and Mozambique, but clearly many important challenges remain.
 - § Corruption
 - § Bureaucratic red tape
 - § Financial services – i.e. payment problems arising from a poor lending environment in Mozambique.
- Could more trade in services improve economic integration and economic performance in southern Africa?
 - A number of interventions from a regional perspective are possible, i.e. making it easier to invest in cross-border infrastructure through public-private partnerships, harmonisation of regulatory frameworks, and allowing freer flow of labour for training and cross-posting purposes.

Presentation: Nkululeko Khumalo, Development through Trade senior researcher, SAIIA

Liberalisation of Trade in Services

- Presentation based on the results of two research papers: one tracking all SADC Protocols and MoUs relating to services and cross-border trade thereof; and research into the movement of natural persons (mode IV) in the SADC region.
- SADC states are interested in liberalising trade in services in the region—a comprehensive agreement is intended to eventually become an Annex to the existing Trade Protocol (covering only goods at the moment).
- What are the Protocols and MoUs affecting services trade in SADC?
 - Trade Protocol and Draft Annex on Trade in Services
 - Protocol on the Facilitation of the Movement of Persons
 - Protocol on Transport, Communications, and Meteorology
 - Protocol on Energy
 - Protocol on the Development of Tourism
 - Protocol on Education and Training
 - Protocol on Health
 - Protocol on Culture, Information and Sports
 - Finance and Investment Protocol: MOUs on Macro-economic Convergence; Taxation and Related Matters etc are now annexes to this Protocol.

- The point is that all of them impact on trade in services in SADC, but there is no integrated framework to approach integration of services sectors in SADC.
- SADC Trade Protocol
 - All states less DRC acceded; Angola acceded but has no liberalisation schedule
 - Madagascar acceded in February 2006
 - There exists already a Draft Annex on Services:
 - § Follows from the statements in Article 23 of the SADC Trade Protocol, which specify a general commitment to negotiating a services agreement.
 - § The Draft Annex sets out a framework for liberalisation.
 - § The aim is in line with the WTO principle of National Treatment, i.e., that each member will treat all regional service suppliers in the same way.
 - § Will start with six sectors (financial, transport, communications, energy, tourism, and construction)
- SADC Protocol on the Facilitation of the Movement of Persons
 - Comprehensive instrument; not restricted to certain types of labour or activity.
 - But not housed under the Directorate on Trade, Investment, and Finance; it's under the Organ on Politics, Defence and Security.
 - Mozambique the only member that has ratified it yet.
 - South Africa was the biggest resistor when the draft was first tabled in 1995, fearing immigration from poorer neighbours.
 - So ratification is subject to many challenges, and will take time. Implementation will then take more time, so this Protocol is a long way off being fully realised.
 - Implications for Mode IV liberalisation? This means that the liberalisation of movement of natural persons to supply services within the region may remain constrained till SADC member states begin to implement this protocol.
- SADC Protocol on Transport, Communications, and Meteorology
 - All members have ratified and are at various stages of implementation.
 - Members generally very eager to make this a success, and have made good progress thus far.
- SADC Protocol on Energy
 - The energy sector has also made a lot of progress, but must remember that these processes began well before the Protocol existed.
 - § Southern African Power Pool
 - § Westcor Project (aimed at harnessing the large water resources of the DR Congo at Inga)
 - § A RERA (regional electricity regulatory authority) has been created to enable national electricity regulators to exchange information, and to cooperate regionally on electricity.
- SADC Protocol on the Development of Tourism
 - Aim is to develop and market the region as a single but multifaceted tourism destination.

- Regional Tourism Organisation of Southern Africa (RETOSA) was established in 1998.
- SADC Protocol on Education and Training
 - Signed 1997; entered into force 2000.
 - Aims to harmonise and standardise education and training processes and policies in SADC.
 - A Regional Qualification Framework is under development; this idea is considered important, and is certainly important to foster the movement of skilled labour within the region.
- SADC Protocol on Health
 - Lots of programmes and projects covering all the major health problems in SADC .
 - It also includes cooperation on training, exchange of medical personnel etc.
- SADC Protocol on Culture Information and Sports
 - Much work has been done to harmonise and promote the sorts of national level policies that make regional cultural and sporting events more successful.
 - The Southern African Broadcasting Association has been formed
- SADC Finance and Investment Protocol
 - Approved at the recent SADC Summit in Maseru.
 - Contains many MoUs on cooperation in the financial services sector.
 - The approach has been bottom-up, with MoUs on Macro Convergence and Taxation forming the foundations.
- So it is clear that there are many SADC legal instruments affecting trade in services in SADC, and it is difficult to get a clear picture of the overall extent of liberalisation. One has to go through a plethora of provisions found in different legal instruments and then determine how they have been effected in practice.
- It is thus also clear that a unified framework is required, which would tie together all the relevant liberalising provisions of the existing Protocols and MoUs in a single integrated Annex to the existing Trade Protocol.
- Conclusions and recommendations
 - Countries should be commended on the extent of cooperation and harmonisation that has occurred thus far. Liberalisation of trade in services has taken place and is taking place, but nothing is formalised, and it happens under a huge variety of different legal instruments.
 - Further, these processes must be strengthened and fast-tracked, and cooperation must lead to deeper liberalisation of services trade.
 - Also, a single SADC document on services trade liberalisation would help SADC countries negotiate with external partners, especially in the WTO and WTO-plus FTAs with partners such as the US.
 - Should also be aware that, if SADC does push in this direction, Members that have failed to accede or implement some or all of these Protocols and MoUs mentioned above will create big challenges to negotiations on regional services

trade liberalisation. Therefore accession to the various legal instruments should therefore be prioritised.

- Overall, however, one of the biggest challenges to deeper services liberalisation in SADC remains the weakness of the Secretariat, which has no power or resources to monitor and enforce implementation. This is linked to SADC's oldest problem—the unwillingness on behalf of members to cede any real policy sovereignty. SADC is as strong or weak as its Members want it to be. But it would clearly be useful if some sort of enforcement mechanism could be devised to help expedite implementation of agreed to Protocols and MoUs.

Panel discussion:

Owen Willcox (TIPS)

- SA FDI into Africa is highly correlated with growth in Africa.
 - IMF study linking SA growth to African growth showed that for every one percentage point increase in SA's growth rate, most of the rest of Africa increased its growth rate by 0.7 percentage points. The study couldn't identify exactly why, but did establish that it was not due to increased trade in goods. Hence much of it must be attributable to SA FDI, much of which in turn is in services sectors.
 - TIPS's own survey work (of companies) indicated that the barriers to services trade in SADC are actually not that plentiful.
 - § One of the biggest facing SA companies wanting to move into Africa was in fact SA's own exchange controls.
 - § Companies also said that it was not a problem importing skills into countries where they are investing (exception being SA again, where importing skilled workers is still very difficult).
 - So in response to Nkululeko's comments, it is clear that liberalisation under the various Protocols and MoUs has had some effect on making cross-border trade in services easier, and that SA companies have responded to this liberalisation.

Kobus du Plooy (DTI)

- Agrees that, from a government point of view, an Annex on Services Trade would be most welcome, not least for SACU's own progress in this area, but also for progress in EPA negotiations with the EU.
- But there are serious complications:
 - Article V of GATS requires liberalisation of substantially all trade. SADC's 6 sector proposal may fall foul of this requirement – but this may be justified in terms of flexibilities afforded to developing countries.
 - If countries have not acceded to Protocols it technically does not prohibit the negotiation of an Annex on Services, which would be a new document with new disciplines.
 - Would SADC follow the classical GATS architecture, or is there scope to do it differently or go further?

- EPAs are supposed to be covering services, and if they proceed as planned they would be finalised before a SADC Annex on Services Trade could be negotiated. This could create many complications, not least surrounding SADC countries' MFN obligations in services liberalisation within a SADC services Annex.
- Multiple and overlapping membership could plague these negotiations as it would all others.

Matthew Stern (SEGA/DNA)

- Is SADC free trade in services desirable?
 - SADC aims to create a globally competitive regional bloc.
 - SADC countries should therefore be focusing as much as possible on integrating into the global economy, not necessarily integrating with each other. It is crucial that these countries get access to world class, lowest cost service providers, not just those of their neighbours.
 - § All we are doing by liberalising within the region is offering inefficient SA providers preferential access to small market that they can dominate easily, raising costs and not contributing positively to SADC's long-term development.
- Can a SADC process be a model for multilateral liberalisation? That is, shouldn't SADC try and do it regionally first, before 'going global'?
 - Perhaps, as the former would be politically easier. But one would have to ensure that the SADC process actually results in good frameworks and policies, because at the moment service sectors in Africa are not well regulated.
- Can we do it even it is desirable?
 - These are the most complex trade negotiations around—SA has only five negotiators in total, who have to cover GATS negotiations and everything else. Can the region negotiate an effective agreement liberalising trade in services?
- Given that much of the above is negative, what can or should SADC be doing?
 - Research of the nature presented today is absolutely crucial.
 - § The existing legal instruments are incredibly complex and difficult to understand.
 - § More research must be done into SADC's links to the external world, not with itself.
 - § SADC members need to get more involved at the WTO level.
 - § SADC members need to realise that many of the necessary reforms that might form part of negotiations are actually in everyone's own self-interest anyway, and should thus be done unilaterally. Good examples are SA's own regulatory restrictions on telecommunications and exchange controls—liberalising both of these is good for SA and would be very good for the region.

Questions and discussion:

- There are limits to Doha: even if it does conclude it will not result in substantial liberalisation of services in the region. The Africa Group is generally opposed to doing this at the multilateral level for negotiating reasons (i.e., it does not want to 'concede' in services until it has extracted satisfactory 'concessions' from other WTO members in areas such as agricultural market access).
- So the regional option as a starting point is important, especially since the WTO moves so slowly.
- It is not clear how much regional services liberalization would be conducted on an MFN basis as opposed to bilateral or regional preferences since services liberalization concerns regulations, not tariffs.

Synopsis

Members of SADC repeatedly commit themselves to deeper economic and political integration. A fully-fledged free trade agreement is envisaged for 2008; further stages of economic integration are planned for 2010 (customs union), 2015 (common market); and 2016 (monetary union). A crucial element of that process is the integration of regional markets for services. Services are a critical business input, especially in transaction-intensive manufacturing, and efficient supply thereof is thus essential to lowering the costs of doing business in Africa. Similarly, efficient service markets are critical if SADC's stated goal of enabling the poor to gain better access to higher quality basic services is to be realised.

As such, the liberalisation of services in SADC is probably not amongst the most controversial or politically challenging items on the SADC agenda; the benefits are relatively clear, while the political costs are relatively small. The obvious exception is negotiations over the freer movement of human service providers (Mode IV liberalisation under GATS). Nevertheless, greater commitment to rationalising the numerous and varied legal instruments currently affecting trade in services in SADC is needed, as is a single, integrated document regulating and opening regional services trade.

Importantly, this document should avoid raising barriers where they have already been reduced by the various Protocols and MoUs in operation. In other words, any progress towards a single document on services trade liberalisation should recognise and understand the progress already made, and build on that. The intention should not be to start from square one.