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Validating South Africa's Copyright Reform through the Lens of US GSP: The Need to Abolish Reciprocal Requirements

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Executive summary

In 2011 the South African government initiated a reform process that identified certain challenges facing copyright-based industries, such as poor governance, reliance on the old and outdated Copyright Act 98 of 1978, which cannot govern the effective exploitation of copyright in the digital era, and limited access to copyrighted materials for educational purposes. This reform culminated in the Copyright Amendment Bill B13-2017 (CAB), which currently awaits the president's assent.

The same CAB was subjected to a review by the US Trade Representative (USTR) after the International Intellectual Property Alliance (IIPA) challenged the legality of specific provisions as being non-compliant with South Africa's international intellectual property (IP) obligations under Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Berne Convention for the Protection of Literary and Artistic Works. In addition, it was deemed as being unable to provide adequate and effective protection of foreigners' intellectual property rights (IPRs). It is in within this context that South Africa's IP country practice is being reviewed.

This policy insight shows that it is the US' external trade policy to use its Generalised System of Preferences (GSP) and associated conditionalities to promote compliance with international IP obligations in order to protect its own IP interests. In addition, this unilateral approach to enforcing compliance not only infringes on the national regulatory space of GSP beneficiaries but also goes against the spirit of the Enabling Clause, making it difficult for GSP beneficiaries to realise the benefits to industrialise their economies. South Africa's benefits could be withdrawn or suspended should it fail to meet the demands of the IIPA, with the result that the country could experience adverse effects through loss of employment opportunities and incomes. Furthermore, South Africa's continuation of and/or re-admission to the programme would require it to abandon the specific terms of the CAB for a US-oriented form of copyright law. Therefore, it is recommended that:

- South Africa intensifies its export diversification efforts through the production of value-added, knowledge-based goods;
- the African Group, together with other developing country groups at the World Trade Organization (WTO), exploits opportunities at the on-going negotiations within the development agenda to pursue the amendment of the Enabling Clause so that it becomes legally binding and meaningful; and
- the AU aggressively pursues the development of the African Continental Free Trade Agreement's IP Rights Protocol, which embraces the needs of all key players and engenders a bottom-up approach to development.

Introduction

Copyright, like patents and trademarks, is IP because it is an intangible property – a creation of the mind – whose exploitation in South Africa is mainly governed by the Copyright Act No. 98 of 1978 (CA), which recognises the following as eligible for protection: literary, musical and artistic works, cinematograph films, sound recordings, broadcasts and programme-carrying signals.[1] This protection entitles the copyright owner to certain exclusive rights, such as the right to reproduce the work in any manner or form, publish the work and make an adaptation of the work.[2] In the case of literary or artistic works, protection is only guaranteed when the work has been written down, recorded and represented in digital data or signals or otherwise reduced to material form. This is the case because it is not the idea that is protected but its expression,[3] with evidence that sufficient skill or effort has been put into the work to give it a new and original character. Except for films, most works get automatic protection by insertion of the words 'copyright' or 'copyright reserved', 'copyright, [the name and year]' or the copyright symbol (©).[4]

Due to such protection, copyright-based industries contributed 4.11% to South Africa's gross domestic product (GDP) and 4.08% to employment in 2011.[5] In 2016 the operations of the film industry were estimated to have raised the level of production by approximately ZAR 12.2 billion[6] ($674.2 million) and also showed a remarkable increase in employment.[7] Yet even with such successes, the government could not ignore the complaints raised by specific copyright owners against the model of operations of the collecting societies.[8] Accordingly, on 18 November 2010 the Department of Trade and Industry (dti) established the Copyright Review Commission (CRC) to review the operations of the collecting societies and determine the reasons for their ineffectiveness and failures. In its detailed report the CRC established, among others, that:

- the CA was inadequate and outdated;
- the CA failed to provide for all forms of digital exploitation;

1 Government of South Africa, "Copyright Act 98 of 1978 as Amended", https://www.gov.za/documents/copyright-act-16-apr-2015-0942.

2 Government of South Africa, "Copyright Act 98".

3 *Williams v Crichton*, 84 F. 3d 581, (2d Cir.1996) 587, https://cite.case.law/pdf/1793349/Williams%20v.%20Crichton,%2084%20F.3d%20581%20(1996).pdf; https://cite.case.law/f3d/84/581/ where the Court stated that 'it is a principle fundamental to copyright law that a copyright does not protect an idea, but only the expression of the idea'.

4 Companies and Intellectual Property Commission, "Registration Procedure", http://www.cipc.co.za/index.php/trade-marks-patents-designs-copyright/copyright/registration-procedure/.

5 Anastassios Pouris and Roula Inglesi-Lotz, "The Economic Contribution of Copyright-Based Industries in South Africa", Department of Trade and Industry and World Intellectual Property Organization, 2011, https://www.thedti.gov.za/industrial_development/docs/Economic_Contribution.pdf.

6 Currency code for the South African rand.

7 National Film and Video Foundation, *Economic Impact of the South African Film Industry Report 2017* (Pretoria: NFVF, 2017), 4–5, http://www.nfvf.co.za/home/22/files/2017%20files/Final%20NFVF%20Economic%20Impact%20Study%20Report_21_06_2017.pdf.

8 They are organisations established to protect the IP of music creators and administer the collection and distribution of music royalties (eg, the Southern African Music Rights Organisation, the Composers, Authors and Publishers Association, the South African Music Performance Rights Association, etc.). They ensure that composers, publishers and performers are adequately compensated for their creative works.

- there was poor governance by certain collecting societies, with evidence of non-compliance;
- many musicians and authors were apparently ignorant of copyrights, to the extent that in several cases some of them assigned their rights to third parties without fully understanding the implications of such assignments; and
- there was a lack of automatic reversals.

The CRC accordingly recommended an amendment to the CA.[9] Then, in 2013, the dti also noted in the draft IP policy that there was a problem of access to copyrighted material for educational purposes. It recommended the introduction of 'fair use' into the CA as a means to introduce flexibilities that 'enhance access to copyrighted materials and achieve developmental goals for education and knowledge transfer' through broad exemptions for educational, research and library uses'.[10] Along that line, a 2015 CAB was introduced to the public for comments, but the reform process stalled and the purpose of this bill could not be realised.

Thereafter, in May 2017, the dti invited the public to submit comments on the 2017 version of the CAB that was drafted with the objective to:

- align copyright with the digital era and developments at a multilateral level;
- protect the economic interests of authors and creators of copyright works against infringement;
- promote the progress of science, innovation and useful creative activities; and
- enhance access to and use of copyright works to promote access to information for the advancement of education and research and payment of royalties to alleviate the plight of the creative industry.[11]

The IIPA, an organisation that represents US industrial copyright owners, strongly opposed the CAB, contesting the validity of some of its provisions to the extent that it filed a petition with the USTR to review South Africa's IP GSP country practice eligibility criterion. In summary, the grounds for the IIPA's petition were that:

- terms such as the one that limits the transfer of rights to 25 years are likely to severely restrict rights holders from freely entering into contracts in the open market;
- the proposed 'fair use' provision does not reflect the true US 'fair use' rubric, with inadequate jurisprudence to protect IPRs coupled with the extremely broad new exceptions and limitations to copyright protection (on top of 'fair dealing' provisions);

9 dti, "Copyright Review Commission Report", 2011, chap. 3–7, https://www.gov.za/documents/copyright-review-commission-report-2011
10 dti, *Draft National Policy on Intellectual Property (IP) of South Africa: A Policy Framework* (Pretoria: Government Gazette, 2013), 30.
11 Government of South Africa, Minister of Trade and Industry, "Copyrights Amended Bill" (Pretoria: Government Gazette, 2016), https://www.gov.za/sites/default/files/gcis_document/201705/b13-2017copyright170516.pdf.

- a hybrid of broad and unclear exceptions and limitations will be created, leading to the creation of an unhealthy environment for legitimate markets for educational materials and locally distributed books;
- the licensing mechanisms are overly regulated with a potentially adverse impact on freedom to exploit copyrights;
- the enforcement mechanism against high levels of online piracy is poor with inadequate civil and criminal remedies for such infringements; and
- the provisions for technological protection measures that should govern the licensing of legitimate content are inadequate.

Considered collectively, the IIPA argues that the provisions contradict South Africa's international obligations under the TRIPS agreement and the Berne Convention, to the extent that they will not promote adequate and effective IPR protection for foreigners. Therefore, the IIPA demands that through cooperation between the US and South Africa, the respective terms of the CAB should be changed to address these inadequacies. Failure to do so could result in South Africa's eligibility being suspended or its benefits withdrawn in whole or in part.[12]

The review already in progress threatens South Africa's eligibility and benefits under the US GSP programme. It is this review process and the possible implications thereof that form the central focus of this policy insight, with the view of providing recommendations that engender the establishment of a trading regime, particularly an IP trading regime relevant to the needs of the people of South Africa and Africa as a whole.

Protecting intellectual property rights through an IP GSP Eligibility Country Practice Review

The GSP was granted in terms of Resolution 21(ii) of the UN Conference on Trade and Development of 1968, and legalised by the contracting parties of the General Agreement on Tariffs and Trade through the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.[13] It is aimed at promoting the export earnings of designated developing countries through preferential tariff benefits extended by developed countries to promote industrialisation and acceleration of economic growth,[14] without the expectation of any reciprocal concessions on their part.

12 International Intellectual Property Alliance, "South Africa's GSP Review Petition", April 18, 2019, http://infojustice.org/wp-content/uploads/2019/11/IIPA-South-Africa-GSP-Review-Petition-2019.pdf.

13 World Trade Organization, "Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries", https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm.

14 UN Conference on Trade and Development, "Proceedings of the United Nations Conference on Trade and Development Second Session, New Delhi, Volume 1, Report and Annexes" (New York: UN, 1968), 38, https://unctad.org/en/Docs/td97vol1_en.pdf.

This decision, referred to as the Enabling Clause, provides the context within which GSP programmes such as the US GSP find their multilateral legal basis.

Authorised in terms of Title V of the Trade Act of 1974 (codified under 19 US Code sections 2461–2467) as amended, and renewed periodically, the US GSP programme permits preferential duty-free market access for over 3 500 of the 7 000 US tariff lines subject to most favoured nation (MFN) tariff rates above 0% (HTS-8 level) to various designated beneficiary developing countries (BDCs). These include 44 least-developed beneficiary developing countries,[15] but is subject to the US president exercising his power to extend the preferences, BDCs and designate the eligible products.[16]

In his evaluation, the US president needs to consider factors such as the extent of statutory protection for IP (including scope and duration of such protection); the remedies available to aggrieved parties; the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals; the ability of foreign nationals to enforce their IPRs on their own behalf; and whether the country's system of law imposes formalities or similar requirements that in practice, discriminate against meaningful protection for foreign nationals. Particularly introduced under the GSP Renewal Act of 1984 to ensure BDCs' compliance with international obligations on IP, the terms under which that objective is achieved are problematic in the absence of definitive standards for evaluating these factors. As a result, each case may be determined on its own merits.[17]

Against this background, the US GSP eligibility of countries such as Argentina, Ukraine and Uzbekistan has been evaluated, with varying results. In December 2017 the US announced Ukraine's partial suspension as a beneficiary country under the GSP for failing to provide adequate and effective protection of IPRs. This was meant to ensure that Ukraine improved its Collective Management Organisation (CMO) regime.[18] In 2018 Ukraine passed new legislation to improve the governance of CMOs and on 25 October 2019 the USTR announced that the US president had decided to restore 'approximately one-third ($12 million) of the $36 million (estimated trade value) GSP benefits originally removed in 2017'.[19]

In another instance, the US president suspended Argentina on March 2012 for failing to act in good faith in enforcing arbitral awards in favour of US citizens or a corporation/ partnership/ association in which US citizens had 50% or more beneficial ownership.[20] It is important to note that the suspension was not related to IP matters, but arbitral awards. Argentina resolved the matter in 2015 and the outstanding debt was settled in February

15 World Trade Organization, "Generalized System of Preferences, Notification by the United States, Addendum WT/COMTD/N/1/Add.10", June 17, 2019, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/COMTD/N1A10.pdf.

16 Government of the US, "Trade Act of 1974", https://legcounsel.house.gov/Comps/93-618.pdf.

17 Robert Webster and Christopher P Bussert, "Revised Generalized System of Preferences: Instant Replay or a Real Change?", *Northwestern Journal of International Law and Business* 6, no. 4 (1985): 1057.

18 Executive Office of the President of the US, Office of the US Trade Representative, *Special 301 Report* (Washington DC: USTR, 2019), 61.

19 USTR, "USTR Announces GSP Enforcement Actions and Successes for Seven Countries", October 25, 2019, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement.

20 Government of the US, "Notices", *Federal Register* 82, no. 247, December 27, 2017, https://www.govinfo.gov/content/pkg/FR-2017-12-27/pdf/2017-27960.pdf.

2016. Yet, as of 27 September 2017, when the public hearing on GSP country practice was held, neither had Argentina's payment of the arbitral award been recognised nor had its suspension from the GSP been lifted. In addition, investigations into other complaints (including the lack of adequate and effective IPR protection) against Argentina had been initiated. Yet Argentina had complied with the arbitral awards, and that particular docket should have been closed. It was a US private sector panellist (a major importer of Argentinian lithium used for metal production) that highlighted how erroneous it was for the US to continue to uphold Argentina's suspension despite the latter's compliance with the arbitral award.[21] As a whole, the private sector panellists presented specific evidence on the adverse effects the continued suspension had on US and Argentinian producers, exporters, importers and farmers through the loss of jobs, trade diversion and increased collection and manufacturing costs. On 27 December 2017 the US president determined that Argentina's suspension should be lifted.[22]

The USTR initiated a review of Uzbekistan's GSP eligibility in 1999 after the IIPA filed a petition alleging the lack of adequate and effective IPR protection because of inadequacies in Uzbekistan's copyright law and its prolonged failure to join the Geneva Phonograms Convention and the World Intellectual Property Organisation's Performances and Phonograms Treaty and Copyright Treaty (WIPO Internet Treaties).[23] Following Uzbekistan's accession to the WIPO Internet Treaties, the USTR announced on 25 October 2019 that it would close the GSP IP eligibility review.[24]

The review process for the country practices of Argentina, Uzbekistan and Ukraine highlights several concerns. Firstly, once a review has been initiated, there is a strong possibility that its conclusion is not a matter of a few days but rather several months and/or many years – the Uzbekistani matter was closed after almost 20 years. This points to the significant technical and financial resources required by the target country to pursue the defence of its interests to its logical conclusion. Secondly, the immense authority granted to the US president, coupled with the absence of an objective standard for review, leaves room for uncertainty, unpredictability and unfairness during the administrative review process. Such a 'judicial' environment is likely to entrench the imbalance of negotiating power to the disadvantage of the target developing country. In that context, the WTO Panel on the US' Sections 301–310 of the Trade Act of 1974 was right to conclude that a threat to withdraw or suspend GSP benefits by a powerful state is enough to curtail a beneficiary country's sovereign freedom to regulate its copyright industry.[25] Thirdly, the review process is a tool the US can use to gain reciprocal concessions, contrary to the original intentions of the GSP.[26]

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21 Regulations.gov, "GSP Country Practice Hearing Sept 27 2017", https://www.regulations.gov/document?D=USTR-2013-0010-0012.

22 Government of the US, "Notices".

23 Regulations.gov, "GSP Country Practice Hearing".

24 Executive Office of the President of the US, USTR, "USTR Announces GSP Enforcement Actions and Successes for Seven Countries", Press Release, October 25, 2019, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement.

25 WTO, "Sections 301-310 of the Trade Act of 1974: Report of the Panel", https://www.wto.org/english/tratop_e/dispu_e/wtds152r.pdf.

26 Gene M Grossman and Alan O Sykes, "A Preference for Development: The Law and Economics of GSP", *World Trade Review* 4, no. 1 (2005): 48.

South Africa is now a subject of this eligibility review process, with the first hearing held on 30 January 2020.[27] This being the beginning of the review process, it may be premature at this stage to evaluate the implication of the process but for its relevance to policy considerations on the governance of IP systems. Against this background, the following discussion proceeds on the assumption that some or all of the claims and remedies sought by the IIPA could be successful. The issue, therefore, is what policy considerations South Africa – and Africa as a whole – should take into account, going forward.

Policy considerations for meaningful GSP programmes for South Africa

South Africa benefits from preferential market access under the US GSP and African Growth Opportunity Act (AGOA). Passed into law in 2000, AGOA, a unilateral preferential trading agreement, permits developing and least-developed sub-Saharan African countries duty-free and quota-free export of products to the US. To benefit under AGOA, South Africa, like any other sub-Saharan country, must first qualify under the GSP.[28] In other words, qualification for the US GSP benefit is a pre-qualification for AGOA. For the years 2016–2018 combined, a total of 13.9% of South Africa's exports entered the US under the GSP programme, while an additional 22% of its exports claimed duty-free preferences under AGOA. South Africa also enjoys market access benefits under MFN tariff lines, so that the majority of its trade with the US happens outside any special preferential market access – to the extent that South Africa would still enjoy a trade surplus under normal tariff conditions should the US withdrew its duty-free trade preferences. However, the possible loss for sectors such as agriculture, which enjoyed approximately 75% preferential market access (equal to $304 million) under AGOA in 2018, could be enormous. For South Africa to avoid the loss of its benefits it may need to comply with the IIPA's demands and give up its economy-specific oriented CAB.

South Africa could re-direct its trade to other export market destinations such as China (its largest trading partner) and Russia.[29] However, that move alone would not cushion the loss of GSP and AGOA benefits, as the balance of trade favours China. Under such conditions, it is recommended that strong support be given to the dti's efforts to promote value-added exports to China.[30] Also, more emphasis should be placed on maintaining a good trading

27 National Archives and Records Administration, *Federal Register* 84, no. 223 (19 November 2019), 63955–63956, https://www.govinfo.gov/content/pkg/FR-2019-11-12/pdf/FR-2019-11-12.pdf.

28 Eckart Naumann, "South Africa under GSP Country Review: What Implications for Preferential Exports to the United States" (Trade Brief, Trade Law Centre, 18 January 2020), 1–9.

29 South Africa is a member of the group of major emerging economies commonly referred to as BRICS (Brazil, Russia, India, China and South Africa). Since 2012 South Africa's trade policy documents have been underpinned by the emphasis to direct its trade with its BRICS partners and the African market – see Niki Cattaneo et al., "The Mapping of South Africa's Cultural and Creative Industry (CCI) and Creative Economy: A Baseline" (Research Report, South African Cultural Observatory, Port Elizabeth, 2017), 71, https://www.southafricanculturalobservatory.org.za/download/328/.

30 Simbarashe Mhaka & Leward Jeke, "An Evaluation of the Trade Relationship between South Africa and China: An Empirical Review 1995–2014", *South African Journal of Economic and Management Science* 2, no. 1 (2016): 2–3.

relationship with Russia to encourage more exports of cultural goods, in light of South Africa's surplus trade in these goods with Russia.[31] To bolster these efforts even further, urgent attention should be given to initiatives that promote diversification of exports through innovation and production of knowledge-based goods. It is for this reason that the amendment of the CA is timeous to encourage creativity and innovation, and promote exports of value-added products.

Policy considerations for meaningful GSP programmes for Africa

In order to appreciate the implications of GSP eligibility conditions and review for Africa, it is important to note the US' vision of trade with developing countries in light of its 2019 proposal to the WTO General Council. In early 2019 the US submitted two proposals to the WTO in which it emphasised the need to do away with the over-reliance on special and differential treatment provisions (S & D provisions) by some developing WTO members, arguing that these provisions had served their purpose in elevating developing countries. Accordingly, the continued reliance on the principle of self-declaration was greatly undermining the effective realisation of the WTO objective of reciprocity and the substantial removal of trade barriers during trade negotiations. In that regard, it proposed, among others, that any country that is a member of the G20 or any WTO member that accounts for no less than 0.5% of global merchandise trade (import and export) should not take advantage of the S & D provisions. South Africa is not only a member of the G20[32] but also a partaker of no less than a 0.5% share of global merchandise trade.[33] This is the predicament that South Africa and other African countries trading with the US – under either the GSP or AGOA – may find themselves in. To counter this, it is therefore imperative that African countries push toward economic diversification that draws them away from unilateral trading arrangements that subject them to the national interests of superpowers, sometimes contrary to their own needs. With the help of a growing and large youth population, they should pursue the establishment of a knowledge-based economy producing value-added goods and services.[34] To achieve that, the AU should carefully consider the specific vision and strategies that the IP Rights Protocol of the African Continental Free Trade Agreement will be built on. Current IP systems in Africa are fragmented, with different models of regulation at regional, national and organisational levels.[35]

31 Cattaneo et al., "The Mapping of South Africa's Cultural and Creative Industry".
32 G20, "G20 Participants", https://g20.org/en/about/Pages/Participants.aspx.
33 WTO, *World Statistical Review* 2018, 2017, 124, Table A6, https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf.
34 Vera Songwe, "A Continental Strategy for Economic Diversification Through the AfCFTA and Intellectual Property Rights" in *Foresight Africa: Top Priorities for the Continent 2020–2030* (Washington DC: Brookings Institute, 2020).
35 UN Economic Commission for Africa, *Assessing Regional Integration in Africa ARIA IX, Report* (Addis Ababa: UNECA, 2019), 107–123.

Consequently, the negotiation process of this protocol should promote extensive collaboration among stakeholders to ensure its legitimacy and enforceability.[36] This will necessitate a bottom-up approach to regional IP rights development as opposed a top-down approach.

From a multilateral point of view, the US' conditionality and review process thus contradicts the development agenda of the Enabling Clause, partly because of the ambiguity surrounding the principle of non-reciprocity,[37] to the disadvantage of developing countries in Africa. This weakness was generally admitted in paragraph 44 of the 2001 Doha Ministerial Declaration, as members were called upon to carry on work to strengthen the terms of S & D provisions in order to attain meaningful results. The Enabling Clause is one of the S & D treatment provisions. The 11th WTO Ministerial Conference in 2017 also emphasised the need for appropriate S & D treatment provisions to be part and parcel of the negotiations on fisheries subsidies.[38] In February 2019 South Africa, Kenya and the Central African Republic, together with other developing countries, emphatically opposed the US' proposal against S & D treatment provisions.[39] These decisions and declarations represent the high level of support for the establishment of a trading regime that promotes the development of under-privileged members. Should similar issues arise in the future, the African Group should submit its own arguments in emphatic terms. Its declaration on WTO issues dated 28 December 2018 is not only non-binding but generally points to the group's vision regarding the treatment of development issues at the WTO – that alone is not enough. A stronger voice, with specifics on the significance of a legally binding Enabling Clause, is crucial.

Conclusion and recommendations

Copyright industries create significant positive economic benefits for South Africa's economy that support the resolution of the triple poverty, inequality and unemployment challenge. As such, the objectives of the CAB are appropriate. The claims against certain terms of the CAB are but a means to engender reciprocity from South Africa and gain market access for US IP products – contrary to the spirit of the Enabling Clause. Should the review end with the suspension or withdrawal of South Africa's GSP benefits, there are bound to be trade losses for the country. To re-gain admission into the system South Africa would have to consider giving up its economy-specific copyright regime in favour of a US-oriented one.

For African countries, there is no doubt that as long as they want to be part of the GSP, they must comply with the eligibility conditions. Yet, with a big and growing population,

36 Carolin Ncube et al., "Intellectual Property Rights and Innovations: Assessing Regional Integration in Africa (ARIIA VIII)" (Working Paper 5, Open Air African Innovation Research, 2017), 13–17.

37 Grossman and Sykes, "A Preference for Development", 48.

38 WTO, "Ministerial Decision on Fisheries Subsidies", https://www.wto.org/english/thewto_e/minist_e/mc11_e/documents_e.htm.

39 WTO, General Council, *The Continued Relevance of Special and Differential Treatment in Favour of Developing Members to Promote Development and Ensure Inclusiveness*, WT/GC/W/765/Rev.2 (Geneva: WTO, March 4, 2019).

Africa already has a comparative advantage to diversify into knowledge-based production and produce value-added goods and services. For this reason, the need for a strong and effective IP regime that engenders innovation cannot be overstated.

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