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QUESTIONS ON DOMESTIC REGULATION*

SUBMISSION BY THE AFRICAN GROUP

The following submission, dated 5 December 2017, is being circulated at the request of the African Group.

1 INTRODUCTION

1.1. This communication is an African Group contribution to the ongoing discussion on regulatory disciplines in the WPDR. Discussions on domestic regulation have picked up pace in the WTO since 2011; this is reflected in the seven textual submissions tabled since September 2016¹. The recent discussions have been useful in some respects, but they have highlighted Members' different perspectives and approaches to domestic regulation under GATS Article VI.4.

1.2. To continue its constructive engagement, the African Group submits a list of questions to the proponents to elaborate more and clarify our understanding on the proposed regulatory disciplines in the WPDR. The responses aim to assist Members in assessing the impact of the proposed regulatory disciplines.

1.3. The African Group's position is informed by the African Union's Agenda 2063: The Africa We Want. The African Ministers of Trade Declaration on WTO Issues² of November 2016 (AMOT Declaration) stressed that 'the work we undertake in multilateral trade and rule-making support Africa's continental integration agenda and, at a minimum, not undermine it.' The AMOT Declaration restated that 'any outcome on GATS Article VI.4 disciplines on domestic regulation does not involve implementation of new and/or onerous administrative requirements or requirements that intrude into the domestic policy-making processes'. Our preliminary assessment indicates that the provisions are intended to prescribe or impose particular regulatory approaches. In our view, this would significantly constrain African Members' right to regulate for legitimate public policy objectives.

1.4. The African Group have always approached domestic regulation from a perspective that gives paramount importance and affirmation to, amongst other things, the right to regulate and the interlinkages between regulations and broader domestic economic imperatives. In building the Africa we want, the African Group places great importance on having further clarity from the proponents in the development of future disciplines on domestic regulation.

* This document was previously circulated as JOB/SERV/269 dated 27 September 2017.

¹ *Administration of Measures* (JOB/SERV/239/Rev.2), *Development of Measures* (JOB/SERV/250/Rev.1 and JOB/SERV/252/Rev.2), *Transparency* (JOB/SERV/251/Rev.2), *Technical Standards* (JOB/SERV/257/Rev.2) and *Gender Equality* (JOB/SERV/258/Rev.3), *Development for LDCs* (JOB/SERV/261).

² WT/L/1004

2 GENERAL QUESTIONS

- a. In accordance with GATS Article VI.4, which disciplines do you think are necessary, and why?
- b. What were the circumstances or specific issues that led to the suspension of the domestic regulation (DR) negotiations in the past, and have those circumstances changed?
- c. Is there a clear economic rationale for adopting DR disciplines, and what is the evidence that benefits from the proposed disciplines will accrue to all Members?
- d. Is there any evidence of the costs entailed by introducing these new obligations, and who would bear those costs?
- e. Is there any consideration that there are different capabilities amongst Members, and amongst their firms and stakeholders, to take greater advantage of these proposed new disciplines?
- f. Have the proponents undertaken an economic impact assessment that demonstrates that their stakeholders are losing out on economic opportunities in the absence of multilateral DR disciplines?
- g. In which Members have your stakeholders experienced problems that the disciplines are seeking to address, and has there been any attempt to resolve them bilaterally? Have domestic remedies been exhausted?
- h. In instances where you have felt aggrieved, has the issue been taken up with the competent authorities in the Member?
- i. To what extent has the application of GATS Article VI.5 been insufficient in meeting the objectives being sought?
- j. How will these disciplines contribute to supporting structural transformation and industrialisation for Africa?
- k. Can proponents indicate the basis for making their proposal/s differently from the approaches taken in 2009 – 2011 where separate rules were considered for licensing requirements and procedures and qualification requirements and procedures?
- l. Can proponents clarify whether their proposals would impose obligations only on existing commitments?
- m. Are there linkages between the proposed DR disciplines and e-commerce and investment?
- n. What are the proponents' perspectives on DR in an increasingly digital world economy, how do each of the DR elements relate to e-commerce, and what are the implications?

3 QUESTIONS ON ADMINISTRATION OF MEASURES

- a. What is the scope of these provisions, and how does this scope relate to the *Development of Measures* and *Transparency* provisions?
- b. Some proponents have recently introduced changes to their skilled visa policies. To what extent would these proponents themselves be infringing on the proposed DR disciplines, in terms of the General Provisions where it says 'These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements

and procedures, and technical standards affecting trade in services where specific commitments are undertaken'?

- c. How do you define 'authorisation'?
- d. How do technical standards and licensing requirements operate in Mode 1 in relation to the proposed DR disciplines?

4 QUESTIONS ON TRANSPARENCY

- a. Under which mandate are you seeking to address 'transparency' in DR disciplines?
- b. What do these provisions have to do with trade?
- c. What is the relationship between GATS Article III and the *Transparency* provisions?
- d. Under which mandate are the proponents seeking to expand GATS Article III?
- e. Do all the proponents currently have a prior comments system in place in all services sectors to allow all interested persons and other Members to comment? Who will benefit from these provisions, and will benefits be shared equitably?

5 QUESTIONS ON DEVELOPMENT OF MEASURES

5.1 Gender Equality

- a. How would gender issues be taken up in DR disciplines and trade agreements?
- b. What is the economic rationale for this provision?
- c. In what way, does gender fall under the remit of trade policy?
- d. Could those principles and approaches be extended to other poor, disadvantaged or marginalised groups or regions in Members?

5.2 Development of Measures

- a. Have these provisions been subjected to its own necessity test?
- b. Does the 'right to regulate' override the substantive disciplines being proposed?
- c. If not, does the right to regulate for legitimate public policy objectives, including for non-trade reasons, override the substantive disciplines being proposed?
- d. Does the state retain discretion in developing measures to achieve a particular set of domestic objectives, which are not trade-related but considered discriminatory by the proposed DR disciplines?
- e. Why do proponents feel that their domestic models of so-called 'good regulatory practice' should be extended to all WTO Members, who have different levels of development, and more wide-ranging domestic development objectives and priorities?
- f. How do you define 'objective and transparent criteria', 'impartial', 'reasonable', 'do not in themselves unduly prevent fulfilment of requirements'?

6 QUESTIONS ON DEVELOPMENT

- a. What development provisions do the proponents envision for all developing countries under the proposed regulatory disciplines?
 - b. Do you believe that an exemption for LDCs is sufficient in, and of itself, to cause the development of the services industry of LDCs?
 - c. Will the intended outcomes on any domestic regulatory disciplines apply automatically to the preferential treatment notified under the waiver mechanism? If not, why not?
 - d. What are the intended benefits to the LDCs in light of the preferential treatment under the waiver mechanism?
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