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Safeguards and Trade Remedies in African Integration

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Introduction

- SADC Trade Related Facility – a technical and financial support mechanism to eligible SADC Member States to assist them implement trade-related commits in the SADC Protocol on Trade, SADC-EU Economic Partnership Agreement (and WTO)
- Trade remedies is one of the intervention areas for this support

Trade remedies

- Trade remedies are trade policy tools that allow governments to take remedial action against imports which are causing material injury to a domestic industry. Broadly they consist of anti-dumping and countervailing measures (directed at unfair practices with regard to imported goods) and safeguard measures (which aim to deal with the consequences of increased importation of goods as a result of trade liberalisation).

Trade remedies at the multilateral level

- The importance of national laws, regulations and procedures on trade remedies. Domestic provisions need to be notified to the WTO and must be consistent with the requirements set out in WTO Agreements.
- Not many African countries have notified domestic legislation, regulations and procedures to the WTO since they are either absent or inadequate.
- Generally only Egypt and South Africa have done so (2010). As a result, only these two countries have participated to a greater extent in the multilateral trade remedy system.

Trade remedies at the multilateral level

- On 5 October 2015, Zambia has notified the WTO Committee on Safeguards of its initiation, on 10 July 2015, a safeguard investigation on “Flat-Rolled Products of Iron, Non-Alloy Steel, Trailers and Semi-Trailers”, and that it has imposed a ‘safeguard measure provisional in nature and will last for 180 days from the 10th July 2015 to 10th January 2016”.
- What has enabled Zambia to initiate this process?

Trade remedies at the multilateral level

- African countries challenge – the absence of adequate national laws and capacity (legal, institutional, human and financial resources).
- High MFN tariff protection in most African countries – and the potential for further trade liberalization can result into competitive pressures that are likely to generate a political economy of protection (costs of adjustment, political demands for trade protection).
- Ability to utilise trade remedy tools, within the rules-based global trade governance framework.

Trade remedies in African trade integration

- African RTAs- keep their rights and obligations to implement the various applicable global trade remedy measures, most refer to the various applicable articles in GATT 1994 and the WTO Agreements (COMESA, EAC, SADC, etc.)
- Generally, trade remedy measures in African RTAs not been implemented, partly for the reasons identified earlier.
- Few cases of implementation such as in COMESA through Kenya's implementation of bilateral safeguards on sugar and wheat flour imports from other COMESA member states.

SADC experience

- Article 3 (1) (c) of the SADC Protocol on Trade – application for grace period according to certain criteria (not under trade remedy provisions)
- Zimbabwe, Malawi and Tanzania derogations
- CMT criteria to consider applications under Article (3) (c) (1) had similar to those you find under WTO safeguard requirements.
- Some members, such as South Africa which appears to be mostly adversely affected, continue to raise their concerns on continued derogations.
- SADC dispute settlement system remains in limbo

Tripartite FTA experience

- An emerging debate searching for flexibilities on trade remedies.
- Arising from the notion that the necessity requirement test for the utilisation of trade remedies within the WTO framework is complex and onerous to fulfil.
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- The challenge is to find a pragmatic balance that is still consistent with the WTO rules.

North-South RTAs

- Bilateral safeguards are becoming more important in North-South FTAs (and there are conditions that arguably resembling such relationships within Africa – the presence of varied levels of industrial development). For example, South Africa has recently initiated agricultural safeguard investigations on bone-in chicken portion imports from the EU (Government Gazette Notice No. 15 of 2016) in terms of its trade agreement with the EU (the TDCA).

Deepening trade integration in Africa

- Address the challenges related to domestic arrangements on trade remedies as critical step towards integrating markets in Africa.
- Trade remedies, especially safeguards, can act as pragmatic tools to deal with the political demands for protection that trade liberalisation provokes.
- This is particularly important in the case of integrating countries at varied levels of industrial development.

Deepening trade integration in Africa

- Trade remedies can provide a means to enhance market integration ex-ante by allowing temporary reversal of trade liberalisation commitments under well-defined and circumscribed, transparent and predictable conditions.
- This supports the notion implicit in the theme for this annual conference that trade remedies, especially safeguards, can be critical in the process of integrating unequal partners in Africa.