South Africa's Trade and Investment Policy

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Mandate

- NDP sets the broad vision and strategic direction; NGP, IPAP, National Infrastructure Programme are programmes to give effect to NDP.
- Government advancing “radical economic transformation”, several elements but include accelerated industrialisation, localisation.
- **the dti** responsible for IPAP (tho" a programme of government, not just **the dti**)

Global Context

Global context

- Global economy undergoing relative shift in economic power from North to South and West to East.

- BRICS are fast emerging as the new sources of global economic growth, trade and investment flows re-shaping the global economy. BRICS accounted for 61% of global growth in 2014.

- Commodity prices are projected to stay soft in 2015. The decline in oil prices in the second half of 2014 could significantly reduce inflationary pressures and improve current account and fiscal balances in oil-importing developing countries.

Global context ctd

- Developing countries grew by 4.4 percent in 2014 and are expected to edge up to 4.8 percent in 2015, strengthening to 5.3 and 5.4 percent in 2016 and 2017, respectively.

- Developing countries‟ share of world trade will increase to 69% by 2050.

- Hence the strategic importance of strengthening South-South trade, investment and development cooperation.

Africa's Growth Prospects

Africa's Growth and Development Prospects

- Africa is second fastest growing region in world, after Asia.
- Enormous reserves of raw materials and 60% of unused arable agricultural land globally.
- Intra-African investment play a key role in spatial economic development.
- In 2007 -2013, RSA biggest African investor in the rest of the continent. South African projects in other African countries have grown annually at 44.2% since 2007.
- Growing consumer markets an important driver of intra-African investment.
- Improvements in the business environment and connectivity to markets also play a role.

Africa's Growth and Development Prospects

- Key investment recipient sectors incl; financial services, telecommunications, cement, food and retail, oil and energy
- BUT Africa's full economic potential will remain unfulfilled unless we address challenges of poor infrastructure; small and fragmented markets; inadequate diversification.
- Hence importance of a developmental regional integration for Africa.

Trade Environment Reform Agenda

SA Trade Policy: Setting the Scene

- SA is a relatively open economy, only “moderately” protected by tariffs.
- Simple average MFN applied tariff: 8.3% (down from 23% in the 1990s).
- 56% duties are set at 0%
- Compared to our partners, the tariff regime is transparent and not overly complex (e.g. comparatively few NTBs).
- Services sectors open: WTO Services commitments exceed some OECD countries.
- SA amongst the most open jurisdictions for FDI in the world and provides strong protection to investors in line with high international standards.

SA Trade Reform Experience

- Extensive tariff liberalisation since 1994.
- BUT while SA exports increased significantly, the basket of export goods, with some notable exceptions, remains largely unchanged.
- SA exports continue to be dominated by commodities, except to Africa.
- Labour-intensive production has contracted due to imports.
- Bias towards capital and high skill-intensive growth.
- Hence NDP, NGP and IPAP call for "developmental" trade policies" to encourage and upgrade value-added, labour-absorbing industrial production.
- Improving SA‟s export performance requires strengthening productive capacity, exporter development, export promotion and marketing.
- New National Export Strategy being developed by **the dti.**

South Africa's Trade Policy

SA Trade Policy

- The nature of global competition has changed:
  - Comparative advantage not only determinant for success in international trade
  - Purposeful intervention to build and deepen production capabilities, investment in human capital, research and innovation & technology
  - Strategic collaboration

SA Trade Policy ctd

- Trends
  - Fastest growing exports in world trade are non-resource based manufactures
  - Emergence of global supply-chains for manufacturing & services as a result of production unbundling and growing trade in intermediate products
  - Growing fragmentation of production has important policy implications- highlights the need for countries wanting to be part of GVCs to have transparent trade and investment regimes.
  - It also highlights the need to invest in skills, productive capacity, and infrastructure to increase domestic value addition.
  - As a group, developing countries" exports growing faster than the world average. Asian countries dominate.

SA Trade Policy ctd

- Policy implications:
  - International experience demonstrates the importance of a strategic approach to tariff policy
  - Ensure that tariff policy is informed by industrial policy, and pursued gradually and selectively to support industrial development
  - Versus unilateral liberalisation

SA Trade Policy ctd

- Policy implications:

- Why a „strategic‟ trade policy? Extensive tariff liberalisation since 1994 increase in SA exports but SA exports dominated by commodities, decrease in labour-intensive production and bias towards capital and high skill-intensive growth.

- Further tariff liberalisation, without purposeful intervention in the economy, is likely to perpetuate this trend

SA Approach Trade Policy ctd

- Tariffs are instruments of industrial policy
- Strategic approach to tariff reform to support industrial and employment objectives
- An evidence-based, case-by-case assessment will inform changes to tariffs (no *a priori* position) – Vital role for ITAC
- Implies
  - Reduce tariffs on mature <u>upstream</u> input industries → lower the costs for downstream, labour creating manufacturing
  - Raise tariffs on <u>downstream</u> industries with employment or value-addition potential → ensure sustainability and job creation (observing international trade obligations)

SA Approach to Trade Policy ctd

- Build trade and investment relations with Africa
- Consolidate and extend „developmental integration" in SACU, SADC, Tripartite and African continent at large.
- Consolidate links with key economies in the North
- South-South opportunities
- Advance developmental agenda in WTO multilateral negotiations

South Africa's Investment Policy

Investment Policy

- Complementary relationship between trade and investment decision-making - Trade may be an outcome of investments, and investments may be motivated by trade opportunities.

- FDI can have critical impacts on economic development and economic growth and should be harnessed to achieve the developmental objectives of host states.

Investment Policy ctd

- Most developing countries are reliant on FDI to develop their economies.

- Most developing countries have developed their domestic systems to protect investment in line with contemporary concepts of the rule of law, protection of property rights, due process, and compensation of expropriation and national treatment of foreigners.

International Trends

Investment Policy

Investment Policy ctd

- Trends:
  - Bilateral Investment Treaties (BITs) and international investment agreements (IIAs) have become the dominant international vehicle through which investment is regulated with implications for countries.
  - Most BITs allows individuals to sue states in arbitral fora - the result of this development is that investors can bypass domestic courts and go directly to international arbitral tribunals that adjudicate matters on narrow financial interest and not broader social and public imperatives.

Investment Policy ctd

- Trends:
  - The public discourse about the usefulness of BITs, their implications, and the Investor State Dispute Settlement (ISDS) mechanism is gaining momentum.
  - It was necessary to assess the implications of entering into BITs and IIAs, the substantive shortcoming of provisions of current BITs and IIAs, the challenges posed by the ISDS mechanism, possible areas of reform and decide on the most appropriate way forward.

Weaknesses in the Investment system ctd

- Currently, the investment system suffers from the following weaknesses:
  - A highly fragmented dispute settlement (arbitration) system without any precedent system to moderate legal and interpretative divergence;
  - *A lack common standards of protection* – the treaties grant national treatment, fair and equitable treatment, investor protection to investors and expropriation; but these definitions are so flexible that investors are able to claim their rights are violated for wide range of reasons.

Weaknesses in the Investment system ctd

- Currently, the investment system suffers from the following weaknesses:
  - Inconsistent interpretations by arbitration panels even on similar matters - the potential for contrasting decisions on the same (or very similar) issues of fact or law undermine the predictability of investment law.
  - Lack of transparency – investment arbitration cases are shrouded in secrecy and are conducted under confidential proceedings. Rulings are not published and affect not only governments but also other interested parties.

Weaknesses in the Investment system ctd

- Currently, the investment system suffers from the following weaknesses:
  - Lack of balance between investor rights and host state obligations – the system grants broad protection to foreign investors and interferes with host countries‟ right to regulate in the public interest.

POLICY APPROACH

- The South African Government adopted a new investment policy framework in July 2010.
- The new policy aims to modernise and strengthen South Africa‟s investment regime by implementing a series of policy measures that will ensure:
  - South Africa remains open to foreign investment;
  - adequate security and protection to all investors;
  - preserving the sovereign right to regulate in the public interest;
  - pursue developmental policy objectives.

CABINET DECISION

- **Five core measures** will be undertaken to implement the new policy framework for investment:
  - First, an intra-governmental process will be initiated to explore the establishment of a National Investment Act for South Africa.
  - Second, South Africa will only enter into BITs in future on the basis of compelling economic or political reasons.
  - Third, develop a new BIT negotiating template in which standard provisions will be formulated to reduce the scope for unpredictable, inconsistent and arbitrary interpretations.
  - Fourth, having been in force for ten years or more, most of the BITs that South Africa has entered into are now open for either review or termination.
  - Finally, the new policy establishes an inter-ministerial committee (IMC) on investment to oversee the implementation of these measures.

IMPLEMENTATION

- IMC has met several times to consider various issues around the implementation and coordination of investment policy framework
- Model BIT developed and finalised – is subject to final approval by IMC
- Draft Investment Act completed by **the dti** and introduction to Parliament is immanent
- South Africa is a member of SADC and was instrumental in the development of the SADC Model BIT
- The SADC Finance and Investment Protocol applies to South Africa, Annex 1 regulates investment

Promotion and Protection of Investment Bill (PPIB)

- PPIB was subject to a rigorous public consultation process which included an expansive public comment period and consultations within NEDLAC and government;
- Cabinet endorsed the PPIB on 24 June 2015;
- The OCSLA Justice certified the PPIB on 16 July 2015 and upon final proof reading will be introduced to Parliament.

Promotion and Protection of Investment Bill (PPIB) cont.

- The PPIB draws on a review of international experience as well as recent national experiences;
- Introduces substantive standards of protection and includes:
  - National treatment: that will grant an investor the right to be treated no less favourably than South African investors so long as their investments are "*in like circumstances*"
  - Security of investment: seeks to clarify that the Republic bears no greater obligation to foreign investors than to its own investors in respect of their investments.
- The PPIB facilitates a dispute prevention approach to investment, however investors retain full legal rights to pursue any avenue available under South African law.
  - Also provides for state-to-state international arbitration subject to domestic exhaustion.

Regulatory Environment for Investment

Investment Environment

- SA‟s policy approach FDI should be mainstreamed into overall economic development strategy.
- SA to remain open to investment – both foreign and domestic - no government approval is required;
- Foreign investors are allowed ownership or shareholding in South Africa- few exceptions related to achieving broader development objectives;
- Liberal repatriation of profits subject to applicable laws.

Key Trade and Investment Policy Priorities

Key Trade and Investment Policy Issues

- Consolidation of the SADC FTA and promoting development integration in SACU;
- Finalisation of outstanding issues in the TFTA negotiations;
- Launch of the CFTA negotiations;
- Preparations for MC10 and implementation of the TF and the development of the post Bali package.
- Legal vetting of the EPA text - improving on existing TDCA;
- AGOA extension and SA‟s inclusion going forward;
- SACU-European Free Trade Association (EFTA) FTA Review

Key Trade Policy Issues ctd

- SACU-India PTA negotiation
- Deepen economic development, trade, and investment partnerships with the BRICS through the work of the BRICS Contact Group for Economic and Trade Issues.
- Enhance bilateral links with African countries, countries of the South and consolidate our relations with countries of the North.
- Publication of the Promotion and Protection of Investment Bill and submission to Parliament.


Thank you