Challenging WTO Rules Countering Regional Development Strategies

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The promotion of regional cooperation and integration between African countries, in order to respond to economic, environmental, social and political challenges at national, regional and continental levels has to be essentially internally driven through inter-governmental negotiations and through peoples cooperation. But such joint efforts have also to include concerted political engagements to counter both internal and external forces that affect the prospects for such developmental strategies between African countries [see AIDC Regional Briefing 2].

This requires dealing together with the self-serving strategies and divisive tactics of powerful foreign governments, particularly the European Union and the United States [see AIDC Regional Briefing 4]. But coordinated external strategies by African governments have also to be directed towards the international institutions that are being used by such powerful governments to set the terms and conditions for what other governments may and may not do within their national terrains or within their regions. National and regional peoples' organisations and actions have, therefore, to engage with these international institutions as well.

The World Trade Organisation's Rules and Regulations

One of the most powerful of these global institutions, possessing exceptional enforcement powers, is the World Trade Organisation (WTO). Like its fellow neo-liberal institutions, the IMF and the World Bank, the WTO since its inception in 1995 has been dominated by the interests and aims of the most powerful governments, especially the EU and the US, although it operates officially on the basis of beliefs in the rationality, efficiency - and even sufficiency - of 'market forces'. In strengthening the role and 'rights' of business enterprises and finance capital, the WTO's politically-determined and legally binding rules require trade and investment liberalisation and the removal of regulatory terms and conditions set by governments because these are considered to be 'barriers' to trade, and to create 'distortions' in the international operations and competitiveness of global exporters and investors. The imposition of this 'free trade' and 'free capital movement' model reflects and reinforces the commercial and production requirements, 'intellectual' and other property rights and investment interests - and the speculative intentions - of capital and capitalist corporations under the ideological banner of 'trade liberalisation' and 'globalisation'.

WTO Constraints on "Regional Trade Arrangements"

In addition to the WTO's general liberalisation prescriptions and regulation constraints, there are more specific terms and conditions within its rules that act directly against the aims and potential gains from regional agreements between African countries, as also between other developing countries. These are expressed in Article 24 (or XXIV) on Regional Trade Arrangements (RTAs). Originally created within the earlier General Agreement on Tariffs and Trade (GATT), this allowed powerful regional groupings such as the European Union many decades and much policy lee-way to consolidate their region (in the same way that they have been allowed to sustain other 'WTO-illegal' policies - especially in agriculture). However, now that there are dozens of regional groupings being formed between developing countries to deal with their own internal needs and external challenges, the WTO has undertaken to “review” the terms of Article 24 in order to tighten up its implementation and ensure the “compatibility” of all RTAs with WTO rules.

– Tight time-frames - It is such “compatibility” with Article 24 that the European Commission opportunistically utilised to pressurise South Africa to accept a rapid process for the implementation of its free trade agreement with the EU. This was supposedly in terms of the WTO clause requiring that all Regional Trade Arrangements must within a period of ten years move towards becoming free trade areas, open to their participants as well as to external ’partners’. A temporary time/space allowance can, under exceptional circumstances, be extended to twelve years on submission of satisfactory justifications to the WTO Committee on RTAs. The first basic question is whether Article 24 does in fact apply to trade agreements between countries that are not “contiguous” - that is, not directly linked or even associated in a common region - and, equally, whether such terms apply to agreements between developed and developing countries.

More fundamentally, the creation of regional groupings involving a large number and variety of developing countries cannot be subjected to the time constraints of Article 24. Regional integration is an extremely complex and necessarily prolonged process entailing detailed research, policy formulation and program development, fine-tuned negotiations and many adjustments - as the EU itself knows very well from its own experience during many decades. Such processes have to be decided and developed over time within and between the participating countries themselves. They cannot be confined to preconceived global regulations and somewhat arbitrarily predetermined time-frames.

Lowered external tariffs - Article 24 also stipulates that any regional groupings that decide to become Customs Unions (CU) with common external tariffs (CETs) must see these only as an interim phase on the way towards becoming open free trade areas. And they must ensure that they do not, in the meantime, raise their common external tariffs above a “weighted average” of all the external tariffs in operation in their member countries before such a CU agreement. This means, in effect, that any countries that have been ’persuaded’ by the World Bank to drastically lower their own external tariffs will exert downward pressures on the ’average’ common external tariffs that their fellow regional members might want to implement together.

For developing countries this is especially serious where such ’border protections’ are one of the few instruments that their governments can utilise to provide support to their ’infant industries’ and prevent their vulnerable economies from suffering the de-industrialisation that is so evident all over Africa under radical trade liberalisation. The other use of common external tariffs is to prevent international exporters from exploiting the lower external tariffs of individual countries within a regional grouping as an opening through which to penetrate other regional members that have higher external tariffs to the rest of the world but have lowered their tariffs to their regional partners. This is already evident with the different levels of external tariffs amongst the countries within SADC.

– Covering all trade - The WTO’s terms for regional trade agreements also require that such agreements must cover “substantially all trade” between the participating countries and “not exclude any major sector”. Apart from the vagueness of the meaning of ’substantially all’ - which was a source of disagreement between the EU and SA during their FTA negotiations - such a sweeping requirement stands in direct contradiction to the kind of variable and preferential trade arrangements that countries at different levels of development need. Weaker countries may even want to exclude sensitive products or entire sectors from subjection to WTO requirements, as many are arguing today [see AIDC Regional Briefing 6].

Such flexibilties are clearly required within SADC which brings together economies of different size and at very different levels of development. As in the relations between stronger and weaker economies at the international level, implementation of across-the-board trade liberalisation at the regional level would - and does - work to the advantage of the stronger South African economy/companies and other relatively stronger economies/companies in SADC, such as Mauritius and Zimbabwe [see AIDC Regional Briefing 1].

Similar Pressures from the "General Agreement on Trade in Services"

The WTO's General Agreement on Trade in Services (GATS) follows the language and aims of Article 24 in encouraging national liberalisation programs. Like the latter, GATS Article 5 prescribes that any program for regional economic integration must not impede member countries from autonomously opening up their services sectors to international service providers. And, if any member(s) in a regional grouping have already opened up any of their own service sectors to external agencies, any subsequent collective services agreement negotiated with other regional partners may not negate or even reduce such pre-existing concessions. Thus,

– whatever services have already been opened up to outside companies by individual countries under IMF/WB SAPs, or
– whatever might in the near future be offered bilaterally under GATS to outside countries by any single country within a regional grouping,
will place severe constraints and have negative implications with regard to further or future intra-regional services agreements.

This is already evident in the threats to some crucial cross-border services cooperation and coordination projects between the countries of Southern Africa. For example, the Southern African Power Project (SAPP), originally aiming for joint programs of energy research/exploration and power generation, coordinated transmission/distribution and strategic energy conservation, is being undermined by the separate deregulation, commercialisation and privatisation of their energy parastatals by various member states (such as South Africa's giant state energy company ESKOM). The same processes can be foreseen in essential inter-governmental regional programs for water resources research, exploration, conservation and distribution.

Such programs require public investment, subsidisation and cross-subsidisation between social and economic sectors and between countries, but these or other 'preferential' regional policies and regulations would be undermined by WTO services liberalisation rules. These rules require that such arrangements must give 'national treatment' to and not 'discriminate' against international companies in favour of national or regional public entities or even private service providers. The same external pressures could arise in the many other services sectors where inter-governmental cooperation and regional coordination is so crucial to equitable and sustainable development within and between the countries of this and other regions of Africa.

Other Restrictive Rules and Regulations in the WTO

In addition to the above, there are many other WTO agreements that restrict the policy choices and spaces allowed to governments to deal with national and regional economic, social, environmental and other issues within and between their countries. Amongst the many agreements, already in existence or proposed, a few to be highlighted are

Trade-Related Investment Measures (known as TRIMs)

This was pushed into the Uruguay Round of trade negotiations (1986-94) by the major powers despite opposition from many developing country governments. In the ’development era’ of the 1960s and 1970s, such governments had set conditions on foreign investors, These included re-investment for specified periods of (a proportion of) profits generated, the return of (a proportion of) foreign exchange earnings from exports, the utilisation of local components and (a proportion of) other local inputs in their projects in order to stimulate domestic companies through forward and backward linkages. These and many other requirements were formulated in order to try to secure more useful (or at least some) national gains from foreign investment. TRIMs, however, is designed to place constraints on such investment conditionalities set by governments.

This has negative implications not only for autonomous national strategies on foreign investment but also for developmental and re-balancing cross-border investment operations within any region. For regional projects to avoid the kind of exploitative and polarising effects of liberalised international investment flows that characterise the global economy today, regional investment policies have to re-instate the kind of capital controls and performance criteria on foreign investment that were used in the past, and even add new up-dated (especially gender and environmental) terms. Such jointly agreed developmental requirements would have to apply to national private enterprise as well as national parastatal entities operating across borders within their regions. But such regional conditionalities would, even more importantly, have to apply also to international investors; amongst other things to prevent them from playing countries off against one another in order to force down or eliminate any specific national or combined regional investment standards.

New possible agreements (through the so-called “Singapore Issues”)

Ever since the Uruguay Round was concluded, the major powers have been relentlessly trying to expand the coverage and powers of the WTO to serve economic needs within their own countries and the demands of ’their’ global corporations.

– The most pressing demand - going well beyond TRIMs - is for a full Multilateral Investment ’Framework’ within the WTO aiming to give freedom of access and operation to all forms of international capital flows into all economies and all sectors. This has long been resisted by many developing country governments, particularly because of the proposal to guarantee ’national treatment’ for all such investors in all countries. This would counter and contradict any selective policies and specifically targeted investment measures that governments might want to promote either within their countries or through regional agreements for complementary or combined cross-border development programs [see AIDC Regional Briefing 1].

– Another ’Singapore Issue’ aims to open up Government Procurement - that is, public tendering for government projects - to ’the most competitive’ tenders, especially by global corporations seeking access to highly lucrative public sector contracts everywhere. If this instrument were ever to get into the WTO, it would restrict the rights of governments to award government contracts for public projects in ways that they consider to be locally and nationally, socially and economically important. Such a global ’market access’ agreement would, similarly, act against governmental choices in strategic cross-border public-public, public-private and people-people projects designed as economically, socially and geographically balancing development instruments within their regions [see AIDC Regional Briefing 1].

– A third ’Singapore Issue’ concerned with Competition Policy’ is supposedly aimed at ’leveling the playing field’ between all companies, in all sectors, in all parts of the world, by removing ’anti-competitive’ policies and practices. It would not, however, be aimed at the notorious anti-competitive restrictive business practices (RBPs) of oligopolistic transnational corporations. The real aim is the elimination of so-called ’anti-competitive’ preferential policies and other instruments of developing country governments targeted towards, and through, their own state marketing boards, public enterprises and domestic producers. A global competition policy agreement in the WTO would be used against both national and regional public agencies to prevent them from 'competing unfairly' against global corporations. Yet it is precisely such state-led cooperation programs and regulatory bodies that are essential for more effective and more equitable development strategies at both the national and the regional levels in Africa.

Challenges by Peoples' Organisations to and Through African Governments

Amongst the many areas of action and challenges on the above issues facing peoples organisations everywhere, African peoples organisations have particular responsibilities. They need to communicate and gain the support of counterpart organisations throughout the world for the economic, social and environmental importance of regional cooperation and integration within Africa. Even more importantly, African peoples organisations also have to join together to engage with their governments on these issues. It is, in the final analysis, African governments - whether the current or future more determined governments - that have to take united and firm positions in the WTO in defense of the interests of their peoples, countries, regions and the continent.

At the more general level, African governments must be urged to accept that - if they are indeed serious about their declared aims to promote developmental regional programs - they must insist very firmly within the WTO that Article 24 rules on Regional Trade Agreements are fundamentally inappropriate for regional integration programs in Africa. In the first place, African regional groupings are not only, and certainly not primarily, about trade and even less so about the liberalisation of trade. Regional development is a much broader multi-dimensional process, with complex inter-linkages between trade, industrial, agricultural and other economic policies, as well as cross-border inter-dependencies in water and other natural resources, and in environmental, health, social, cultural, political and security relations. There may have to be 'trade-offs' in trade in the service of such needs. Externally-set trade regulations cannot be an unchangeable requirement taking precedence over all the other vitally important regional relations.

At the tactical level, but with strategic potentials, African governments must challenge the WTO on its own terms to expose the inconsistencies and contradictory nature of its rules on regional agreements; as on so much else within all its extremely biased rules and imbalanced agreements. The following are some key tactical arguments that African governments must be urged to pose within - and ultimately against - the WTO.

– The terms of Article 24, having been originally created as a permissive clause to allow European countries to consolidate their regional community/union over many decades, and to level up all their member states, cannot now be "reviewed" and tightened up just when developing countries need the same rights and policy space to create their own regions in order to cope with an extremely difficult global economy. Thus 'global' rules must - as in the past, but more than ever before - accommodate the needs of such developmental regions, and not vice versa.

– The rapid trade liberalisation terms within Article 24 do not and cannot apply to agreements between developed and developing countries because, amongst all the other broader counter-arguments, the terms of GATT Part IV on Trade and Development (1966), carried over into the WTO in 1994, does not require developing countries to implement the kind of sweeping trade liberalisation between themselves, with full sectoral and product coverage, as demanded by Article 24, nor to abide by its tight time-frames.

– Similarly, to be consistent with its own rules, the WTO and its member states have to recognise that the GATT Enabling Clause (1979), also now enshrined within the WTO, exempts developing countries from having to fully reciprocate (respond to) trade liberalisation by developed countries.

The EC now simply chooses to ignore this ’non-reciprocity’ clause in its negotiations with ACP (African Caribbean and Pacific) countries because it does not serve EU economic interests [see AIDC Regional Briefing 5].

– By extension, members of the WTO cannot demand that developing countries measure up to the restrictive requirements of this clause, and other WTO agreements, because the fundamental principle of Special and Differential Treatment (S&D) brought over into the WTO from GATT recognises, implicitly and explicitly, that countries at very different levels of development cannot be subject to WTO rules in the same ways.

African governments must be urged to remain united in their current official insistence on the prioritisation of the above principles in all WTO negotiations and agreements. The effective and full implementation of S&D and related terms that African governments are now demanding to be “operationalised” in all agreements could even - if conceived more strategically and expanded in content - incrementally erode and undermine the one-size-fits-all prescriptions of the neo-liberal model. Success in these directions could reinstate the policy choices and spaces for developing countries everywhere and, by recreating - or recognising - the real underlying diversities, such policy gains could - together with other processes outside of and against the WTO - contribute to the ’deglobalisation’ of the single integrated globalised capitalist economy.