



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

**PROPOSAL TO RATIFY THE SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY (SADC) PROTOCOL ON TRADE IN SERVICES TO THE
DECLARATION AND TREATY OF THE SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY**

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

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COMMUNITY PROTOCOL ON TRADE IN SERVICES TO THE DECLARATION AND
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FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE PROPOSAL TO RATIFY THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY PROTOCOL ON TRADE IN SERVICES TO THE DECLARATION AND TREATY OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 Membership of the Committee

The Committee consisted of Dr S Musokotwane, MP (Chairperson); Ms M Miti MP, (Vice-Chairperson); Mr G G Nkombo, MP; Mr E M Mwila, MP; Mr C Chali, MP; Mr D Chisopa, MP; Dr S C Kopulande, MP; Mr D Livune, MP; Mr E Kamondo, MP; and Mr M Mubika, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the consideration of the Proposal to Ratify the Southern African Development Community (SADC) Protocol on Trade in Services to the Declaration and Treaty of the SADC.

2.0 Meetings of the Committee

The Committee held ten meetings to consider the Executive's Proposal to Ratify SADC Protocol on Trade in Services to the Declaration and Treaty of SADC.

3.0 Procedure Adopted by the Committee

The Committee requested written submissions from various stakeholders. The stakeholders were also requested to appear before the Committee to orally brief it on the contents of their written memoranda, and to clarify issues that arose from the presentations. The witnesses who appeared before the Committee are listed at Appendix II of this Report.

4.0 Background to the Southern African Development Community (SADC) Protocol on Trade in Services

In August 2012, the Member States of the Southern African Development Community (SADC) adopted the Protocol on Trade in Services. The preamble to the Protocol provides for the establishment of "an integrated regional market for services", to unlock the potential of the region's services market so that businesses and consumers can take full advantage of the opportunities that this Protocol presents.

The Protocol sets out general obligations for all State Parties with regard to the treatment of services and service suppliers from other State Parties. It does not contain liberalisation obligations, but provides for a mandate to progressively negotiate removal of barriers to the free movement of services. It comprises the Protocol itself and a number of annexes which contain the details on which sectors would be liberated and to what level. The sectors that were

identified as priority service sectors to be liberated are financial services, energy, construction, communication and tourism.

It is expected that an integrated regional market will generate new opportunities that will strengthen the region's service capacity, efficiency and competitiveness. The Protocol also aims at encouraging competition and attracting more foreign direct investment to the SADC region.

Trade in services is defined as the buying and selling of intangible commodities between consumers and service suppliers resident in different countries. Trade in services is also defined by the modalities through which services are supplied. This is one of the key features of services that distinguishes it from trade in goods. The World Trade Organisation General Agreement on Trade in Services (GATS) identified four modes of supply.

- i. Mode 1: Cross-border – this covers services flows from the territory of one economy into the territory of another economy, for example, banking or architectural services transmitted via telecommunications or mail;
- ii. Mode 2: Consumption abroad – this covers services consumed in the territory of another economy, for example, tourists, students, patients;
- iii. Mode 3: Commercial presence – refers to situations whereby a service supplier of one country establishes a physical presence in the territory of another country to provide a service, for example a foreign company setting up a subsidiary bank in another country; and
- iv. Mode 4: Presence of natural persons – This consists of persons of one economy entering the territory of another economy to supply a service, for example, a consulting firm sends one of their consultants to travel and provide a service in another country.

Typically, financial and insurance services, telecommunications, transportation and professional services are supplied through Mode 1, Tourism through Mode 2, while Mode 3 accommodates all service sectors. Professional services such as legal, accounting, auditing, management consultancy, architecture and others tend to be supplied through Mode 4. The modes of supply are an important consideration because each country's Schedule of Specific Commitments, which specify the services for which market access will be granted and where limitations might be imposed are undertaken with respect to each mode of supply.

5.0 Object of the Protocol

The main objective of the Protocol is to level the playing field among SADC members by ensuring that industries and consumers take full advantage of a single regional services market. The Protocol provides a framework for the elimination of discrimination in the services sector with a view to creating a competitive services environment with the ultimate objective of enhancing economic growth and development; and promoting deeper regional integration. The Protocol provides for a mandate to progressively negotiate the removal of barriers to the free movement of services, including the movement of natural persons.

6.0 Salient Provisions of the Protocol

The Protocol provides *inter alia* for general and specific obligations and dispute settlement procedure.

How to Become a Party

According to Articles 28 and 29, the Protocol shall be signed by duly authorised representatives of Member States and shall be ratified by these States according to constitutional provisions. The Protocol is open to accession by any Member State at any time. Once a State ratifies or accedes to the Agreement, a formal instrument must be deposited with the Depository. The designated Depository is the SADC Executive Secretary.

Reservations

The Agreement has no reservations. However, state parties may apply for a waiver of certain obligations in case of an emergency.

Denunciation/Withdrawal

A Member State may withdraw from the Protocol by giving the Executive Secretary twelve (12) months' notice of its intention to withdraw.

PART ONE - DEFINITIONS, OBJECTIVES AND SCOPE

The Protocol is modeled closely on the General Agreement on Trade in Services (GATS) in that there are some provisions that mirror those of GATS. The Protocol is divided into six parts. Part One (Articles 1 to 3) covers the definitions, objectives and scope.

Article 1-Definitions

Article 1 of the Protocol provides for definitions of words and phrases used whose meaning in the context of the Protocol is different from the ordinary dictionary meaning. The words defined include Committee of Ministers Responsible for Trade (CMT) commercial presence; member state; national; regional; SADC juridical person; service supplier; state party; subsidiary; territory; third country; Trade Negotiating Forums (TNF); Services; and treaty. There are, however, some terms that have not been defined even if they relate to matters directly regulated by the Protocol. These terms carry the same meaning as in the WTO General Agreement on Trade in Services (GATS).

Article 2 - Objectives

Article 2 sets out the objectives of the protocol. The Protocol is aimed at liberalising trade in services thereby promoting economic growth in the region. It is hoped that such economic growth will lead to the improvement of the livelihoods of the people of the region. The Protocol takes the positive list approach to liberalisation of sectors, that is, it specifies the sectors that will be negotiated and liberalised. The Protocol is also aimed at ensuring that the liberalisation process fully preserves the rights of Member States to continue regulating and enhancing the capacity and competitiveness of their service sectors.

Article 3 - Scope and Coverage

Article 3 outlines measures to which the Protocol shall apply, the manner in which it will apply and also exceptions. It is acknowledged that the protocol applies to measures by state parties affecting trade in services. The Protocol applies to measures affecting aircraft repair and maintenance services; selling and marketing of air transport services and Computer Reservation System (CRS) services. This is particularly beneficial in light of Zambia's desire to re-introduce a national airline.

The protocol applies to measures affecting trade in services taken by the central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by the above named institutions. The Protocol also requires each state party to take reasonable and available measures to ensure the observance by regional and local governments and authorities and non-governmental bodies within its territory.

PART TWO - GENERAL OBLIGATIONS

The second part of the Protocol (Articles 4 to 13) stipulates the general obligations to promote regional integration of trade in services that a member state accepts once it undertakes to implement. It deals with a wide range of matters which include most favoured nation treatment; right to regulate; domestic regulation; mutual recognition; transparency; effective and transparent regulation; general exceptions; subsidies; monopolies and exclusive service suppliers; and government procurement.

Article 4-Most Favored Nation Treatment

Under the Most Favored Nation (MFN) principle, a country undertakes to treat all SADC countries the same according to the best treatment it accords any of them. The Article also allows member states to negotiate and conclude other preferential agreements on trade in services with other SADC members or with third countries, provided that the countries negotiating such agreements allow other SADC states to negotiate the preferences that will be granted in such agreements on a reciprocal basis. This should, however, be done in a manner that does not frustrate the objectives of the Protocol. This means that, should two or more states enter into further negotiations to liberalise trade in services for specific sectors or sub-sectors, such negotiations must be in accordance with the objectives of the Protocol. Additionally, the negotiating states must afford reasonable opportunity to other members to negotiate such preferences granted on a reciprocal basis.

Despite the provisions of this article, a Member State may maintain a measure which gives preferential treatment to one State party provided that the measure is included in the MFN exceptions list annexed to the Protocol.

Article 5 - Right to Regulate

This Article allows a state party to regulate its service industry taking into account its own unique circumstances and level of development, provided that such regulations do not impair the country's rights and obligations under the Protocol.

Article 6 - Domestic Regulation

This article gives Member States the right to regulate their own trade in services. Not only does it provide guidelines on how the regulations are to be undertaken, but it also provides a procedure for dispute resolution in the event that a dispute arises.

In regulating domestic trade in services, Member States are to establish rules and procedures (through administrative tribunals etc) to govern the relationship between trading parties, in a case of a dispute. This must be done in a manner that is transparent, adequate and reasonable. The

establishment of the tribunals or procedures shall, however, be consistent with the Member State's supreme law and legal system.

Article 7- Mutual Recognition

This Article provides for Mutual Recognition Agreements (MRAs) which are aimed at facilitating the authorisation, licensing or certification of professional practices based on qualifications obtained in another country. The objective of MRAs is to ensure that professional licences and certificates given by one jurisdiction are considered valid in the other jurisdictions. Thus, the licences will provide proof of professional qualifications and experience in the particular field, in line with the requirements of the issuing jurisdiction.

Article 10 - General Exceptions

This Article provides for exceptions to the general commitments imposed by the Protocol. These exceptions hold that each member state may adopt any measures necessary to protect and maintain public morals, protect human, animal, or plant life or health and that members may implement measures necessary to prevent fraud and protect individual privacy.

Member States may also implement measures that offer preferential treatment, in contrast with the MFN principle where all member states must be treated the same. This may be done as long as members do not go against any double taxation agreements or provisions that they are bound by.

Article 13- Government Procurement

The Protocol does not cover government procurement of services.

PART THREE - TRADE IN SERVICES

This part sets out members' commitments in pursuance of Article 16. Member States commit not to negatively hinder market access, to promote national treatment, progressively liberalise trade and allow the temporary movement of people across borders.

Article 14 - Market Access

This Article restrains Member States from adopting or maintaining certain limitations relating to the provision of services.

Article 15 - National Treatment

The principle of national treatment prohibits discrimination against foreign services and service providers to the advantage of local services and service providers. All services must be treated the same. This treatment is made subject to any conditions and specific limitations stipulated in the particular country's list of commitments. This means that, if there is any area in which Zambia may wish to have monopoly in terms of services, this should be stipulated in its list of commitments as a limitation or condition.

Article 16 - Progressive Trade Liberalisation

The Protocol identified six service areas as the initial priority areas for progressive liberalisation. These were communication, construction, energy related, financial, tourism, and transport services. These areas were similar to the sectors identified by the WTO with the exception of the energy related sector. While this was not identified as a service sector by the WTO, it could fall

under the 'other services' category. Countries were to negotiate the liberalisation of these sectors in a period of three years and make commitments therein. Thereafter, the negotiation of the rest of the service areas would take place in three year rounds.

These negotiations were to be conducted in conformity with the principle of asymmetry; that is taking into account the circumstances of individual countries. The principle of asymmetry dictated that in liberalising trade, countries should not be required to make similar commitments, but instead that each country's circumstances be considered and that each country be allowed to make commitments on the basis of the progress it had made in development. Asymmetric treatment of individual states was allowed to take into account size, structure, vulnerability and level of economic development. As an integral part of the Protocol, the adoption of trade liberalisation commitments, negotiated under each round of negotiations, should benefit disadvantaged member states.

Article 17- Temporary Movement of Natural Persons

Part three provided for the promotion of the procurement and integration of services within the SADC region. It provided for the temporary movement of natural persons. This entailed that a Member State could apply its own laws and regulations regarding entry and stay, work, labour conditions, and the establishment of legal persons without contradicting the provisions of the Protocol. The Protocol did not apply to persons seeking employment and did not grant the right of access to a labour market of another member state.

PART FOUR - MATTERS RELATED TO TRADE IN SERVICES

The provisions under this part of the Protocol addressed issues relating to the promotion of trade and investment, business practices, transfers, labour market integration agreements, denial of benefits and waiver of obligations.

Article 18- Promotion of Trade and Investment in Services

The Protocol only stipulated that member states must aim to promote an attractive and stable environment for the supply of services in order to encourage trade and investment in services. It also set out how this promotion must be carried out, such as the development of model laws and mechanisms to disseminate information on business opportunities.

Article 19 - Business Practices

SADC members had undertaken to do away with anti-competitive conduct. To achieve this, the members had undertaken to apply their competition laws in a way that would not amount to anti-competitive conduct and would not be abusive of their market position. They had also undertaken to cooperate in offering technical assistance to each other and to use such assistance to ensure that their arrangements complied with other SADC arrangements.

Article 23 - Waiver of Obligations

This Article allowed state parties to apply to the CMT for waiver of the obligations imposed by the Protocol in case of any emergency. An application for waiver was required to include the following information:

- (a) identification of the obligations in respect of which the waiver was being sought;

- (b) circumstances justifying the granting of the waiver; and
- (c) the period for which the waiver was required.

PART FIVE INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT PROVISIONS

Part five put in place institutional arrangements for the settlement of disputes. The part covered Articles 24 to 25.

PART SIX - FINAL PROVISIONS

Part six dealt with final provisions of the protocol and issues of annexes, amendments, signature, and ratification, entry into force, accession, withdrawal and depository of the protocol.

ANNEX 1: CONCERNING SETTLEMENT OF DESPUTES BETWEEN THE STATE PARTIES

In so far as dispute resolution was concerned the Protocol provided for this under Annex 1. This annexure provided for an in-depth discussion of how disputes would be addressed and that the CMT were responsible to adopt regulations that would see to the facilitation and implementation of the annexure. This Annex allowed for the use of various dispute resolution mechanisms state parties could consult and go for conciliation and mediation. Annex 1 also provided for the establishment of a panel to deal with a dispute if it was so requested by an aggrieved party.

7.0 Summary of Views from Stakeholders

The *Ratification of International Agreements Act No.34 of 2016* provided guidance on the parameters to be satisfied before an international agreement could be ratified or acceded to by Zambia. The Act provided that the international agreement should be in the best interests of the state. Specifically, Section 3(2) of the Act was instructive on this matter.

In this regard, the Committee considered the views of the stakeholders on the proposal to ratify the Southern African Development Community (SADC) Protocol on Trade in Services in light of the parameters set out in the said Act. This Part contains a synopsis of the views presented to the Committee by various stakeholders.

i. The Object/Rationale of the International Agreement

The Committee was informed that the SADC Protocol on Trade in Services was premised on the conviction that liberalising trade in services could create new business opportunities, strengthen the region's capacity to produce and export services, enhance efficiency, competitiveness and expand and diversify the region's exports. The Committee learnt that the Protocol took cognisance of the different levels of development, economic sizes and structures of Member States, national policy objectives and thus provided flexibility on the pace and sequencing of reform and liberalisation in services sectors so as to minimise adjustment costs associated with trade liberalisation. Specific objectives as articulated in the Protocol included:

- (a) the progressive liberalisation of intra-regional trade in services on the basis of equity, balance and mutual benefit with the objective of achieving the elimination of substantially all discrimination between State Parties and a liberal trading framework for trade in services with a view to creating a single market for trade in services;

- (b) promoting sustainable economic growth and development, thereby raising the standard and quality of life of the people of Southern Africa, supporting the socially disadvantaged and alleviating poverty through regional integration in the area of services;
- (c) enhancing economic development, diversification, local, regional and foreign investment in the services economies of the region;
- (d) ensuring consistency between liberalisation of trade in services and the various Protocols in specific service sectors;
- (e) pursuing services trade liberalisation, while fully preserving the right to regulate and to introduce new regulations; and
- (f) enhancing the capacity and competitiveness of the services sectors of State Parties.

With regard to the objectives of the Protocol, most of the stakeholders were of the view that ratifying the SADC Protocol on Trade in Services was a step in the right direction as it would increase intra-regional trade in services and in turn expand businesses, increase wealth and create jobs.

Other stakeholders were, however, of the view that the biggest threat for Zambia in ratifying the Protocol was the increased exposure to fierce market competition within the region. They contended that South Africa dominated all services exports and accounted for more than 50 per cent of the region's total exports of services. The other noteworthy competitors included Tanzania and Mauritius that respectively accounted for 13 per cent and 11 per cent of the SADC bloc exports of services in 2018. They argued that the regional market was highly concentrated in these three countries, collectively accounting for 76 per cent of SADC exports of services. The remaining 24 per cent was shared amongst thirteen countries from which Zambia's market share was a paltry 3 per cent of the region's exports of services.

The stakeholders who held this latter view were reluctant to recommend the ratification of the protocol.

Minister's Response

In addressing these concerns, the Minister submitted that the ratification of the SADC Protocol on Trade in Services would imply that Zambia was giving formal consent to Zambian firms and professionals to start trading with SADC member states through commercial presence of firms and businesses, or through export and import of professionals and specialists in the region in line with the negotiated Schedule of Commitments and accompanying annexes.

If, however, Zambia did not ratify the SADC Protocol on Trade in Services, she would not be able to trade with other SADC member states when the Protocol entered into force with the current ratification of 10 out of 15 member states of the trade agreement.

ii. Existing Legislation Addressing the Object of the International Agreement

Stakeholders informed the Committee that the National Industrial Policy of 2018 had recognised the benefits of participation in Regional Economic Communities. It stipulated various strategies that would be utilised to transform Zambia from a producer and exporter of primary products into a net exporter of value added goods utilising local primary resources with increased citizens' participation. Further, the National Trade Policy of 2018 made provisions for trade defence mechanisms that the country could implement to protect domestic industries from injury as a result of unfair trading practices. In addition to existing legislation, the Agreement establishing

the SADC Protocol on Trade in Services provided sufficient avenues to address any disputes that may arise as a result of unfair trading practices.

Stakeholders noted that to fully harness the benefits of ratifying the Protocol on Trade in Services, it was imperative for Zambia to develop trade defence mechanisms and adequate monitoring mechanisms to detect unfair trade practices and seek appropriate remedies, particularly with regard to the Rules of Origin.

iii. *The Impact of Implementing any Measure Specified in the International Agreement*

a) Large Market Size

The Committee was informed that the market potential of SADC for trade in services was quite considerable compared to Zambia's economy on its own. Collectively, the sixteen member states provided a potential market demand for services of 353.9 million people with a combined income (GDP) of US\$692.3 billion. On its own, Zambia's domestic market was too small (estimated at about 17.8 million people with income [GDP] of US\$23 billion in 2019) and posed demand limits that prevented service suppliers from exploiting economies of scale and becoming low cost producers. Access to a broader regional market for services could circumvent some of these challenges and attract considerable investments via Mode 3 required to sustain economic growth and create the much needed employment.

b) Export Diversification and Structural Transformation

The Committee learnt that liberalising trade in services also held potential for economic diversification and structural transformation. The Committee was informed that there was a growing wealth of literature that recognised the important role of services in stimulating structural transformation for socio-economic development. Although services were tradable in their own right, they were not an end in themselves but rather, acted as intermediate inputs into many productive and export processes of various industries. A good illustration of this was the use of transport services to ship raw materials in and finished manufactured products out, or the use of information and communication technologies to organise production and financial services to facilitate investments in buildings and capital equipment. Therefore, services affected efficiency, productivity and competitiveness in various economic activities, which if enhanced, could reinforce economic growth.

The Committee also learnt that the growing importance of services was reflected in the structure of Zambia's economic output and employment. Following the liberalisation of Zambia's economy, the share of services in gross domestic product (GDP) had taken off; increasing from 30 per cent in 1983 to 54 per cent in 2018. This was matched by a corresponding decline in the share of manufacturing and agriculture value added in GDP from peaks of 33 per cent in 1992 and 30 per cent in 1993 respectively, to lows of 7.8 per cent and 2.8 per cent in 2018, which was quite undesirable. Arguably, by liberalising trade in services and encouraging more competition, the cost and quality of service inputs could improve and in turn, drive productivity and output growth in manufacturing and agriculture.

iv. *Legislative Measures and/or Reforms Necessary to Give Effect to the International Agreement*

The Committee was informed that typically, the major constraints to trade in services related to regulatory measures in sectors and modes of supply. This included institutional, administrative,

procedural and legal measures. While regulatory measures could present barriers to trade in services, certain regulations were taken in the interest of safeguarding consumers, employment, profits and government revenues in line with national policy objectives. Thus most countries tended to impose regulations. For instance, the most recent (2008) Services Trade Restrictiveness Index (STRI) showed that Zambia and a few SADC member states were generally not very restrictive in all the modes of supply with the exception of the Democratic Republic Congo and Zimbabwe.

In this regard, stakeholders contended that although there were a number of provisions under the Protocol to provide flexibility in implementing commitments for countries disadvantaged in economic size, structure, vulnerability, and level of development, Zambia had failed to take advantage of prevailing trade remedies such as safeguards to protect local services industries and jobs from import competition under ratified protocols. Further, there were no domestic institutional capacities and competencies to cover this gap. Consequently, Zambia's pursuit of export-led industrial development without first expanding productive capabilities had left the country specialised in its comparative advantage of copper production but vulnerable to external shocks, and with limited job opportunities.

Stakeholders who held this view, therefore, recommended that the measures set out below should be put in place before the Protocol could be ratified.

- (a) Zambia should build domestic services and services export capacities through investments in education, skills, research and development, technology and the provision of affordable finance.
- (b) Zambia should provide an enabling business environment by addressing infrastructure and other constraints in service sectors, modes of supply, and the macro-economy that adversely impacted the competitiveness of service suppliers.
- (c) Zambia should lobby for a practical adjustment support facility under the SADC Protocol that incorporated the provisions of the SADC Protocols for technical assistance to build capacity of Member States, including Zambia. This would help Zambia to build capacity in policy and strategy reforms, in the preparation of evidence-based and widely consulted technical documents such as schedules of commitments and trade in services negotiations at multilateral, regional, and bilateral levels.

Minister's Response

In addressing these concerns, the Minister submitted that the negotiation of the schedules of specific commitments for Zambia and accompanying annexes was guided by the laws and regulations of the domestic sectors in Zambia. Any unforeseen event that may occur in the services sector would be guided according to the laws and regulations of the sector. Hence the domestic industry would remain protected by the laws of the country.

Further, according to Article 8 of the Protocol, Zambia would be required to promptly publish, except in emergency situations, through print or electronic media, any changes made in any law or regulations pertaining to trade in services in Zambia, noting that this may not always be practical.

7.1 Stakeholders Views on Specific Provisions of the Protocol

Set out below are some of the specific concerns of the stakeholders.

7.1.1 Article 1: Definitions

Stakeholders observed that some acronyms such as MFN which were used extensively in the protocol had not been defined. They recommended that for purposes of providing clarity in the use and interpretation, these must be defined.

7.1.2 Article 2: Objectives

- a. Whereas the stakeholders supported the proposal to facilitate a progressive approach to liberalisation of trade in services, they were wary that unless deliberate steps were taken, some countries, including Zambia may not fully benefit from the opportunities of regional trade liberalisation in services on account of their existing state of development and competitiveness of firms in these states. This could translate into some inequality gains, and possibly deepen poverty levels in those countries that may not be able to compete effectively.

They noted that there was also a potential adverse outcome related to local generation of taxes to support the provision of social services. In this regard, Zambia would need to carefully assess its competitiveness before agreeing to any commitments that had the potential to deliver adverse outcomes for national economic growth rates, domestic revenue mobilisation as well as poverty alleviation in the country.

b. Article 2 Objective 5:

Stakeholders noted that whereas this objective was aimed at highlighting the need to pursue the benefits associated with trade liberalisation in services and fully preserving the right to regulate and introduce new regulations, the provision may pose some practical challenges in implementation. Particularly for the information and communication technology sector, there were a number of licence conditions associated with providers of services. All foreign suppliers of services were required to register their establishments locally, and to obtain licences to provide services or provide services through licenced entities. Therefore, the objectives of trade liberalisation which may be aimed at facilitating the foreign supply of services may not be aligned to the local regulations which required that the services be supplied by licenced providers or through licenced providers.

In this regard, the stakeholders recommended that the objective should be aligned to establishing a balance between the pursuit of services trade liberalisation, and the existing local regulations.

7.1.3 Article 3: Scope and Coverage

Stakeholders noted that the service industry was quite wide and wondered whether or not there would be any ad-hoc committees, comprising representatives of key service sectors, which would be subject to ministers of trade and industry, constituted to look into the impact of the implementation of the Protocol. Further, while appreciating the four modes of supply for trade in services highlighted in the Article, stakeholders contended that Zambia should negotiate its commitments to ensure that these four modes of supply and the associated ramifications were assessed independently, as well as collectively before making any commitments. This was because currently, the tax treatment for consultancy services was different for locals and foreign

suppliers. While local suppliers faced withholding taxes at 15 per cent, foreign suppliers faced withholding taxes of 20 per cent.

The stakeholders also noted that there was a requirement for entities to be registered locally in Zambia as a prerequisite for obtaining a licence to provide ICT services within the country. This was aimed at facilitating the oversight and supervision of the entities. However, liberalisation of trade in services in the SADC region would entail that consumers of services would be able to receive services from foreign suppliers emanating from member states in the region.

In this regard, stakeholders proposed that in order to safe guard consumer interests, the protocol must also provide for how consumer protection and redress would be achieved, especially relating to the supply of services across borders.

7.1.4 Article 5: Right to Regulate

Stakeholders noted that Article 5 (1) implied that Zambia's right to regulate was limited to the extent that the same did not impair any rights and obligations arising out of the Protocol. This meant that an entity from another state party may not need to be licenced in Zambia to provide services such as electronic communication. They contended that this posed a challenge in meeting the requirements of the regulatory framework in Zambia. One of the requirements for licensing a network and service operator was registration of the company in Zambia.

In this regard, stakeholders contended that local regulations should take precedence over the provisions of the protocol.

7.1.5 Article 6: Domestic Regulation

Stakeholders noted the provisions of Article 6, which focused on the establishment of a mechanism that would facilitate prompt review and where necessary appropriate remedies for administrative decisions affecting trade in services. They, however, observed that the *Information and Communication Technologies Act, No. 15 of 2009*, for instance, provided for a procedure for instituting a tribunal to deal with appeals relating to regulatory decisions. The Tribunal also had a mandate to deal with appeals relating to the provision of postal and courier services.

In this regard, the stakeholders wondered whether or not the provisions in the Protocol would override the provisions of the Act.

7.1.6 Article 14: Market Access

Stakeholders noted that Article 14 contained provisions that may take away the regulatory oversight by institutions such as the Bank of Zambia and the Zambia Information Communication Technology Authority over certain matters. They contended that according to the licensing guidelines and terms and conditions of the licences in the ICT sector, licensees were required to employ 80 per cent of Zambians at all levels of the organisation. This was aimed at ensuring that the benefits of these investments accrued to the local populace, and in turn assisted with increasing household and individual welfare. Further, Article 14 (e), provided that foreign firms should offload some shares to the Zambian public in line with the existing listing rules. This particularly applied to licence conditions issued to mobile network operators.

In this regard, the stakeholders recommended that as provided for under Article 16, Zambia should evaluate the benefits of these existing arrangements and possibly provide ‘a list of commitments’ to which the provision applied before committing to the Protocol.

7.1.7 Article 15: National Treatment

Stakeholders noted that there would be need for reconciliation of existing Value Added Tax (VAT) rules because most, if not all, countries in the SADC region imposed VAT on imported services, which was called the Reverse Charge VAT system and yet the Protocol was advocating for the removal of uncompetitive barriers.

7.1.8 Article 19: Business Practices

Stakeholders noted that the liberalisation of trade in services would come with increased supply of services across borders. These services would be provided by firms registered in different jurisdictions and under different regulatory regimes. In this regard, for purposes of effective cooperation on issues concerning competition law and policy enforcement, as well as notification of matters affecting the implementation of this Protocol, Zambia and State Parties should take appropriate measures to ensure that the competition and consumer protection laws were compatible with the following principles:

- (a) transparency in the making and publication of national laws, authority notifications, policy statements, and notifications affecting the interpretation or application of those laws;
- (b) impartiality and independence in the investigations and decision-making of the respective competent authorities;
- (c) procedural fairness in handling cases, the right to be heard, opportunity to provide written submissions, judicial or quasi-judicial decisions, and the right of appeal or review of such decisions; and
- (d) non-discrimination on the basis of nationality.

The stakeholders further noted that in order to ensure that competition disputes, including issues relating to mergers and acquisitions involving firms in different member states that involved foreign suppliers were addressed with ease, consideration should be made for the establishment of a regional competition body.

7.1.9 Article 24: Institutional Arrangements

Stakeholders observed that Article 24 highlighted the institutional arrangements relating to the implementation of the Protocol. However, the definition and composition of the Committee of Senior Officials had not been provided for in the Protocol.

In this regard, it was proposed that the definition and composition of the Committee of Senior Officials should be provided.

7.1.10 General Recommendations

Stakeholders noted that in order to take full advantage of the provisions of the Protocol, Zambia should take the measures set out below.

- i. Build capacity of underdeveloped but strategic service industries in order to protect their domestic market share and enable them to compete favourably in the export market.

- ii. Develop logistical support services and other revenue generating activities to take advantage of Zambia's central location in trade.
- iii. Strengthen the regulatory monitoring framework for institutions like the Zambia Bureau of Standards, the Zambia Compulsory Standards, Competition and Consumer Protection Commission, to ensure protection of consumers against sub-standard services.
- iv. Strengthen the employment code and other safeguard measures such as the minimum wage to protect the Zambian worker against poor working conditions.
- v. Strengthen the institutional capacity in the Ministry of Commerce Trade and Industry to deal with safeguards and trade remedies as provided in the Protocol.

8.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Following the interactions with stakeholders, the Committee makes its observations and recommendations as outlined below.

8.1 Specific observations and Recommendations

8.1.1 Article 1: Definitions

The Committee agrees with the stakeholders who observed that the acronym MFN which is used extensively in the protocol has not been defined.

The Committee, therefore, recommends that for purposes of providing clarity in the use and interpretation, this must be defined.

8.1.2 Article 2: Objectives

The Committee, while supporting the proposal to facilitate a progressive approach to liberalisation of trade in services, is concerned that, unless deliberate steps are taken, Zambia may not fully benefit from the opportunities of regional trade liberalisation in services on account of its current state of development and competitiveness of firms. This could translate into some inequality gains and possibly deepen poverty levels in Zambia. The Committee observes, further, that there are also potential adverse outcomes related to local generation of taxes to support the provision of social services.

In this regard, the Committee recommends that Zambia should carefully assess its competitiveness before agreeing to any commitments that have the potential to adversely affect national economic growth rates, domestic revenue mobilisation, as well as poverty alleviation in the country.

8.1.3 Article 2 Objective 5:

The Committee notes that this objective which aims to highlight the need to pursue the benefits associated with services trade liberalisation and fully preserving the right to regulate and introduce new regulations, may pose some practical challenges in implementation. This is particularly so for the information and communication technology sector, where there are a number of licence conditions associated with providers of services. For instance, all foreign suppliers of services are required to register their establishments locally and obtain licences to provide services or provide services through licenced entities. In this vein, the objectives of trade liberalisation which are aimed at facilitating the foreign supply of services may not be aligned with the local regulations.

The Committee, therefore, recommends that Objective 5 should be revised to provide for a balance between the pursuit of services trade liberalisation and the existing local regulations.

8.1.4 Article 3: Scope and Coverage

The Committee is in agreement with stakeholders who noted that the service industry is quite wide and wondered whether or not there would be any ad-hoc committees constituted to look into the impact of the implementation of the Protocol, with representation from key service sectors, which would be subject to the Minister of Trade and Industry.. While appreciating the four modes of supply for trade in services highlighted in the Article, the Committee recommends that Zambia should negotiate its commitments to ensure that these four modes of supply and the associated ramifications are assessed independently, as well as collectively before making any commitments.

The Committee also notes the requirement for entities to be registered locally as a prerequisite for obtaining a licence to provide ICT services within the country, with the aim of facilitating the oversight and supervision of the entities. However, liberalisation of trade in services in the SADC region will entail that consumers of services will be able to access services from foreign suppliers emanating from member states in the region. The Committee observes, however, that the Protocol does not provide for how consumer protection and redress will be achieved, especially relating to the supply of services across borders.

In this regard, the Committee recommends that in order to safe guard consumer interests, the Protocol must also provide for the protection of consumers and redress should grievances arise.

8.1.5 Article 6: Domestic Regulation

The Committee notes that the provisions of Article 6 focus on the establishment of a mechanism to facilitate prompt review and where necessary appropriate remedies for administrative decisions affecting trade in services. However, the *Information and Communication Technologies Act, No. 15 of 2009*, for instance, provides for the procedure for instituting a tribunal to deal with appeals relating to regulatory decisions. The Tribunal also has the mandate to deal with appeals relating to the provision of postal and courier services.

In this regard, the Committee wonders whether or not the provisions in the Protocol will supersede the provisions of the Act and recommends that this should be clarified.

8.1.6 Article 14: Market Access

The Committee is in agreement with stakeholders who noted that Article 14 contains provisions that may take away the regulatory oversight functions of institutions such as the Bank of Zambia and the Zambia Information Communication Technology Authority over certain matters. The Committee notes that according to the licensing guidelines and terms and conditions of the licences in the ICT sector, licensees are required to employ 80 per cent of Zambians at all levels of the organisation. This is aimed at ensuring that the benefits of these investments accrue to the local populace and in turn assist with increasing household and individual economic security.

In this regard, the Committee recommends that, taking advantage of Article 16 of the Protocol, Zambia should evaluate the benefits of these existing arrangements and possibly provide ‘a list of commitments’ to which the provision applies before ratifying the Protocol.

8.1.7 Article 19: Business Practices

The Committee notes that the liberalisation of trade in services will come with increased supply of services across borders, which will be provided by firms registered in different jurisdictions and under different regulatory regimes. In this regard, the Committee recommends that for purposes of effective cooperation on issues concerning competition law and policy enforcement, as well as notification of matters affecting the implementation of this Protocol, Zambia should take appropriate measures to ensure that the local competition and consumer protection laws are compatible with the following principles:

- (a) transparency in the making and publication of national laws, authority notifications, policy statements, and notifications affecting the interpretation or application of those laws;
- (b) impartiality and independence in the investigations and decision-making of the respective competent authorities;
- (c) procedural fairness in handling cases, the right to be heard, opportunity to provide written submissions, judicial or quasi-judicial decisions and the right of appeal or review of such decisions; and
- (d) non-discrimination on the basis of nationality.

The Committee further recommends that in order to ensure that competition disputes, including issues relating to mergers and acquisitions involving firms in different member states are resolved expeditiously, a regional competition regulatory body should be established.

8.2 General Observations and Recommendations

Generally, the Committee recommends that in order for the country to take full advantage of the Protocol but at the same time protect the local service industry, the measures set out below should be put in place.

- i. Build capacity of underdeveloped but strategic service industries in order to protect their domestic market share, and enable them compete favourably in the export market.
- ii. Develop logistical support services and other revenue generating activities to take advantage of Zambia's central location in trade.
- iii. Strengthen the regulatory monitoring framework for institutions like the Zambia Bureau of Standards, the Zambia Compulsory Standards, Competition and Consumer Protection Commission, to ensure protection of consumers against sub-standard services.
- iv. Strengthen the employment code and other safeguard measures such as the minimum wage to protect the Zambian worker against poor working conditions.
- v. Strengthen the institutional capacity in the Ministry of Commerce Trade and Industry to deal with safeguards and trade remedies as provided in the Protocol.

The Committee is satisfied that the conditions for determining whether or not the ratification of the SADC Protocol on Trade in Services is in the best interests of the nation, as set out in the *Ratification of International Agreements Act, No.34 of 2016*, have been met.

The Committee, therefore, recommends that the National Assembly approves the proposal to ratify the SADC Protocol on Trade in Services subject to the recommendations of the Committee.

9.0 CONCLUSION

Trade in services is fundamental to Zambia's development agenda, Vision 2030, which places a premium on the tourism and ICT service sectors. In the National Export Strategy of 2018, services are recognised as “ a new frontier for promoting sustainable growth and development in developing countries, and is considered as an important enabler for the growth of other economic sectors.”

The Committee laments, however, that in the past Zambia has failed to take advantage of prevailing trade remedies such as safeguards to protect local service industries and jobs from import competition under existing protocols. The Committee notes also that there are no domestic institutional capacities and competencies to cover this gap. Consequently, Zambia's pursuit of export-led industrial development without first expanding productive capabilities has left the country dependent on copper production which is vulnerable to external shocks, and with limited job opportunities.

In this regard, the SADC Protocol on Trade in Services could not have come at a more opportune time than now, and is in fact long overdue. The Committee, however, cautions that in order to avoid the situation where Zambia becomes a dumping ground, the measures proposed by stakeholders and the committee should be implemented.

We have the Honour to be, Sir, the Committee on National Economy, Trade and Labour Matters, tasked to consider the proposal to ratify the SADC Protocol on Trade in Services for the Fifth Session of the Twelfth National Assembly.

Dr S Musokotwane, MP;
(Chairperson)

Ms M Miti, MP;
(Vice - Chairperson)

Mr G G Nkombo, MP;
(Member)

Mr D Livune, MP;
(Member)

Mr E M Mwila, MP;
(Member)
Dr S C Kopulande, MP;
(Member)

Mr C Chali, MP;
(Member)

Mr E Kamondo, MP;
(Member)
Mr D Chisopa, MP; and
(Member)

Mr M Mubika, MP.
(Member)

October, 2020
LUSAKA

Dr Situmbeko Musokotwane, MP
CHAIRPERSON

APPENDIX I - List of National Assembly Officials

Ms C Musonda, Principal Clerk of Committees
Mr H Mulenga, Deputy Principal Clerk of Committees (FC)
Mrs C K Mumba Senior Committee Clerk (FC)
Mrs E K Zgambo, Committee Clerk
Mr C Chishimba, Committee Clerk
Mrs G Chikwenya, Typist
Mr M Kantumoya, Parliamentary Messenger

Appendix II - List of Witnesses

- i. Minister of Commerce, Trade and Industry
- ii. Ministry of Commerce, Trade and Industry
- iii. Ministry of Justice
- iv. Ministry of Finance
- v. Ministry of Transport and Communication
- vi. Ministry of Tourism and Arts
- vii. Zambia Revenue Authority
- viii. Bank of Zambia
- ix. Zambia Institute for Policy Analysis and Research
- x. Zambia Chamber of Commerce and Industry
- xi. Zambia Development Agency
- xii. Zambia Information and Communications Technology Authority
- xiii. Centre for Trade Policy and Development
- xiv. Southern Africa Cross Border Traders Association
- xv. Bankers Association of Zambia
- xvi. Economics Association of Zambia (written submission only)