



**Economic Commission for Africa**

Preparations for the Seattle  
WTO Ministerial Conference

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**Some African Perspectives  
on the Third Ministerial  
Conference of the World  
Trade Organization**

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Economic Commission for Africa.

## I. Introduction

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1. The Third Ministerial Conference (TMC) of the World Trade Organization (WTO) is scheduled to hold in Seattle, United States, 30 November - 3 December, 1999. The TMC will clearly have a much more ambitious agenda than the previous two post - Uruguay Round (UR) ministerial conferences. A first glimpse of this comes from the general Ministerial Declaration agreed on May 20, 1998 which instructed the WTO's General Council to begin preparations for the launch of envisaged negotiations and consideration of the organization's forward agenda beyond 1999.

2. More specifically, the agenda of the TMC is expected to include at least four broad areas. First is an assessment of the implementation of existing agreements. This would, essentially, be a review of implementation experience whose primary purpose would be to identify areas where difficulties have surfaced and, hence, where changes could facilitate improved enforcement of obligations and enhanced adherence to rules and commitments. The assessment is expected to cover all articles of GATT 1994, the Marrakesh Protocol to the General Agreement, the General Agreement on Trade in Services (GATS), each of the individual agreements (e.g. on agriculture, textiles and clothing, etc) as well as the understanding on Dispute Settlement, Trade Policy Review Mechanism, and Ministerial Decisions and Declarations, including those undertaken at Marrakesh.

3. The second major agenda item at the TMC is made up of specific reviews of particular agreements that were mandated by the UR. In this context, specific reviews are due around the turn of the century with respect to various elements of the agreements on agriculture, anti-dumping, customs valuation, dispute settlement understanding (DSU), rules of origin, sanitary and phytosanitary (SPS) measures, trade-related aspects of intellectual property rights (TRIPS), trade-related investment measures (TRIMS) and GATS, among others. The third broad agenda item emanates also from previous commitments. The UR negotiations took the unprecedented step of incorporating into the round's final results the commitment to enter into future negotiations in a number of areas. This agenda item is clearly different from the earlier two. While these call for assessment and reviews which may lead to changes, the third agenda item more specifically mandates new negotiations. These mandatory negotiations, covering agriculture, GATS, and TRIPS will, therefore, constitute the core of the new (Millennium) Round of negotiations scheduled to begin in the year 2000.

4. Finally, the Singapore Ministerial Conference adopted a work programme which included the establishment of several working groups around a number of issues. The TMC will be expected to decide what, if any, next steps should be taken with respect to the issues that the working groups have been considering. At least four of these are expected to be raised at the TMC. These are trade and investment, trade and competition policy, trade facilitation, and transparency in government procurement.

5. Current discussions within the WTO suggest that the TMC agenda could, in fact, be expanded to include a few additional issues. Many countries are apparently lukewarm to the idea of a new round of multilateral trade negotiations focusing on a limited number of sectoral areas (i.e the current list containing agriculture, services, and intellectual property rights) because they believe that these are unlikely to provide a sufficient balance of interests and could in fact end up neglecting some of their own individual concerns. Some suggest that this reluctance could be eliminated if the negotiations agenda is broadened to include industrial tariffs, as this would enhance the potential for a more balanced package of interest for most countries. Others would also specifically include further negotiations on textiles and clothing. Both of these proposed additions deserve the support of African countries since they could provide the opportunity of reaching agreements that would reduce peak industrial tariffs, eliminate tariff escalation in developed countries and further liberalize the textiles and clothing sector and, thus, enhance African market access in these areas.

6. But most African countries are still pre-occupied with problems arising from the implementation of various UR agreements. They have been faced with considerable administrative,

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institutional and financial problems in meeting the obligations that flow from these agreements. They are faced with similar problems also in the process of internalizing the implications of the UR agreements and trying to realize the benefits derivable therefrom. Their fundamental disabilities in these two broad areas (i.e fulfilling obligations and actualizing benefits) spill over, inevitably, into major difficulties of identifying specific negotiating interests and priorities as well as articulating the development strategies in the context of which their interests and priorities can be appropriately selected and pursued.

7. In spite of these difficulties, however, African countries cannot afford to de-link themselves from the globalizing trends in the world economy. Their continued, more active and effective participation in the WTO process (including the TMC and the future negotiations that it is likely to launch) must therefore be regarded as an unavoidable imperative. The main focus of African countries in future multilateral trade negotiations should be to preserve and deepen market access for their exports of goods and services. This broad negotiating interest could be covered in precisely those areas that have been identified for negotiation in the "built-in agenda", i.e agriculture and services; in addition to the reduction of tariff peaks and elimination of industrial tariff escalations.

8. But Africa's negotiating interests go beyond these issues of sectoral market access. African countries confront significant concerns with respect to the general rules that govern the WTO process which, in turn, conditions the extent of their participation in the process. In particular, African countries need to ensure that these rules are clearer and more transparent and that they receive the necessary support for enhancing their participation in the WTO process, which is the only really effective mechanism for asserting their rights. Therefore, this paper will first discuss some critical systemic issues and rules (in section II) before proceeding to an analysis of what the African position should be with respect to the key components of the built-in agenda (in section III). The additional negotiating agenda items are discussed in section IV; and the paper concludes in section V.

9. The over-riding theme of the paper is the articulation of the broad elements of a common negotiating position for African countries. Given the number of countries in Africa and their homogeneity, these broad elements will inevitably gloss over certain details of specifics which are best captured by more comprehensive country analysis. An implicit underpinning of the identification of a common negotiating position at this broad level is the assumption that to enhance the bargaining position of African countries in future negotiations, concerted efforts will be made to build coalitions with other least-developed, developing and developed countries around specific components of this common negotiating position.

## **II. Systemic Issues and Rules**

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10. A key and often repeated objective of the WTO is to ensure that all Members share equitably in the benefits of a rule-based multilateral trading system. In addition, the organization's claim to universality rests on the full integration of all countries into the global trading system, irrespective of their different levels of development. For the developing and the least-developed countries, current thinking on development suggests that their enhanced integration into the global economy is an important mechanism for their rapid and sustainable economic growth and development. But the development interests of many of this category of countries cannot be fully taken into account in a multilateral trading system in which they lack adequate capacity to comply fully with their obligations, enforce the rights derived from their membership or even simply participate effectively in WTO meetings. The concerns of these countries relating to the implementation of existing agreements, given their absorptive capacity, clearly have a bearing on their apparent reluctance to accept the rapid expansion of the multilateral trade agenda to include a range of new post-UR issues.

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11. It is against this background that African countries need to get the WTO to address a number of systemic issues and rules prior to the proposed negotiations on the specific sectoral and other issues that are already on or are likely to be placed on the agenda of the Millennium Round. Critical among these systemic issues are concerns revolving around the participation of African countries, including issues relating to the management and governance of the WTO; the criteria and content of special and differential treatment of certain Members of the WTO; as well as technical assistance.

### **(a) Participation**

12. The WTO is a member-driven organization which has turned into a more or less permanent negotiating forum through the process of a large number of virtually continuous and simultaneous meetings. Effective participation in this WTO process is an important responsibility of membership since it is through this that each member can ensure that its own interests are fully reflected in what the organization does. Active participation is typically directed at a range of objectives, including the following:

- ◆ protecting and exercising a member's trading rights in export markets, especially when confronted with illegal restrictive actions;
- ◆ taking advantage of the trading opportunities that arise from the rules, and the concessions and commitments made by each member's trading partners;
- ◆ meeting relevant WTO obligations with respect to domestic policies and using these to enhance the transparency, stability and credibility of the domestic policy regime; and
- ◆ articulating and pursuing a member's national interests in multilateral trade negotiations and ensuring that these interests are fully reflected in the negotiation agenda.

13. On paper, the WTO appears like an organization in which the interests of the small and poorer countries cannot be crowded-out by the influence of the larger, richer, and, hence, more powerful countries. In other words, the WTO is, at least in appearance, a model of democracy. It claims several unique features in support of this idealistic image: the WTO is structured on the assumption that all its members are equal; each member of the WTO has a single vote at meetings of the Ministerial Conference and the General Council; decisions at these meetings are mostly based on consensus.

14. However, the reality of the WTO and its processes is dramatically at variance with the democratic ideal. For the WTO, a consensus decision occurs when no member, present at the meeting when the decision is taken, formally objects to the proposed decision. Implicit in this arrangement is the permanent representation in Geneva of each member and the capacity of that representative to take decisions based on full understanding of the issues, many of which are technically complex, discussed at various stages of the WTO decision-making process. Contrary to the organization's democratic facade, many important decisions are, in fact, taken by a limited number of countries which "consult" in closed groups or even outside the framework of the WTO altogether.

15. African countries face considerable difficulties in organizing themselves to effectively participate in the WTO process. They are therefore neither able to take full advantage of the opportunities that the multilateral trading system offers nor able to ensure that the system adequately reflects their trade interests and development concerns. The constraints that obstruct their full and effective participation in the WTO process include the following:

- ◆ high cost of maintaining an adequate permanent delegation devoted in WTO activities in Geneva;
- ◆ weak institutional infrastructure that denies them the necessary and appropriate support from capitals and in Geneva;
- ◆ shortage of skill personnel required for WTO work;
- ◆ increasing complexity of WTO rules and working processes and structures;

- ◆ lack of awareness of and full information on WTO rules and the technical issues that are subjects of discussion and negotiation; and
- ◆ inability to upgrade domestic institutions and regulations to make them compatible with the requirements of the WTO.

16. Many of these constraints are not amenable to quick or short-term solutions. The build-up of appropriate human and institutional capacity will take considerable time and resources. Yet, they will continue to marginalize many African countries from effective and full participation in the WTO process, with all the negative consequences already identified.

17. Therefore, African countries should request negotiations aimed at reforming the WTO's management and governance structures and processes in ways that enhance their participation, given the disabilities that they face. More specifically;

- ◆ the WTO budget should support a minimum of three full-time staff, for each delegation, devoted exclusively to WTO work;
- ◆ an executive directorate system should be introduced as a management body of the WTO, such that groups of countries are represented by executive directors with the mandate to watch over their interests; and
- ◆ the WTO Secretariat should be strengthened to enable it effectively support each delegation with appropriate analytical and technical input on all matters related to the mandate of the WTO.

## **(b) Special and Differential Treatment**

18. The framework for special and differential (or more favourable) treatment (SDT) of developing countries under the broad rules governing the multilateral trading system was set out in the Tokyo Round of multilateral trade negotiations. SDT provisions were meant to take account of the diversity of conditions and capacities in various member countries. In explicitly acknowledging the disparities among members, and the growing divergence in the economic situation and capacities of developing countries, SDT provisions sought to relate them to the benefits that such countries could reap from the multilateral trading system and the obligations and commitments that they could undertake.

19. In more recent times, especially since the completion of the Uruguay Round, many previously unregulated areas of trade and trade-related policies have been added to the mandate of the WTO, and a vast array of new obligations have been introduced. Underlying the basic principle of SDT are that the ability to meet these new obligations varies widely across WTO member countries, and that while full implementation of the new commitments may be appropriate for the more developed countries, it may be much less so for many of the developing and probably all the least-developed countries.

20. The Second Ministerial Conference of the WTO recently re-affirmed the justification and continued support for the SDT principle on the following grounds:

- ◆ the need to ensure that the benefits of the multilateral trading system are extended as widely as possible;
- ◆ the need for the system to make its own contribution in response to the particular trade interests and development needs of developing country Members;
- ◆ deep concern over the marginalization of certain developing and least-developed countries as well as small economies;
- ◆ the SDT is an important means of integrating these marginalized countries into the global economy; and
- ◆ continued commitment of the WTO to improve the market access conditions for products exported by the least-developed countries on as broad and liberal a basis as possible.

21. In principle, SDT provisions enhance market access conditions of beneficiary countries and permit them derogation from certain WTO rules. In addition to granting certain trade preferences, SDT provisions allow these countries some flexibility in the use of certain trade measures on both the export and import sides. The derogation from rules is to ensure that developing and least-developed countries are not deprived of the essential tools for strengthening their competitive supply capacity without which they would not be able to take full advantage of the preferential market access granted to them. Thus, the two key elements of SDT provisions are essentially complementary; special market access preferences would not be fully utilized in the absence of special measures to enhance the supply capacity of beneficiary countries.

22. In broad terms, the UR agreements have maintained the basic principle and key components of SDT introduced in earlier multilateral trade negotiation rounds. Thus, many of the individual UR agreements contain provisions that differentiate the rights and obligations of WTO member countries in accordance with their presumed level of development. In general, the UR agreements imply a descending order, in terms of obligations, from developed countries through developing to the least-developed countries. In particular, the developed country members are required to commit fully to all the obligations while, for developing countries, the commitments are less demanding. On the average, the reduction obligations of developing countries are two-thirds of those of the developed countries, while their implementation (or transitions) permits are also roughly 67% longer. In comparison the least-developed countries enjoy the same benefits as the developing countries; and, in addition, are allowed even longer transition periods as well as several other exemptions.

23. But, with few exceptions, SDT provisions in the post-UR multilateral trading system are expressed mainly in terms of transitional periods, differences in threshold level and offer of technical assistance rather than in the form of substantive exemptions, as in the pre-UR era. To make matters worse, the length of transitional periods and the levels at which thresholds are set appear, for the most part, to have been chosen rather haphazardly. They do not appear to be closely linked to or based on any objective criteria reflecting differences in level of development or country capacities. The specified transitional periods are excessively optimistic in many cases. While the essence of some of these transitional periods can be explained in terms of the time it may take an economy to adjust to the required rule changes, their limited duration renders many of them inadequate as a basis for capacity creation for enhanced trade and production. Contrary to the realities on the ground in many African countries the limited transitional periods appear to assume the existence of the appropriate institutional and resource capacities required to enable these countries take maximum advantage of the opportunities provided by the multilateral trading system.

24. The deficiencies of the post-UR SDT provisions point to the need for a careful re-thinking of their concept and contents prior to the launch of a new round of multilateral trade negotiations. Better informed and multilaterally negotiated decisions regarding SDT forms and contents should be taken before the sectoral and rules negotiations begin so that these decisions can be appropriately reflected both in the reviews of existing agreements and the construction of new rules. In particular, it is necessary to identify and reach agreement regarding measurable development and trade parameters which would be used for determining eligibility for specified SDT provisions and for selecting the rules for which derogation might enhance the supply capacity of recipient countries. Clearly, SDT based on objective economic criteria, for eligibility as well as graduation, should provide a more meaningful and transparent specification and implementation of its specific provisions.

25. The WTO recognizes three categories of members, i.e developed, developing, and least-developed. However, the criteria for separating members into these three categories remain controversial and not fully transparent. For instance, the WTO seems to have adopted the United Nations' definition of a least-developed country. Unfortunately, this definition is not designed to measure trade competitiveness, which is or should be, the major consideration of the WTO. But even on the basis of its broad income-based definition, the UN's list of least-developed countries exclude several low-income countries that should have been included. In an attempt, perhaps, to remedy the inherent deficiency of the UN definition, the UR agreement on subsidies actually expanded the UN list of least-developed countries to include others with per capita income of up to \$1000. This was,

however, an ad hoc solution that was not extended to other UR agreements in which SDT provisions were made.

26. An even greater ambiguity exists over the definition of a developing country. In the absence of a specific definition, the WTO appears to have allowed self-designation by countries which choose to refer to themselves as developing. However, the increasing references in WTO discussions to the so-called "more advanced" developing countries may signal the beginnings of possible contention in future trade disputes. It seems clear, therefore, that the WTO cannot for long dodge the issue of negotiating an appropriate set of criteria for categorizing its member countries, determining an objective basis for eligibility for certain SDT provisions and for graduation from these provisions, as well as articulating the forms and specific contents of SDT provisions applicable to the different categories of recipients.

27. In view of the critical importance of SDT to many African countries, it should be part of their common position at the TMC to insist that the form and content of SDT be negotiated prior to discussing the other agenda items of the proposed Millennium Round so that the negotiated agreement on SDT can be fully reflected in the subsequent negotiations on sectoral issues and rules. In particular, African countries should push for definitions of least-developed and developing countries based on objective criteria reflecting basic development status such as income level and trade competitiveness:

- ◆ for the least-developed countries, per capita income level of not more than \$1500 and/or manufactured exports share of total exports up to 20% may be appropriate;
- ◆ for the developing countries per capita income levels in the range of \$1500 - \$10,000 and/or manufactured share of total exports in excess of 20% would appear reasonable.
- ◆ African countries should also push for negotiations on the specifics of SDT provisions. In this context, the following could form part of the common African position:

- ◆ Least-developed countries

- **Market Access (Exports)**

- ◆ grant of duty - free quota-free and bound access for all exports to developed-country markets.
- ◆ grant of preferential access to developing-country markets.

- **Market Access (Imports)**

- ◆ impose 100% tariff bindings on all products at no more than 50% tariff rates.

- **Derogation from Rules**

- ◆ exempt all exports from contingency trade measures in the developed and developing country markets
- ◆ permit least-developed countries to use domestic support and export subsidy measures in all goods and services sectors.

- ◆ Developing countries

- **Market Access (Exports)**

- ◆ reduction rates for tariffs, production and export subsidy measures at 50% of those applied to developed countries;
- ◆ transitional periods at twice the length applicable to developed countries.

- **market access (imports)**

- ◆ 100% binding for all goods at applied rates;
- ◆ grant of preferences to exports of least-developed countries.

**(c) Technical Assistance**

28. Technical assistance aimed at helping WTO member countries cope with the requirements of their membership is becoming more and more important as more least-developed and developing countries join the organization. Explicit recognition of this is documented in various UR agreements that contain specific offers of technical assistance to help certain members meet different aspects of their obligations.

29. In spite of this, the post-UR experience shows that least-developed and certain developing countries, especially those in Africa, are facing great difficulties in meeting their obligations and benefitting from the trading opportunities made available by the multilateral trading system. Many African countries are still struggling to get a better understanding of the UR agreements and the rights and obligations that they involve. Adding to these difficulties is the increasing complexity of issues that are covered in the expanding mandate of the WTO. Many of these issues involve extremely difficult technical questions which are often open to different interpretations.

30. The efforts of many African countries to implement their WTO notification requirement have been hampered by limited human resources and weak institutional infrastructure, with the result that many have not or were not able to fulfil the notification requirement within the time allowed. The lack of technical capacity in meeting the often administratively and technically burdensome notification obligations probably characterizes other least-developed and developing countries outside Africa.

31. This disability has practical consequences for many African countries. In particular, the failure to file certain notifications within the time allowed has resulted in several African countries forfeiting the chance to take advantage of various UR agreements. For instance, many of the least-developed countries in Africa failed to make the notifications with respect to certain trade-related investment measures (under Article 5.7) and may therefore have lost the opportunity to benefit from the transitional period provided. Similarly, African countries face a particularly acute problem in establishing new domestic legislation to reflect a wide range of new WTO disciplines in such areas as anti-dumping, subsidies and countervailing measures, customs valuation, import licensing procedures, and technical barriers to trade. The implementation of the transparency provisions of the agreement on sanitary and phytosanitary (SPS) measures cannot be effectively carried out by many African countries that lack the appropriate regulatory bodies and institutional infrastructure.

32. On the domestic front, many Africa countries are confronted with weak institutional capacities and lack of resources for sustaining effective trade policy formulation and coordination mechanisms. Their trade policy establishments are often unable to carry out necessary systematic studies on how proposals for market access liberalization or for changes in trade rules or institutional arrangements would impact on their economies. As a result, they are often reluctant to take decisions on such matters or are forced to adopt a defensive approach in multilateral trade negotiations.

33. In the context of the special problems of the least-developed and developing countries several key objectives appear self-evident for the WTO's technical assistance programme. These include:

- ◆ improving the participation of member countries in international trade policy decision-making in the WTO by enhancing their capacities to enforce their rights and implement their obligations;
- ◆ upgrading their capacities for preparing for and participating in multilateral trade negotiations;
- ◆ ensuring greater access to trade information and technology for processing and analyzing such information;

- ◆ strengthening their capacities to identify trade policy objectives; and
- ◆ strengthening their capacities for national trade policy management.

34. Virtually all of these technical assistance objectives can be met through the training of individuals and the strengthening of the structures of national trade policy institutions. The building of appropriate human and institutional capacity through such technical assistance should also extend to the strengthening of the supply-side capacities of the least-developed and developing countries to assist in their effective utilization of market access opportunities.

35. Some amount of technical assistance has always been associated with the WTO process, and this has grown in quantity especially during the post-UR era. The WTO maintains a training facility in Geneva for trade policy officials; and it has collaborated with other organizations in the context of the integrated programme of the least-developed countries. But WTO's current technical assistance programme is inadequate for meeting the rapidly growing needs in the light of the special problems faced by the least-developed and developing countries. The current programme is not sufficiently focused on the full range of problems, the secretariat's capacity to meet the needs is extremely limited, and the heavy reliance on voluntary contributions from a limited number of generous donors to fund the programme makes it unsustainable.

36. This discussion on technical assistance in the WTO suggests that African countries should include in their common position at the TMC the following proposals:

- ◆ technical assistance should be regarded as a right for the least-developed and developing country members of the WTO, and as an important pre-condition for meeting their WTO obligations;
- ◆ the WTO should restructure and strengthen its technical assistance programme and target it at meeting the key objectives stated earlier;
- ◆ the revamped technical assistance programme should be accompanied with enhanced capacity in the WTO Secretariat and should be largely funded through the WTO budget to ensure sustainability;
- ◆ the WTO technical assistance should include appropriate human capital development, studies on WTO issues, specific advice on concrete problems, practical hands-on assistance, advisory missions, etc.
- ◆ WTO technical assistance programme should include support for an independent legal advisory centre for the least-developed and developing country members to enable them protect their rights through more effective use of the dispute settlement mechanism;
- ◆ WTO's technical assistance should be delivered as much as possible, through regional offices so as to bring the facilities closer to the countries being assisted; and
- ◆ at least four of these WTO Regional Offices should be established in Africa (2 Anglophone, 1 Francophone and 1 Arabic) in view of the heavy concentration of least-developed and developing countries on the continent.

### **III. The Built-in Agenda**

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37. The core of the "built-in agenda" consists of mandated negotiations on agriculture, services and TRIPS. This section articulates the key negotiating issues with respect to each of these areas and offers some African perspectives.

#### **(a) Agriculture**

38. The Uruguay Round Agreement on Agriculture (AoA) focussed on reversing the existing trend in agricultural protection particularly in the developed countries. It also laid the foundations for

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reducing both production and export subsidies which are, again, problems associated primarily with agricultural policy of the developed countries. AoA achieved a number of significant results. Through it, domestic agricultural policies were, for the first time, firmly brought under multilateral discipline. In addition, it mandated the tariffication of non-tariff barriers (NTBs) in agriculture, committed countries to a phased reduction of bound tariffs on agricultural products and mandated similar reductions in agricultural production support and export subsidies.

39. In spite of these achievements, however, much remains to be done before trade in agricultural products is as fully disciplined or as liberal as trade in manufactured products. Thus, at the end of the implementation period of AoA, average tariff on agricultural products in the developed countries will still be as high as 36% compared with 20% for the developing countries and 13% in Sub-Saharan Africa. In addition, production subsidy in the developed countries will average 1% while developing countries will tax agricultural production at 2%, and Sub-Saharan African countries will retain an average agricultural production tax of 1%. With respect to agricultural export, the developed countries' subsidy will average as much as 7%, while the developing countries will tax agricultural exports at an average rate of 2%, and Sub-Saharan Africa's agricultural export tax will average as high as 9%. In other words, beyond 2005, the developed countries will continue to subsidize agricultural production and exports while developing (and, especially, African) countries will continue to tax both. This suggests that significant distortions to agricultural production and trade will remain. It also justifies the need for further negotiations.

40. This need is explicitly recognized by article XX of AoA which mandated that new negotiations should be initiated by 1 January 2000. The new negotiations are to take the following into account:

- ◆ experience with implementation of the reduction commitments;
- ◆ effects of the implemented reduction commitments on world trade in agriculture;
- ◆ non-trade concerns, special and differential treatment for developing countries, and the objective of establishing a fair and market-oriented agricultural trading system; and
- ◆ any further commitments necessary to achieve the long-term objective of substantial progressive reduction in agricultural support and protection.

41. In the discussions, within and outside the WTO, and preparations for the mandated new negotiations on agriculture, several issues have been suggested. First is what to do about tariffs. Questions here relate to the ways and means of reducing the existing tariff peaks and eliminating tariff escalation. In addition, there are concerns regarding the tariff rate quota system and its administration. Second is what to do about agricultural production support. In particular, discussions point to the need to eliminate "Blue Box" measures and revise the criteria for the "Green Box" measures. Third is what to do about agricultural export subsidies. The fourth broad area of concern relates to the incorporation of the special needs and conditions of developing countries in market access disciplines, including the fullest liberalization of trade in tropical agricultural products and the food security concerns of the low-income food-deficit countries. Also included in this broad area is the question of the concrete follow-up actions on the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Finally, there is a range of other issues which will be negotiated. Included in these are the disciplines on state trading enterprises; export credits, export credit guarantees or export insurance programmes (which could be used to circumvent any agricultural export subsidy commitments).

42. From the economic development perspectives of African countries, the primary objectives to aim for in the new negotiations on agriculture should include the following:

- ◆ substantial reduction in agricultural tariff protection in the developed countries, possibly to the levels applied to manufactures;
- ◆ achievement of this reduction in agricultural protection in such a way that tariff peaks are substantially reduced and tariff escalation eliminated;
- ◆ elimination of agricultural production support and agricultural export subsidies in the developed countries;

- ◆ application of SDT provisions for least-developed and developing countries with respect to tariff reduction and the use of agricultural production and export support measures; and
- ◆ concrete operationalization of the special assistance programme for the least-developed and net food-importing developing countries negatively affected by the global liberalization of agriculture.

43. The specific proposals meant to address these negotiating objectives deserve some elaboration.

### **Market Access**

44. Above quota bound tariffs are very high in all countries. This results from a combination of two factors; i.e dirty tariffication by developed countries and the adoption of very high ceiling bindings by developing and least-developed countries. Thus, bound tariffs are as high as 50% - 250%. It is clear that achieving the objective of increased market access will require substantial tariff reductions. In doing this, however, it is in the interest of African countries to ensure that not only is there a sharp reduction in overall tariff rates, the liberalization process also carries with it a reduction in peak tariffs and an elimination of tariff escalation. To achieve these latter two elements of the objective, it is necessary to adopt a tariff cutting formula in which the rate of reduction for each product is higher the greater the product's tariff level. This is the "Swiss Formula". Hence the negotiating positions with respect to above quota tariffs should be the following:

- ◆ there should be a fairly large across - the-board reduction in tariffs, by as much as 50%; and
- ◆ the "Swiss Formula" should be used to implement the agreed tariff reductions.

45. The second element of market access relates to in-quota tariffs. The negotiating positions that would enhance the objective of increased market access are to:

- ◆ substantially expand the tariff rate quotas; and
- ◆ bind in-quota tariffs at the same rate as the average tariffs applicable to manufactured products.

46. As the above quota tariffs are reduced and compressed and as the tariff rate quotas are expanded, the aggregate tariff level should eventually approximate that applicable to manufactured products.

### **Production Support**

47. The ultimate objective of the reform process in agriculture is to at least place it on the same level with the manufacturing sector. This suggests that production support for agriculture should be further constrained. In doing this, at least three proposals need to be negotiated:

- ◆ complete elimination of the "blue box";
- ◆ tightening of the "green box" criteria so that they will not provide loopholes for illegal output - increasing support measures;
- ◆ further reductions (by at least 50%) in aggregate measures of support (AMS).

### **Export Subsidies**

48. Bringing agriculture in line with the manufacturing sector requires the prohibition of agricultural export subsidies. It also requires tighter disciplines on the use of such measures as export credit guarantees and insurance.

49. These call for proposals to:

- ◆ prohibit or rapidly phase out agricultural export subsidies,
- ◆ impose more stringent disciplines on export credit and associated measures.

### **Non-trade Concerns**

50. The existing AoA does not, in the view of many developing countries, fully reflect their non-trade concerns. Neither do the proposals suggested under market access, production support, and export subsidies above. Yet, it is clear that the least-developed and developing countries require considerable flexibility to pursue certain non-trade objectives, given the multi functionality of agriculture. These countries should have the flexibility to provide appropriate agricultural support needed to alleviate poverty, maintain the standard of living of the rural population, sustain rural employment, improve national food security, and preserve the environment.

51. In its sectoral application to agriculture, the broad SDT provisions articulated in section II above should be adequate to provide the domestic policy flexibility needed by the least-developed and developing countries in Africa for addressing their non-trade concerns. Under these provisions, the least-developed countries (which will constitute a larger group than before if the suggested new eligibility criteria are adopted) will not have to make any reduction commitments with respect to market access, production support, and export subsidies; while the reduction commitments of developing countries will be 50% of those applicable to developed countries and these will be phased-out over twice the implementation period allowed for developed countries. In addition, the least-developed countries should receive bound duty-free and quota-free access for their processed and unprocessed agricultural products into the markets of developed countries as well as preferential access into the markets of developing countries.

### **Assistance for Food Deficit Countries**

52. The AoA makes explicit provisions for assisting the least-developed and net food-importing developing countries to cope with the effects of implementing the agreement on international food prices and the effects of reduced subsidies on the export of food from the developed countries. This assistance was to take three different forms, i.e increased food aid, short-term financial assistance to import food, and technical assistance to improve agricultural productivity and infrastructure. Neither the first two short-term assistance measures nor the third longer term assistance measure are within the purview of the WTO and the decision that contains the explicit offer of assistance does not indicate what operational modalities would be used to deliver its promise.

53. Meanwhile, the post-UR experience shows three trends: food aid has fallen rather than increased, food import bills of the least-developed and net food-importing countries African have risen, and technical assistance to improve their agricultural productivity and infrastructure has declined. It is not necessarily the case that all of these three trends are due entirely to the implementation of AoA, both a significant part of at least the first two (i.e falling food aid and increasing food import bills) is traceable to it. In particular, there is evidence that some of the observed increase in food prices derives from the reduction of export subsidies which has also generated reduced intervention stocks and, hence, lower food aid volumes. In addition, the erosion suffered by preference receiving African countries (most of which are least-developed and net food-importing developing countries) has worsened their ability to cover their food import bills through increased export earnings. In short, many vulnerable African countries have faced precisely the kind of difficulties foreseen as a short-term consequence of the implementation of AoA, but there is no evidence that they have been significantly assisted as promised.

54. Africa carries the major burden of these difficulties. As many as 43 of the region's 52 countries fall in the category of low-income food-deficit countries that have also suffered from significant

preference erosion. Unless the short-term needs for assistance of these countries can be met, it is likely that their food consumption will be compromised by the global agricultural liberalization process. African countries should therefore insist that the WTO establish the operational modalities of implementing the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

### **Safeguards**

55. It is universally recognized that agricultural markets are inherently volatile. While the consequences of this volatility are not unique to least-developed and developing countries, it is clear that the consequences are typically much more serious for this category of countries. Several factors account for their greater vulnerability. First, their economies are more prone to external shocks which usually amplify the inherent volatility of their agricultural markets. Second, the agricultural sector plays an overriding role in their economies, given its close links with the livelihood of a large segment of the population.

56. Safeguard measures could be important in the context of volatile agriculture and in relation to food security concerns, particularly when bound tariffs are quite low. Hence, developing countries should be offered safeguards for selected and limited number of basic food commodities.

57. Such safeguard measures are neither appropriate nor necessary for the developed countries which can ensure adequate food security through the combination of competitive domestic production, imports and stockholding. They are also not required in the case of the least-developed countries which, under the suggested SDT provisions, will not be obliged to make any reduction commitments or be constrained in the use of domestic support measures.

### **(b) Services**

58. One of the major results of the UR negotiations was the General Agreement on Trade in Services (GATS). But while the UR established the basic structure of GATS and completed several of its key components, negotiations on a number of sectors were not completed until after the UR. These include negotiations on telecommunications and financial services. In addition, negotiations on other items, such as sea and air transportation, government procurement subsidies, safeguards and labour mobility have been left to a wider future round of negotiations.

59. This future round is provided for in article XIX of GATS and should start before the year 2000. Its broad focus will be to achieve a progressively higher level of liberalization in all areas of services.

60. More specifically, the negotiations will be aimed at:

- ◆ reducing or eliminating adverse measures which affect trade in services as a means of providing effective market access;
- ◆ increasing the general level of specific commitments while promoting the interest of all participants on a mutually advantageous basis and securing an overall balance of rights and obligations;
- ◆ paying particular attention to identifying sectors of export interests to developing countries for which liberalization could be negotiated;
- ◆ finding ways to facilitate further commitments on services through the movement of natural persons; and
- ◆ completing the unfinished agenda on GATS rules covering key rule-making areas such as emergency safeguards, government procurement, and subsidies.

61. As in the case of other pre-determined future negotiations, the new negotiations on GATS are to be preceded by an assessment of its implementation so far. Several major problems have been identified in the preliminary evaluations of GATS implementation. First, the provisions aimed at

increased participation of developing countries in international trade in services (e.g. Articles IV and XIX:2) have not been operationalized and implemented. There is, in general, no clear mechanism for implementing several GATS provisions that are meant to address the specific needs of the least-developed and developing countries, with particular reference to flexibility in the liberalization process and offer to them of enhanced access to technology, distribution channels, and information network by developed countries. Second, adequate market access has not been provided to the least-developed and developing countries in sectors and modes of supply that are of particular interest to them. This problem is typified by the lack of meaningful liberalization with regard to the movement of natural persons in the absence of commercial presence.

62. Pre-negotiation discussions in and outside the WTO suggest the possibility of using the mandated new negotiations to re-establish the GATS along the lines of a more general approach based on a negative list (compared to the current arrangement which uses a positive list) and making national treatment an obligation (rather than a commitment which is subject to negotiation). It is essential for African countries to insist that the current “architecture” of GATSs not be tampered with and that the new negotiations should concentrate, instead, on the liberalization commitments as originally mandated. It is widely recognized that, in most service sectors, the only way in which the least-developed and developing African countries can derive full benefits from liberalization is if the process is preceded or accompanied by adequate supportive capacity building measures.

63. Ideally, the liberalization of international trade in services should facilitate the reform of domestic regulatory systems of African countries. This could, in turn, enhance the efficiency of services and improve overall economic growth. Since services are typically heavily regulated by governments, there is a close relationship between domestic regulatory reform in services and multilateral negotiations aimed at the liberalization of international trade in services. Based on this relationship, it can be further argued that the establishment of a fully liberalized and competitive framework for international trade in services requires far-reaching reform and liberalization of domestic regulatory systems and, hence, the emergence of a global regulatory framework for services. But proceeding along this route would lead to the establishment of rigid global rules that could unnecessarily limit national flexibility and policy discretion which may frustrate the efforts of African countries to build appropriate capacity in various service sectors.

64. Given the need of African and other least-developed and developing countries to build capacity as a means of reaping the full benefits of liberalized international trade in services, it will be counterproductive to impose a harmonized set of global regulations on all countries especially as many of them are at different levels of economic development. In essence, therefore, WTO disciplines in services should, in general, set out broad principles for the design and application of domestic regulatory systems rather than seek to establish detailed global regulations that all countries must accept. This suggests that the current GATS architecture is appropriate and that negotiation of sectoral agreements is useful to the extent that it makes it possible to address specific areas of regulatory problems in a particular service sector only up to the point at which open competition is facilitated among domestic and foreign firms. In other words, a sectoral negotiating approach tends to minimize the degree of intrusion by multilateral rule-making while, at the same time, it can provide a viable framework for enhanced entry and open cross-border competition. It is thus an effective approach for liberalizing trade in heavily regulated service sectors while preserving national preferences to the extent possible.

65. For all participating countries, the foremost challenge of the new round of negotiations in services is to expand the market access commitments incorporated in the national schedules. This general challenge applies to African countries as well. In negotiating improved market access commitments, the following proposals are useful:

- ◆ a “formula” approach should be adopted;
- ◆ under this approach, countries should agree to a percentage reduction (or elimination) of specific types of existing market access restrictions (e.g. quotas, limitations on number and/or volume of activity of locally established foreign firms, etc);

- ◆ in the spirit of SDT, exempt the least-developed countries from any new market access commitments;
- ◆ use of “formula” approach to establish appropriate horizontal and sectoral targets for developed and developing countries (at 50% of developed countries); and
- ◆ establish appropriate periods of implementation of the new commitments for the developed and developing countries (at twice that of the developed countries).

66. A key area of specific concern for African countries is the movement of natural persons in the absence of commercial presence. Their negotiating position on this issue should include proposals aimed at:

- ◆ enhancing the freer movement of natural persons as service providers in the absence of commercial presence by improving the transparency and predictability of the administration of visa regimes, work permits and licenses as well as the mutual recognition of professional qualifications.

67. Current discussions argue in favour of the negotiation of emergency safeguard measures in GATS because it might encourage developing countries to liberalize their services further by providing appropriate safety value. However, the “positive list” and sectoral negotiation approach of GATS probably offers an adequate safety value. In any case, there are inherent conceptual and empirical difficulties in the development and application of rule-based safeguard and counter-vailing measures, given large sectoral differences and the complexities of the four modes of service provision recognized in GATS.

68. The GATS has already established an across-the-board obligation of transparency for all internationally traded services by requiring that member countries should publish all government measures affecting such trade and that they should respond to requests for information on the measures. African countries should therefore have no problem if this obligation were to be extended to transparency in government procurement. The articulation of WTO discipline on subsidies in the context of GATS may turn out to be more complicated unless an operationally feasible analogue can be found in the subsidies discipline applicable to agricultural and manufactured goods. In the case of the latter, subsidies are largely prohibited whereas they are subject to reduction commitments in the former. In both cases, SDT provisions largely exempt the least-developed countries while both the reduction obligations and transitional periods for developing countries are different from those of the developed countries.

69. The discussions above suggests the following proposals as possible elements of a common African position regarding the issues of safeguard, government procurement, and subsidies:

- ◆ given the positive list and sectoral negotiation approach of GATS, the addition of provisions for emergency safeguard measures may not be necessary;
- ◆ since the GATS already imposes an obligation of transparency with regard to all internationally traded services, this obligation is extendable to government procurement and separate provisions may therefore not be needed; and
- ◆ WTO discipline on subsidies in the context of GATS should be articulated along the lines of similar provisions in the Agreement on Agriculture, provided that appropriate SDT provisions are included to exempt the least-developed countries and adequately differentiate the obligations of developing countries from those of the developed countries.

70. As its implementation experience has clearly demonstrated, GATS appears to have fallen short of the expectation of African and other least-developed and developing countries essentially because its provisions aimed at increasing their participation have not been operationalized. In particular, African countries should use the opportunity of the future negotiation on GATS to:

- ◆ ensure that appropriate operational mechanisms are established for the effective implementation of existing GATS provisions aimed at increased participation of least-developed and developing countries in international trade in services; and
- ◆ ensure that GATS provisions which promise increased access of least-developed and developing countries to technology, distribution channels, and information networks are fully implemented in a timely fashion, using appropriate technical assistance and other capacity building measures.

### **(c) TRIPS**

71. Article 71.1 of the TRIPS Agreement mandates a review of its implementation in year 2000, after which further negotiations may occur, focusing on the following issues:

- ◆ new developments that might warrant modification or amendment of the TRIPS Agreement;
- ◆ exceptions of patentability and protection of plant variety;
- ◆ development of a multilateral system of registration of geographical indication of wines;
- ◆ use of dispute settlement mechanism to prevent violations of intellectual property rights; and
- ◆ extension of article 23 of the TRIPS Agreement to cover increased protection for geographical indications for wines and spirits

72. Implementation of the TRIPS Agreement requires complex changes in existing domestic legislation, new legislation, overhauling of domestic regulation systems; as well as institutional and administrative capacity building and strengthening. To comply fully and effectively with the Agreement, many African countries need to adopt comprehensive new judicial instruments and procedures and set aside specific institutional mechanisms for the administration of intellectual property rights. Compliance thus poses major and difficult challenges for many African countries. Yet, these challenges imply net long-term costs for them, given their limited technological development, limited opportunities and mechanisms for technological transfer and knowledge diffusion, as well as the rudimentary nature of local innovation. In these circumstances, it is clear that any further extension of rules and obligations under TRIPS would worsen the difficulties for African countries, many of which are still struggling with the implementation of the existing rules and obligations.

73. For many African countries, it is not self-evident that the multilateral system of intellectual property protection established by the TRIPS Agreement can be effectively transformed from what is, essentially, a rent transfer mechanism to an instrument for technological development. On the more positive side, however, it may be feasible to reform African intellectual property protection systems in ways that limit the potentially adverse effects of more stringent international protection standards while facilitating access of local entrepreneurs to the intellectual protection systems.

74. The achievement of even these rather limited damage-control objectives cannot be ensured in the absence of substantial technical assistance and much greater flexibility in terms of a long transitional implementation period. There are, of course, implementation support mechanisms recognized in the TRIPS Agreement itself. The key areas in which appropriate technical assistance is required include support for the reform process of intellectual property rights protection systems, implementation of agreed reforms, building relevant institutions and enhancing local understanding of the socio-economic effects of intellectual property rights protection. The TRIPS Agreement obligates the developed countries to provide “technical and financial” support to the least-developed and developing countries but it fails to offer institutional and other modalities for operationalizing this obligation.

75. Africa’s common position on TRIPS should include the following elements:

- ◆ the provision of technical assistance under Article 67 of the TRIPS Agreement should be multilateral, systematic, stable and focused;

- ◆ appropriate modalities and operational mechanisms should be established for implementing Article 66.2 which is meant to provide incentives for the transfer of technology to the least-developed and developing countries; and
- ◆ appropriate provisions and operational mechanism should be articulated for codifying, enhancing and protecting indigenous knowledge in the context of the TRIPS Agreement.

**(d) TRIMS**

76. The TRIMs Agreement is subject to review before year 2000 to consider whether it should be complemented with provisions covering two key areas, i.e, investment policy and competition policy. This latter aspect, complementarity, rather than the review, constitutes an element of the “built-in agenda”. But aspects of investment and competition issues fall under many different categories of WTO mandate. For example establishment and national treatment aspects of investment are defined as market access issues in the GATS. Similarly competition among governments to offer investment incentives could be addressed more directly in the context of the Agreement on Subsidies and Countervailing Measures. It is therefore more appropriate to examine investment policy and competition policy issues on their own merits in section IV (under additional negotiation agenda) below.

77. Meanwhile, a review of the implementation of the TRIMs Agreement throws up several issues of concern for African countries. First, the Agreement imposes stringent limitations with regard to both the notification period and the phase-out period. Thus, notification were required to be submitted within 90 days of the entry into force of the Agreement. Phase-out periods are two years for the developed countries, five years for the developing countries, and seven years (plus possible extension) for the least-developed countries. Due to institutional weaknesses combined with administrative and human resource capacity constraints, many least-developed and developing countries have not been able to satisfactorily meet their TRIMs notification requirements on time or even at all. This problem is particularly serious in Africa; in proportionate terms, notification from African countries has been far fewer than that from Latin America and Asia.

78. Second, TRIMs continue to be important development policy tools for strengthening the production capacity and export supply response of many African countries. Without these supportive measures, they are unlikely to be able to take full advantage of the market access opportunities currently available in the multilateral trading system. Their phase-out within the very limited period imposed by the TRIMs Agreement is thus likely to further constrain the industrialization and development prospects of many African countries.

- ◆ In the light of these considerations, the common position of African countries may well include the following:
- ◆ the exemption of the least-developed countries from all obligations imposed by the TRIMs Agreement;
- ◆ the operationalization of Article 5.3 of the TRIMs Agreement, which recognizes the importance of taking account of development, financial and trade needs of least-developed and developing countries in dealing with TRIMs and
- ◆ a more careful and analytically based differentiation between the various elements of TRIMs to determine which foster development and should be permitted and to isolate those that should be phased-out over a longer transition period.

## **IV. Additional Negotiation Agenda**

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79. A wide variety of issues has been suggested for negotiation in the next round in addition to those discussed above. Basically, however, these can be grouped into two broad categories. One relates to conventional market access negotiation to address the objective of further liberalization of the manufacturing sector, with particular focus on the issues of tariff peaks and tariff escalation (which are also problem areas in agriculture). The other broad category of issues covers the negotiation of various WTO rules.

80. African (and other least-developed and developing) countries have obvious interests in negotiations focusing on the reduction of tariff peaks and elimination of tariff escalation. The same cannot be said in respect of negotiation in WTO rules. These rules typically attempt to deal with the trade-impeding effects of domestic regulatory regimes. But their inclusion in the WTO agenda is largely motivated by efforts of the developed countries to enforce their own national standards and laws extra-territorially. There is considerable uncertainty regarding whether many of the least-developed and developing countries will derive much real net benefits from accepting new obligations in many of these rule-making areas. They should therefore be especially cautious in supporting new multilateral agreements on these issues.

81. There are other strong reasons for urging caution. Least-developed and many developing countries lack the necessary analytical and negotiating resources for tackling the "new trade issues". WTO members are still in the process of exploratory and analytical work on many of the new trade issues. In any case, inclusion of the new issues in the negotiating agenda should be subject to several conditions, including adequate preparation by all countries, studies showing that the new issues are beneficial to all participants and that there exists a clear consensus among members to address the issues in the context of the multilateral trading system. Finally, the proposed new issues should be clearly trade-related and their inclusion should neither strain the absorptive capacity of the WTO system nor add to existing asymmetry in the balance of benefits.

### **(a) Market Access Negotiations**

82. The key area of additional market access negotiation that has been suggested for inclusion in the Millennium Round agenda is that of industrial tariffs. The support of African countries for this proposal is motivated by several considerations. Clearly, reducing industrial tariff peaks and eliminating tariff escalation in the markets of the developed countries should be a major objective of African countries in any future round of multilateral trade negotiation. Post-UR tariff escalation in the developed countries shows a substantial bias against imports from developing countries; this makes it more difficult for them to develop downstream industrial processing. The UR has, of course, reduced the overall degree of tariff escalation, but a considerable amount of it continues to exist for several African export products, including hides, skins and leather, rubber, wood, jute, copper, aluminum, zinc, and tobacco. In addition, peak tariffs are particularly evident with respect to textiles and clothing, leather, rubber, footwear, travel goods, fish and fish products. Therefore, how to reduce industrial tariff peaks and eliminate tariff escalation should be one of the issues to be negotiated in a new round; and it is an issue that should be endorsed by African countries.

83. Support for the inclusion of this issue in the negotiating agenda is, of course, not unanimous. Some developing countries regard talk of further tariff reduction negotiations as "premature", citing in support, the need for countries to "digest" the impact of the UR tariff reduction commitments. However, many other countries would like to include industrial tariff negotiations as part of a comprehensive new round designed to complement the mandated negotiations (in the built-in agenda). Those who support this view also pinpoint reduction of industrial tariff peaks and elimination of tariff

escalation as the primary objectives, with the additional expectation that a push for 100% industrial tariff bindings should also be achievable.

84. In this context, key elements of a common position for African countries should include:

- ◆ support for the inclusion of negotiation on industrial tariffs in the agenda of a future round of multilateral trade negotiations;
- ◆ focus on the reduction of industrial peak tariffs and elimination of tariff escalation in the developed country markets;
- ◆ adoption of an appropriate “formula” approach that would ensure that the tariff peak and escalation problems are directly addressed; and
- ◆ adoption of two key SDT provisions on industrial tariffs, i.e (i) unconditional, non-reciprocal, duty-free, quota-free and bound access for all industrial products of the least-developed countries into the markets of the developed countries; and (ii) preferential access of the industrial products of the least-developed countries into the markets of developing countries.

### **(b) Rule-Making Negotiations**

85. The areas of rule-making negotiations can be divided into two broad groups. The first group consists of existing WTO rules whose review of implementation experience may generate demand for further changes. The second group is made up of the “new trade issues” that are largely still in the study-and-discussion stage and whose inclusion in the new round of multilateral trade negotiations is not yet certain.

86. In the first group are issues such as standards (technical barriers to trade, sanitary and phytosanitary standards), regional trade agreements, contingency trade measures (anti-dumping, subsidies and countervailing measures, safeguard measures), and the dispute settlement mechanism. The second group contains the following: transparency in government procurement, trade and environment, trade facilitation, trade and investment, trade and competition policy, and labour standards.

#### **(i) Standards**

87. The least-developed and many developing countries are confronted with difficult market access problems arising from the imposition of standard (environmental, health, safety, social, etc) and technical regulations (including sanitary and phytosanitary regulations). These standards and technical regulations are rapidly being transformed into new instruments of disguised non-tariff protection in the form of trade barriers against the least-developed and those developing countries whose products are unable to conform to them. This is particularly burdensome where the standards and technical regulations imposed by developed countries are beyond the technical competence of the least-developed and developing countries; and there is no or inadequate participation of these countries in the international standard setting institutions and arrangements.

88. In relation to these problems, African countries face a number of challenges in the context of new negotiations on standards and technical regulations. They must find ways of strengthening WTO disciplines which will prevent a protectionist abuse of standards and technical regulations, articulate mechanisms and arrangements to enable the least-developed and developing countries participate more effectively in the formulation and implementation of international standards and technical regulations, provide for their harmonization, and ensure that national standards and regulations are not set at level higher than those specified by the relevant and universally recognized international bodies.

89. The specific actions that African countries must push for in the negotiations, as a means of meeting these challenges, include the following:

- ◆ development of precise criteria by international standard-setting organizations, which take into account the special concerns of least-developed and developing countries, for defining international standards and technical regulations;
- ◆ mechanisms for promoting the transparency of mutual recognition agreements which also permit the possibility of third-party accession;
- ◆ operational mechanisms for implementing the recommendation of Article VI of the Agreement on Technical Barriers to Trade (acceptance of conformity assessment procedures) so as to favour the international recognition of assessment and certification undertaken by competent institutions in the least-developed and developing countries;
- ◆ development of provisions on equivalence for voluntary standards (similar to Article 2.7 of the TBT Agreement) in respect of other standards and technical regulations; and
- ◆ concretization and operationalization of the technical assistance provisions of all agreements on standards and technical regulations (e.g. Article 10.1 of the Agreement on Sanitary and Phytosanitary Standards) by committing the WTO to provide adequate and appropriate assistance to the least-developed and developing countries.

### **(ii) Regional Trade Agreements**

90. Current discussions in the WTO suggest that proposals will be tabled during the next round of multilateral trade negotiation aimed at clarifying the interpretation of and strengthening regional trade agreement rules such as Article XXIV of GATT 1994. The current provisions of the regional integration elements of GATT 1994 appear to be more suitable for regional integration arrangements among developed countries. But African countries are involved in two types of regional integration arrangements that are fundamentally different from these. Thus, African countries are involved in regional integration schemes among themselves (i.e. among least-developed and developing countries) and/or among African and other developed country partners (e.g. the Lome Convention).

91. To take account of the special features of the integration arrangements in which they are involved, African countries should initiate proposals which will seek to:

- ◆ differentiate between the rules that apply to regional arrangements among developed countries and those that should apply in the case of regional schemes among least-developed and developing countries; and
- ◆ lengthen the implementation period and reduce the product coverage proportion for the latter two types of regional integration arrangements.

### **(iii) Contingency Trade Measures**

92. The market access opportunities of least-developed and developing countries are increasingly being frustrated by the targeting of anti-dumping and safeguard measures at certain sectors of significant export interests to them. This observation suggests the need for a comprehensive review of the agreements on the various contingency protection measures (i.e. anti-dumping, subsidies and countervailing measures, and safeguard measures), in the context of the next round, to identify how developmental concerns can be advanced. It is widely recognized that certain types of subsidies are critical to the development process. Hence, the agreements on the various contingency protection measures should provide adequate flexibility to the least-developed and developing countries to use appropriate instruments for addressing their development objectives.

93. African countries face additional difficulties in terms of capacity and cost of effectively defending their domestic enterprises against anti-dumping investigations. Similarly, they face the same

difficulties of capacity and cost in effectively using anti-dumping measures to protect legitimate concerns of their domestic producers.

94. To address these concerns during the next round, African countries should articulate proposals on the following:

- ◆ exemption of all exports of the least-developed countries from all contingency protection measures in the developing and developed countries; and
- ◆ differentiation between developing and developed countries in terms of anti-dumping measures by doubling the permissible amount of support for domestic producers, de minimis dumping margins, and negligible volume of dumped imports or injury for developing countries when compared to the developed countries.

#### **(iv) Dispute Settlement Mechanism**

95. Post-UR experience demonstrates clearly that due to a range of problems arising from technician difficulties, lack of specialized expertise and high cost, the least-developed and many developing countries have had limited access to the WTO's dispute settlement mechanism. This limitation is particularly strong in the case of African countries.

96. African proposals to loosen the constraints of the dispute settlement mechanism in the context of future negotiations should include the following:

- ◆ exemption of least-developed countries from any obligation to defend cases in the dispute settlement mechanism on SDT grounds,
- ◆ substantial increase in the WTO Secretariat's legal services (Pursuant to Article 27.2) and placing the Secretariat's legal experts permanently at the disposal of developing countries;
- ◆ support for the creation of an independent legal body to assist the least-developed and developing countries with respect to WTO activities; and
- ◆ increased threshold levels for developing countries (relative to the developed countries) in various dimensions of the dispute settlement process, such as loss above a certain de minimis level, increased period for the implementation of decisions of the Dispute Settlement Board, increased time for making submissions and rebuttals, etc.

#### **(v) Transparency in Government Procurement**

97. A plurilateral agreement on this subject exists in the WTO framework. The proposal that may be tabled at the next round could be to transform the plurilateral agreement into a multilateral one. A major argument in favour of this proposal is that improved transparency in government procurement practices is in the interest of all members. But fundamental differences continue to exist among WTO members regarding what constitutes transparency in government procurement and the requirements for it. Hence, it remains a controversial area requiring further deliberation and consensus building. Hence, it is not a ripe enough subject for negotiation.

98. In any case, the GATS already imposes an obligation of transparency on all countries regarding all internationally traded services which constitute a sizable proportion of government procurement. Further progress is, perhaps, more easily achievable by refining the relevant provisions in GATS.

#### **(vi) Trade and Environment**

99. The interface between trade and environment poses questions on which no real consensus has been established in the WTO. Developed countries seem to want either of two things, i.e a stand-alone global agreement within the WTO framework or the factoring of environmental concerns into the

various WTO agreements through the negotiation of appropriate provisions and their insertion into the relevant agreements. This second option would, in the view of some, ensure the complementarity of the trade liberalization and environmental protection objectives.

100. Developing and least-developed countries are, in general, opposed to both of these options. Their argument has four strands to it: The trade and environment interface issue is quite complex and not enough study and clarifications have been done to establish its full understanding and justify a role for the WTO; existing WTO provisions are more than adequate to deal with bonafide environmental concerns and these need not be duplicated; environmental concerns should not be negotiated against trade concessions and, finally, the real solution for environmental protection lies with the international institutions which have established mandate for the negotiation of multilateral environmental agreements, there is no reason for subordinating these to the WTO process.

101. It seems clear from the above that the trade and environment interface is not likely to become a serious issue for negotiation in the next round, given the absence of discernible consensus or even appreciable movement towards convergence of views.

#### **(vii) Trade Facilitation**

102. There is obvious and generally acknowledged need for greater coherence and an integrated approach to trade facilitation measures. The key WTO role in this area is to ensure full and faithful implementation of existing trade facilitation-related obligations, review their implementation and then determine the need for expanding existing rules and/or developing new ones. As this process unfolds, the primary concerns of African countries should be to:

- ◆ ensure that the revised and /or new rules on trade facilitation take account of their specific needs and address clear developmental concerns; and
- ◆ where applicable, articulate appropriate SDT provisions that would more directly reflect these needs and concerns.

#### **(viii) Trade and Investment**

103. Preliminary discussions at the WTO reveal that several countries are in favour of introducing multilateral disciplines on investment policies. Thus some argue that investment should be included in the agenda of the new round of trade negotiations. In particular, they would like to see a comprehensive set of multilateral principles and rules on investment developed and integrated into the WTO framework.

104. Other countries are opposed. They suggest that no convincing arguments have been offered to justify the need for multilateral rules on investment and call for further work and analysis to deepen the understanding of members on the issue. In the opinion of this group of countries, it is premature to draw any concrete conclusions on the results of work done so far on the subject or to discuss possible recommendations regarding future negotiations.

105. It is not clear that there is a strong case for African countries to support the establishment of a stand-alone multilateral agreement on investment. Existing agreements (including TRIMS and GATS) already provide ample scope for pursuing liberalization in the area of investment. By including "commercial presence" as a mode of supply of services, GATS offers an opportunity to liberalize foreign direct investment in services, where it matters most. Yet, the parallel growth of foreign direct investment flows and bilateral investment treaties inevitably raises the question whether a multilateral agreement might not be desirable for bringing coherence to the investment rules.

106. However, there continue to exist deep misgivings regarding an uncritical and undifferentiated approach to foreign investment that a multilateral agreement might directly or indirectly endorse. In

any case, whether country-specific investment incentives/restrictions work or not, there appears to be no clear case for international disciplines that would restrict national policy discretion on this matter. Furthermore, a multilateral investment agreement which constrains government behaviour by guaranteeing access and attractive operating conditions for investors may neglect the possible abuse by foreign enterprises of their monopolistic positions in the host economies.

107. These considerations and the current diversity in the policy environment across countries suggest that even if it were to find its way to the negotiating agenda, the next round is unlikely to produce a successfully negotiated multilateral agreement on investment.

#### **(ix) Trade and Competition Policy**

108. Trade and Competition Policy constitute another rule-making area on which the membership of the WTO is split down the middle. One group suggests that there are substantial potential benefits to all members from a multilateral framework of rules that promote competition, and that there is a clear need to promote coherent competition principles within the WTO, given the interdependencies between trade and competition policy aspects of the existing TRIPS, TRIMS and GATS agreements. Hence, this group regards the WTO as the appropriate forum for developing a multilateral framework on competition issues and calls for the inclusion of competition policy in the agenda of the new round of trade negotiations.

109. Competition policy has an important role to play, in all countries, in promoting a competitive environment in which enterprises are not permitted to behave collusively and market power is not exploited at the expense of societal welfare. Several arguments can also be offered for multilateral competition rules, for instance, international actions might be called for where trade distortions exist due to the lack of national competition rules. Differences in national competition regimes and resulting omissions could probably be eliminated through international rules. As the operations of transnational companies increasingly span multiple jurisdictions, international competition rules may be required to control abuses of market positions that cannot be easily addressed by a single national competition authority. Given their relative lack of industrial base in several key sectors, the least-developed and developing countries may be particularly susceptible to becoming victims of non-competitive market practices by large foreign suppliers that they are unable to control. Finally, multilateral competition rules could provide an alternative avenue for reducing the use of anti-dumping measures.

110. Against this case for a multilateral agreement on competition must be placed the other competing perspective. According to this, there are no convincing arguments for multilateral rules, it is therefore premature to talk of a multilateral framework of rules on competition policy. Rather, what is called for is further work to better understand the impact of anti-competitive practice on the global trading system and clarify the possible role of the WTO in addressing them. Many of the least-developed and developing countries do not have competition laws; and those that have them on paper often have limited implementation ability. In Africa, less than ten countries have anti-monopoly or competition legislation. In all African countries, the capacity building needs for the framing of legislation and regulations and qualified administrators to implement them are considerable. In any case, the market access and merger control issues that motivate the developed countries seeking multilateral competition rules are largely irrelevant for African countries.

111. Even among the developed countries, the discretionary nature of much of competition policy and the sharp differences in national approaches suggest that these countries are unlikely to accept strong multilateral obligations for decision-making in respect of competition policy. For African countries, the primary focus should be on designing appropriate national competition policies, bearing in mind their own human and institutional capacities. Multilateral surveillance and scrutiny could help this process, but only at a price - in terms of harmonized rules and implementation infrastructure - that most African countries can ill afford.

**(x) Labour Standards**

112. In spite of the Singapore ministerial decision on the subject, serious concerns still remain that direct or indirect attempts will be made to place the issue of labour standards on the agenda of the next round of trade negotiations. This seems clear from on-going discussions within the WTO to the effect that the WTO should address issues relating to labour standards, and that members must be prepared to continue to debate the issues within the WTO.

113. Most least-developed and developing countries continue to insist however, that there is no justification for addressing issues of labour standards as an issue for negotiation within the WTO or in the context of the new round. According to this perspective, labour standards relate to social, not trade, policy and, hence, lie in the domain of the International Labour Organization. This, in fact, represents the view that was agreed by the WTO Ministerial Conference in Singapore.

114. The key issue in the debate is an empirical one, i.e whether or not the failure of certain countries to comply with core labour standards allow wages ( and production costs) to be reduced and, as a result, international competitiveness to be improved. Empirical results confirm that there is no correlation at the global level between real wage growth and freedom of association. The view that non-observance of core labour standards gives rise to unfair trade practices is not empirically established. Hence, placing labour standards as an issue for negotiation in WTO is not justified.

115. If it does surface on the agenda, however, key elements of the common position of African countries on the issue should include the following:

- ◆ labour standards should not be used to stifle competition from labour-abundant countries;
- ◆ any agreement about labour standards should not raise the costs of unskilled labour in countries whose comparative advantage lies in exported products that use unskilled labour extensively;
- ◆ excessively high labour-related product standards should not be imposed; and
- ◆ where appropriate, SDT provisions should exempt the least-developed countries from such labour-standard obligations and grant developing countries suitable transitional periods.

## **V. Conclusion**

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116. In attempting to provide a fairly comprehensive coverage of the issues that are likely to be confronted by African countries in the Millennium Round of multilateral trade negotiations, this paper may have inevitably glossed over some important details that deserve the attention of the negotiators. However, the paper's approach remains broadly consistent with the objective of articulating a set of common African positions on as wide a range of issues as possible.

117. The conclusion is quite short and straight forward. The first critical obligation of African negotiators should be to argue strongly for and promote favourable consensus around the cross-cutting issues relating to (i) their participation in the WTO process and the multilateral measures for enhancing its effectiveness; (ii) more precise definition and identification of criteria for special and differential treatment (SDT) for the least developed and developing countries, the multilateralization and binding of the SDT obligations, and their consistent integration into and effective operationalization in each of the WTO Agreements; and (iii) the systematic and more focused operationalization of all WTO technical assistance provisions, improvements in their implementation and the predominant use of enhanced WTO budget for their finding. It is of critical importance for African countries to ensure that multilaterally binding agreements are reached on these cross-cutting issues prior to the negotiation on specific sectoral market access and rule-making issues to enable these reflect the provisions agreed to with respect to the cross-cutting issues.

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118. Africa's common position with regard to the issues on the built-in agenda should be guided by two basic motivations. First is the achievement of higher levels of market access and second is the promotion of developmental concerns through the retention of greater national policy autonomy. The second motivation is best pursued through appropriate SDT provisions African countries should support the inclusion of industrial tariffs as an additional negotiating issue. This would enable them to seek the reduction of tariff peaks and elimination of tariff escalation with respect to both agriculture and manufacturing. Great alertness and extreme caution are suggested in dealing with most of the existing and proposed new areas of rule-making, all the way from TRIPS and TRIMS to labour standards. Most rule-making areas intrude substantially on domestic policy space and while they may promote more rational domestic regulatory systems, their implicit (and quite often explicit) aims of imposing harmonized global standards may involve unsustainable short to medium run costs. Where these harmonizing trends cannot be avoided, it may be possible to acquire badly needed breathing-space through appropriate SDT provisions.