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Issues Note

High-Level Brainstorming Meeting of African Trade Negotiators Preparatory to the Fifth WTO Ministerial Conference

Organized by

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Introduction

Several issues of interest to African countries will be discussed at the Fifth WTO Ministerial Conference scheduled for September 2003, in Cancun, Mexico. To enable these countries form common negotiating strategies and positions and participate effectively in the deliberations, the Economic Commission for Africa (ECA) and the African Union (AU) are organizing a High Level Brainstorming Meeting of African Trade Negotiators from 11-13 June 2003 in Grande Baie, Mauritius. This note is one of the background materials prepared by the ECA and the AU to guide the discussions at the meeting. It outlines the basic issues of interest to African countries at the forthcoming Cancun meeting. These include negotiations on: Trade in agriculture; services; market access for non-agricultural products; Singapore issues; trade related intellectual property rights; new WTO working groups on trade, debt and finance and trade and technology transfer; regional trade agreements; and special and differential treatment.

1. Trade in Agriculture

Bringing down barriers to agricultural trade is the key issue of the Doha round of multilateral trade negotiations for most African countries. Dealing effectively with issues of tariff and non-tariff barriers to agricultural trade will be an important determinant for the success of the current round of trade negotiations. The multilateral trading system needs to deal effectively with the huge outlays on domestic support provided by developed countries to their farmers, which erodes the competitiveness of Africa's agriculture. Similarly, addressing issues of "tariff peaks and tariff escalation" are also important as they inhibit African countries from adding value to their raw materials and primary products. In the same vein, the international community needs to develop modalities for addressing the current negative trends in commodity prices, which have increased the burden for most African countries of earning a dollar in foreign exchange. The "modalities" currently being discussed in WTO negotiations have to produce results that will not only achieve a marked liberalization of world agricultural markets, but also provide avenues for African countries to increase their agro-industrial activities.

During most of 2002, WTO members have had the opportunity to propose and discuss possible modalities for further commitments, including rules-related elements. Many proposals are on the table and much technical work has been carried out and positions of various countries have emerged. Progress has been made regarding some issues, such as tariff quota administration and export credits. However, a substantial number of important issues remain outstanding. There are still wide gaps in the positions among WTO Members regarding fundamental aspects of further reform programme in agriculture. A number of countries have made proposals on market access, export competition and domestic support, while others have not. There are still differences in views with regard to appropriate provisions for special and differential treatment (S&D), even among developing countries. Small island developing states and other vulnerable developing countries have proposed modalities for addressing their concerns. Net food-importing developing countries (NFICs) have called for the implementation of the Decision on Measures Concerning the Possible Negative Effects of Reform Programme on LDCs and NFICs. A group of transition economies have also proposed modalities for dealing with their concerns. There are still different views regarding the extent and the ways to take non-trade concerns into account, in such areas as food security, livelihood and poverty alleviation, rural development, protection of the environment, food safety and animal welfare. Some member countries have established a link between their willingness to move on agriculture and the accommodation of their

ambitions in other areas of the negotiations. The Doha Declaration stated that further negotiations on agriculture should aim for: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; substantial reductions in trade-distorting domestic support; special and differential treatment for developing countries an integral part of all elements of the negotiations; and incorporation of non-trade concerns in the new Agreement. Accordingly, the discussions have focused on these issues. During a greater part of last year, the discussions focused on defining "modalities" for undertaking these negotiations, including establishing "numerical targets" for some elements of the negotiations, such as tariff reduction levels. Under this agenda item, the discussions will focus on the following issues:

- current state of play and negotiations on trade in agriculture;
- modalities for further commitments in the following areas:
 1. market access—especially tariff reductions, tariff quota administration, and special safeguard measures
 2. export competition, focusing on such issues as export subsidies, export credits, farm subsidies and food aid; and
 3. domestic support measures (focusing on the Green Box, the Blue Box and the Amber Box)
- implementation issues

2. Trade in Services

Trade in Services is Africa's untapped gold mine with immense potential to contribute not only to the continent's Gross Domestic Product (GDP) but also to employment. Although African countries contributed to the development of "Guidelines and Procedures for the Negotiations" adopted by the Council for Trade in Services and later affirmed by the Doha WTO Ministerial Declaration, many are finding it difficult to participate effectively in the ongoing negotiations. Due to human and financial constraints, many are experiencing difficulties in preparing and submitting "requests" in order to promote their own trading interests in the negotiations effectively. The main factors as to why many African countries are experiencing difficulties in elaborating their "initial requests" relate to: lack of human resources; the complexities involved in identifying concrete trading interests at the national level; and in a few cases, lack of understanding of the General Agreement on Trade in Services (GATS).

Active participation of African countries in the "request-offer" negotiations is a necessary condition for achieving increased participation in Trade in Services. Requesting market access in sectors and modes of supply that would effectively translate in increasing exports of services and attaching necessary conditions to foreign services suppliers when granting market access would contribute to a positive outcome. The Doha Development Round should therefore ensure that African countries become effective partners in promotion of trade in services. Under this agenda item, the discussions will focus on:

- current state of play and negotiations on trade in services;
- delineation of sectors in which African countries have interest and comparative advantage;

- identification of modalities to improve participation of these countries in the negotiations:
- implementation issues—identifying the technical assistance needs of African countries in the “request and offer” exercise; and
- investigating a range of major features affecting treatment of African countries, including control of restrictive business practices, establishing the importance of adequate regulatory agencies and links to competitive policy, and improving infrastructure, especially for transportation.

3. Market Access for Non-Agricultural Products

The reduction of barriers on industrial products has featured prominently in multilateral trade negotiations under the umbrella of the GATT and the WTO. At the fourth WTO Ministerial Conference in Doha, members agreed to new negotiations to “reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries.” African countries, and developing countries in general, are concerned that tariff and non-tariff barriers imposed by developed countries hinder their exports, especially in key commodities such as textiles and clothing, foodstuffs, steel, energy products, leather goods, and footwear. Consequently, they would like developed countries to honour their commitments to reduce their tariff and non-tariff barriers on products of export interest to developing countries. Specific issues that will be discussed under this session include:

- current state of play in negotiations on market access for non-agricultural products
- proposed modalities—principles, approaches, and formulae—for reducing tariff and non-tariff barriers
- tariff peaks and escalation
- non-tariff barriers
- impact of previous liberalization efforts on African economies
- implementation concerns

4. The Singapore Issues

At the fourth WTO Ministerial Conference in Doha, the European Union succeeded in getting four issues—Investment, Competition Policy, Transparency in Government Procurement, and Trade Facilitation—onto the negotiating agenda. These issues are called the “Singapore Issues” because they were first placed on the WTO agenda at the 1996 Ministerial Conference in Singapore. Many African countries have expressed reservations about the inclusion of these issues in the WTO work programme and the current round of multilateral trade negotiations. However, their concerns, as well as those of other developing countries, were ignored by the developed countries. The Doha Ministerial declaration attempted to

address these concerns with the following provision: "we agree negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session, on modalities of negotiations." Interpretation of this statement differs among developed and developing countries. While developed countries are of the view that a tacit agreement was reached at Doha to proceed with negotiations after the Fifth Ministerial Conference, developing countries are of the view that no such consensus was reached. It will be important for African countries to develop a clear stand on this issue. Issues to be discussed under this session include:

- ❑ the current state of play on the four Singapore issues;
- ❑ concerns of African countries regarding the inclusion of the Singapore Issues in the post-Doha work programme;
- ❑ other implementation issues

5. Trade-Related Intellectual Property Rights (TRIPS) Agreement

The Declaration on Trade-Related Intellectual Property Rights (TRIPS) and Public Health is widely regarded as the most positive outcome of the Doha WTO Ministerial Conference from the perspective of sustainable development. The Declaration reaffirms that the WTO Agreement on TRIPS "does not and should not prevent Members from taking measures to protect public health". The Doha WTO Ministerial Conference agreed that the TRIPS Council should find an "expeditious solution" to the difficulties faced by countries with insufficient pharmaceutical manufacturing capacity in making effective use of compulsory licensing under the TRIPS Agreement.

A significant rift has opened between developed and developing countries on several counts, among which is the nature of measures to prevent re-export of drugs manufactured under compulsory licensing from the beneficiary countries to rich country markets. The TRIPS Council of WTO has reached an impasse on this question and positions appear to be hardening and diverging further instead of converging. Most developing countries consider implementation of this mandate as a "litmus test" of the political will to address these concerns in the multilateral trading system and to achieve a true "development round" at the end of the current round of negotiations. Countries with powerful-patented medicines manufacturers are attempting to limit the type of product that can be manufactured under third party compulsory license. Other main points of contention revolve around which countries would be eligible to import generics under the new arrangement. Furthermore, countries with large research-based pharmaceutical sectors are worried about trade diversion, in the sense of re-export of low-cost products from beneficiary countries to OECD members.

Major patented medicine-producing countries are seeking other conditions for the manufacture and export of generics under compulsory license. Also at issue is the legal mechanism for allowing the export of medicines produced under compulsory license. Another point under discussion is compensation to patent holders. Brand-name manufacturers are also lobbying to make the packaging requirements more stringent, even suggesting that the colour and shape of the generic medicines should be different from their patented versions.

Accordingly, on this item, the focus will be on a critical analysis of the progress made since Doha on the major issue of primacy of public health over patents for medicines. The

underlying agreement reached at Doha was that the TRIPs Agreement should not prevent members from taking measures to protect public health. Hence, it is essential to investigate the extent to which the WTO decision to give explicit rights to member countries to grant licenses unilaterally to enable domestic producers to override patents and to remove previous stipulation under 'compulsory licensing' is being implemented. Thus, the discussion in this session will focus on:

- ❑ the current state of play on TRIPS and public health;
- ❑ Compulsory licensing: how should it be applied to countries with insufficient or no pharmaceutical manufacturing capacity?
- ❑ discussions on Geographical Indications (GIs) and whether Africa stands to gain from possible extension of the higher level of protection for GIs to products other than wines and spirits
- ❑ how to safeguard the patenting of life forms and biological materials in African countries
- ❑ Africa's concerns about the TRIPS agreement; and
- ❑ outstanding implementation issues

6. Trade, Debt and Finance and Trade and Technology Transfer

In the current round of trade negotiations, the issues of the interface between trade, debt and finance as well as between trade and transfer of technology have become important in the agenda for developing countries, including African countries. Although developed countries wish to relegate most of these to the bottom of the agenda, most developing countries are of the view that they hold the key for linking trade with development of their economies and for handling complex issues of the link between trade and debt and trade and commodity price trends.

Under this agenda item, major issues that have emerged in these New Working Groups on Trade, Debt and Finance, and Trade and Transfer of Technology will be explored. This is underpinned by the extent to which the Working Groups can effectively review the inter-relationships between trade, debt and finance, and trade and transfer of technology and provide insights into steps that may be taken within the mandate and competence of WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing countries, especially LDCs, and the transfer of technology to developing countries. The ultimate goal is to safeguard the multilateral trade system from the effects of financial and monetary instability. In particular, this item will raise issues about:

- ❑ the conceptual framework underpinning the link between trade and debt in the framework of mobilizing development finance in developing countries;
- ❑ the interface between trade, terms of trade, commodity prices trends, and development finance;

- ❑ positioning the debt problem within overall development policy;
- ❑ reviewing WTO Agreements to ascertain the scope of dealing effectively with the interface between trade, debt and finance; and
- ❑ viable modalities for transfer of technology to developing countries in the context of developing international trade.

7. Regional Trade Agreements

Trade relations among countries are increasingly being influenced by regional trade agreements, which have expanded vastly in number, scope and coverage. Such initiatives can promote further liberalization and may assist developing economies to integrate into the international trading system. At the Fourth WTO Ministerial Conference held in Singapore in December 1996, WTO members observed that the expansion and extent of regional trade agreements make it important to analyse whether the system of WTO rights and obligations as it relates to regional trade agreements needs to be further clarified. They reaffirmed the primacy of the multilateral trading system, which includes a framework for the development of regional trade agreements, and renewed their commitment to ensure that regional trade agreements are complementary to and consistent with its rules. In this regard, they welcomed and endorsed the work of the new Committee on Regional Trade Agreements.

The difficulties of reconciling national, subregional and regional development goals with the requirements of the multilateral trading system are generally acknowledged. Numerous subregional and regional economic and/or trade blocs or groupings exist in the world. Accordingly, reconciling and making provisions in the various subregional and regional trade agreements consistent with WTO Agreements is indeed a huge undertaking. The WTO Agreements acknowledge that the goals of these trade blocs may not always be consistent with multilateral trade principles and rules. In Africa, a number of Regional Economic Communities (RECs) and/or trading blocs have been established. This session will focus on:

- ❑ a review progress made in the discussions on regional trade arrangements in the WTO context
- ❑ how to make regionalism consistent with multilateralism. For African countries, the issue of consistency between the ACP/EU Cotonou Agreement and the WTO Agreements will be highlighted
- ❑ Transparency of Regional Trade Agreements
- ❑ Examination of any submissions made by the African group on this issue

8. Special and Differential Treatment

The multilateral trading system recognizes the fact that countries are at different stages of development and so have different abilities to implement trade rules and take advantage of opportunities created by the trading system. Under the GATT, developing countries were exempted from certain rules and obligations and were granted non-reciprocal preferential

concessions—a phenomenon currently referred to as Special and Differential Treatment (S&D). Under WTO agreements, there are also provisions for differentiated rights and obligations between developed and developing countries. However, because most of these S&D provisions are not mandatory, they are not enforceable and so have limited success in meeting the objective of assisting developing countries to increase their share of the gains from trade. The Doha Ministerial declaration acknowledged this limitation by stating that “all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational.” In this session, we intend to focus on the following issues:

- current state of play on S&D
- identification of S&D provisions that are really important for African countries
- aspects of S&D provisions that should be made mandatory
- measures to make S&D provisions more effective—monitoring mechanisms etc
- review of progress in addressing technical assistance and capacity building needs of African countries.

9. A Road Map for a Proactive African Negotiating Agenda

For African countries to make significant gains at the forthcoming WTO meeting in Cancun, they must have clear goals as well as strategies for achieving them. This session will outline and discuss a road map for a proactive African negotiating agenda. Elements of this road map include:

- an outline of what Africa expects to achieve at the WTO Ministerial Conference in Cancun, Mexico
- an identification of general negotiation strategies for African countries at the WTO Ministerial Conference
- a review and discussion of the recommendations developed in all sessions and how these could be incorporated into Africa’s negotiating strategies and positions.