



Cancún and Post-Cancún Briefing
Papers on Africa and the Doha
Development Agenda
The Current State of Play in the Negotiations

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Acronyms

AG	Africa WTO Geneva Group
AMS	Aggregate Measure of Support
CAP	Common Agricultural Policy
CTD	Committee on Trade and Development
DDA	Doha Development Agenda
DITS	Diagnostic Trade Integration Studies
ECA	United Nations Economic Commission for Africa
EC	European Commission
EMS	Emergency Safeguard Measure
EU	European Union
GATS	General Agreement on Trade in Services
GIs	Geographical Indications
HS	Harmonized System
IDA	International Development Association
IMF	International Monetary Fund
IF	Integrated Framework
ITC	International Trade Centre
JITAP	Joint Integrated Technical Assistance Programme
LDCs	Least-Developed Countries
MDGs	Millennium Development Goals
MEA	Multilateral Environmental Agreement
MFN	Most Favoured Nations
NAMA	Non-Agricultural Market Access
NEPAD	New Partnership for Africa's Development
NFIDC	Net-Food Importing Developing Countries
NGMA	Negotiating Group on Market Access
NTBs	Non-Tariff Barriers
OECD	Organization for Economic Cooperation and Development
PRSP	Poverty Reduction Strategy Papers
RTA	Regional Trade Agreement
S&D	Special and Differential Treatment
SADC	Southern African Development Community
SP	Special Products
SPS	Sanitary and Phytosanitary
SSG	Special Agricultural Safeguard
SSM	Special Safeguard Mechanism

STO	Specific Trade Obligations
TBT	Technical Barriers to Trade
TNC	Trade Negotiating Committee
TRIPS	Trade-Related Intellectual Property Rights
TRQs	Tariff Rate Quotas
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environmental Programme
US	United States of America
WB	World Bank
WTO	World Trade Organization

Briefing Paper 1

Overview of the Mandate of the Doha Development Agenda

Mandate

In Doha, World Trade Organization (WTO) Ministers reaffirmed the importance of the multilateral trading system by stating as follows:

“The multilateral trading system embodied in the World Trade Organization has contributed significantly to economic growth, development and employment throughout the past fifty years. We are determined, particularly in the light of the global economic slowdown, to maintain the process of reform and liberalization of trade policies, thus ensuring that the system plays its full part in promoting recovery, growth and development. We, therefore, strongly reaffirm the principles and objectives set out in the Marrakesh Agreement Establishing the World Trade Organization, and pledge to reject the use of protectionism.”

State of the Negotiations

The Chairman of the Trade Negotiating Committee (TNC) reported during the meeting of the General Council of the WTO, held 24-25 July 2003, that the negotiations reached a mid point of the Round and that, although some progress was made on all fronts, overall, it was still insufficient. In his view, “we do not have a real negotiation.” In most cases, negotiators just waited for the other person to show their hand. What was needed was “commitment and political will.” He stated that the Chairman of the General Council circulated the first draft of the Ministerial Text to help focus on the intensive work ahead to prepare for Cancún. In his opinion, this Text reflected the level of ambition established by the Ministers at

Doha, and that it was important to maintain this level of ambition.

The Chairman of the TNC warned that without agreement on key issues, there was a high risk of immobility overall. He also noted that there were some important linkages among the various issues under negotiations. For example, an outcome by the time of Cancún on TRIPS and Public Health could help set a positive tone for the Conference; and an outcome on agriculture could influence how far countries could go on non-agricultural market access, the Singapore issues and some other issues. He called on members to build on the work that was done to facilitate consensus building on the outstanding issues.

General Position of African Countries

In the Ministerial Declaration adopted in Mauritius in June 2003, African Ministers of Trade stated as follows:

“(We) TAKE NOTE of the outcomes of recent Ministerial meetings of Eastern and Southern African countries in Nairobi, SADC in Lusaka and LDCs in Dhaka as well as the work under the NEPAD Initiative. RECOGNIZE that trade can serve as a tool for development and make an important contribution to the realization of the Millennium Development Goals (MDGs). We recall the collective commitment we undertook at the Fourth Session of the WTO Ministerial Conference, held in Doha, Qatar, in November 2001 to place the needs and interests of developing countries at the heart of the WTO work programme. EXPRESS serious concerns at the general lack of progress in the current round of multilateral trade negotiations as evidenced by missed deadlines on key issues and negotiations of importance to African countries. The most critical of these have been the lack of progress on the negotiations in agriculture, TRIPS

and public health, special and differential treatment and implementation-related issues and concerns. We call on WTO members to inject momentum in these negotiations in order to ensure that the Cancún WTO Ministerial Conference yields positive results for African countries and makes the Doha Work Programme a truly *Development Agenda*.”

Draft Ministerial Text

The Chairman of the General Council, on his own responsibility, and in close cooperation with the Director-General circulated a Revised Draft Cancún Ministerial Text (JOB (03)/150/Rev.1). The Text was to be discussed at a meeting of the General Council, scheduled for the week of 25 August, and which was to be preceded by an informal meeting of Heads of Delegations. The Chairman of the General Council and the Director General of the WTO stated that: “(The) text does not purport to be agreed in any part at this stage, and is without prejudice to any delegation’s position on any issue.” The Preamble of the Draft Ministerial Text stated that Ministers should:

“Reaffirm their Declaration made at Doha and the discussions they took there. They should also take note of the progress that has been made towards carrying out the Work Programme agreed at Doha, and recommit themselves to completing it fully. They should also renew their determination to conclude the negotiations launched at Doha successfully by the agreed date of 1 January 2005.”

Draft Cancún Ministerial Text

During the fifth WTO Ministerial Conference at Cancún, the Chairman of the Ministerial Conference issued under his own responsibility the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2). The preamble of the Second Revised Draft Ministerial Text stated as follows:

“We reaffirm our Declarations made at Doha and the decisions we took there. We take note of the progress that has been made towards carrying out the Work Programme agreed at Doha, and recommit ourselves to completing it fully. We also renew our determination to conclude the negotiations launched at Doha successfully by the agreed date of 1 January 2005.”

State of Post-Cancún Negotiations on Agriculture

The Fifth WTO Ministerial Conference held in Cancún from 10-14 September 2003 ended abruptly without WTO members achieving consensus on many of the key issues in the current round of multilateral trade negotiations, called the Doha Development Agenda (DDA). Some have argued that signs of failure of Cancún could be discerned prior to Cancún, as reflected in lack of convergence of positions among WTO members on many key issues in the negotiations, such as agriculture, non-agricultural market access (NAMA), the Cotton Sectoral Initiative as well as the Singapore Issues. For a number of people, the writing for the failure of Cancún was on the wall even as delegates were leaving for Cancún. For some there was hope that as was the case in Doha, last minute brinkmanship could produce a positive and conclusive outcome from the Fifth WTO Ministerial Conference.

The final outcome of Cancún was indeed an unfortunate development for many African countries, as it meant that many of the important issues of market access for Africa’s exports would remain unresolved. However, Cancún, like Doha, also revealed that African countries were not prepared to accept an outcome of the current trade negotiations, which would place them at a disadvantage and increase the burden of their

obligations in the multilateral trading system, without commensurate benefits to their economies. African countries went to Cancún with very clear objectives and strategies, which evolved through extensive consultations.

This unity led to common positions and negotiating strategies: “African countries had achieved significant progress in articulating common negotiating objectives and strategies and in building strategic alliances with other relevant groups. While the continent played only a peripheral role in the Singapore talks, by the time of the Cancún talks, the continent had managed to improve its participation in the WTO Ministerial Conferences and its preparatory processes.”¹

After Cancún, African countries continued to consult in preparing for the 15 December 2003 WTO General Council Meeting. These preparations benefited from the Post-Cancún Expert Group Meeting of African Trade Negotiators and Officials, organized by the United Nations Economic Commission for Africa (ECA) and the African Union (AU) in Accra, Ghana from 28-29 November 2003. This meeting reviewed the positions of African countries on different issues, as explicitly stated in the Mauritius Declaration and associated documents as well as in the consolidated position taken by the ACP/AU/LDC countries in Cancún. A number of recommendations were made to assist African countries in the post Cancún Trade negotiations.

Broadly the view of the trade experts was that: “Negotiating strategies need to be developed at the national, sub-regional and continental levels. The process of articulating such strategies should involve all stakeholders, including civil society

organizations, parliamentarians, and the private sector. The strategies should combine political and diplomatic dimensions; and technical aspects, supported by informed research. In this connection, the experts called on ECA and AU and other partners to undertake research, which will strengthen their negotiating capacities.”²

The WTO General Council Meeting held in December 2003 finished, once more, without achieving consensus on many of the key issues, despite the general agreement of most WTO members of the need and urgency to revive the stalled Cancún trade talks. The Chairman of the General Council, Mr. Carlos Perez del Castillo, issued a statement after the meeting saying he did not sense any failure, crisis or disappointment. He stated:

“I rather see a pragmatic approach that more time is needed in order to deal with the unfinished business that our Ministers gave us in Cancún and that we have tried to implement over the last few weeks. I think the reconfirmation of a sense of engagement, commitment to the DDA and to the multilateral trade system, has been highlighted in this meeting by all members. I have even seen — as a positive feature — a renewed support for efforts directed towards trying to finish this round on time. If I say a positive feature, it is because sometimes during our consultations in the last few weeks, the date of 2004 had been questioned by many of the members. I see at this meeting that many delegations have committed themselves to do their utmost to try to fulfil that mandate.

I must confess that, I did not see at this meeting the closing of the gap between expressions of flexibility, commitment and engagement and a translation of these into new negotiating positions that would allow us to look for common ground or to accommodate the position of others. This is work that will remain

pending for the next few weeks. Certainly if we want to make progress we must recapture the sense of urgency that seems to have evaporated as mentioned by some members and we have to narrow the gap between expressions of goodwill, commitment and their translation into negotiating positions.”³

After the end of the WTO General Council meeting in December 2003, informal discussions continued, but formal negotiations were suspended until March 2004 when the new Chairpersons were elected. Following the reactivation of the WTO Negotiating Committees and organs in March, activity at the WTO and elsewhere intensified in an effort to restart the Cancún trade talks. Consultations have taken place in Geneva as well as outside of Geneva (Cairo, Mombassa, London and Paris) in the shape of mini-ministerial meetings in order to give momentum to the process. African countries have recently held meetings in Kampala and Kigali in order to render support to the initiatives aimed at reviving these talks.⁴

At the WTO, the Chairman of the General Council urged members to focus first on four key issues of agriculture, non-agriculture market access, cotton and the Singapore issues in order to unblock the negotiations.

On 9th May 2004, the European Commission sent a communication to the WTO membership, making proposals on possible modalities for reviving the trade talks. This letter tried to inject new momentum into the WTO talks under the DDA. This communication, by Commissioners Pascal Lamy and Franz Fischler, outlined three areas where the EU is ready to make further movement to contribute to unblocking the trade talks: “The EU was ready to put on the table all issues relating

to removal of export subsidies, provided the EU got full parallelism and a balanced overall package on agriculture, new flexibility on Singapore issues and a package on concessions for the poorest and weakest WTO members (essentially the G-90). The EU called on other WTO members to match this level of ambition, so that the Doha Round could make real progress in July 2004, by agreeing to modalities for the rest of the negotiations.”

A new optimism emerged that some progress could be achieved in the current round of multilateral trade negotiations, provided WTO members were able to agree on some form of modalities “Negotiating Frameworks” on agriculture and NAMA as a first stage for defining “Modalities” for these negotiations and also make some progress on reaching consensus on how to deal with the Cotton Sectoral Initiative and the Singapore issues by July 2004. Achieving some progress at the July 2004 WTO General Council meeting will be a litmus test as to whether the current round of trade talks will come to its successful conclusion or not. The role of the Economic Commission for Africa is to walk along with its African membership in the perilous journey and see that the Doha Development Agenda is truly a “development round”.

(Footnotes)

- 1 Accra statement. Available at: www.uneca.org
- 2 Accra statement. Available at: www.uneca.org
- 3 WTO News, “Chair wraps up: Groups can restart, but still no deal on tough issues”, 16 December 2003. Available at: http://www.wto.org/english/news_e/news03_e/stat_gc_chair_16dec03_e.htm

4 The Thirty-Seventh Session of the Economic Commission for Africa (ECA)/Conference of African Ministers of Finance, Planning and Economic Development was held in Kampala, Uganda from 21 to 22 May 2004; and the

Second Ordinary Session of the conference of African Union Ministers of Trade was held in Kigali, Rwanda from 27 to 28 May 2004. For the Kampala Ministerial Declaration see: <http://www.uneca.org/cfm/2004/top.htm>.

Briefing Paper 2: Negotiations on Agriculture

Mandate

The WTO Ministers stated in the Doha Declaration as follows:

“We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.

We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.

Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.”

State of Negotiations

The Chairman of the TNC was of the view that progress on agriculture was central to forward movement under the Doha Development Agenda as a whole. In this respect, it was essential that the modalities on agriculture should faithfully reflect the Doha mandate. He noted that participants had varying perspectives on how the objectives set by the Ministers at Doha were to be translated into further reform commitments. He also noted that linkages between the various areas in the negotiations on agriculture were so numerous and complex, that it was difficult to put emphasis on just some of the issues without raising questions of balance and comprehensiveness of the reforms.

The Chairman stated that decisions were required in order to establish how the tabling of lists of offers on market access, export competition and domestic support could proceed. Furthermore, decisions were also required on proposed amendments to the Agreement on Agriculture, either in the form of additional disciplines to strengthen or clarify and enhance certain provisions, or to modify the Agreement.

In the Report of the Chairman of the Committee on Agriculture of 7 July 2003 (TN/AG/10),

Ambassador Harbinson admitted that reaching agreement on a number of key issues was proving elusive and that some movement would need to be made on many of these issues if progress was to be achieved, before and at the Cancún WTO Ministerial Conference. The main issues highlighted by Ambassador Harbinson, included:

Market Access

- The need to agree on modalities to be employed for reducing tariffs (including the formula to be used) and other means to improve market access, such as expanding market opportunities through tariff quota access commitments.
- Agreement on rules-related issues, such as tariff quota administration and special safeguards.
- Agreement on how to integrate non-trade concerns in the Agreement on Agriculture.
- Special and Differential (S&D) treatment in relation to both negotiation of further access commitments and rules.
- A number of related issues, such as whether existing tariff quotas should be expanded; whether the special safeguard provisions of Article 5 of the Agreement on Agriculture should cease to apply for developed countries; whether a new special safeguard mechanism for developing countries should be established.
- Whether the provisions regarding preferential schemes, which were contained in paragraph 16 of the Revised First Draft Modalities, were acceptable or should be further refined; and whether the market access package should also include complimentary approaches, such as sectoral initiatives.
- Whether modalities should contain provisions

for additional protection for a limited list of geographical indicators, beyond wines and spirits; whether the modalities should have an authoritative interpretation of the conditions under Article 5.7 of the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures; and whether the modalities should also have an authoritative interpretation of Article 2 of the Technical Barriers to Trade (TBT) Agreement with respect to agricultural products.

Export Competition

- The need to reach agreement on whether the formula for the phasing out of export subsidies proposed by the Harbinson modalities was agreeable and/ or should be revised;
- Although some progress had been made on the issue of export credits, agreement was still needed on the length of the maximum repayments terms in excess of 180 days to be accorded under the provisions of S&D treatment; and details of possible more favourable terms of export financing in respect of exports of developing countries experiencing emergency situations.
- Progress had been made regarding the development of strengthened disciplines on food aid, but there is still the need to agree whether the provisions of 4(b)(i) regarding the trigger mechanism for provision of food aid should be adopted.
- As regards state trading enterprises, there was still debate as to whether Article XVII of GATT 1994 provided sufficient disciplines or whether, the modalities should cover these enterprises, as part of strengthened disciplines in the area of export competition.

- As regards export restrictions and taxes, a number of participants were calling for their prohibition or progressive reduction/elimination, while others were not in favour.

Domestic Support Measures

- The issue of whether the modalities contained in paragraph 44 and 45 of the Revised Draft Modalities concerning the Blue Box needed to be resolved and agreement reached on which of the two suggestions for reduction of Blue Box subsidies should be agreed upon (i.e. a cut of 50 percent of Blue Box payments or the inclusion of Blue Box payments in the Aggregate Measure of Support (AMS) and the respective S&D modalities).
- The issue of whether the modalities to reduce the Amber support by 60 percent for developed countries and 40 percent for developing countries; and to cap product-specific Amber support as contained in the proposed revised Harbinson modalities also needed resolving.
- The need to reach agreement on whether the *de minimis* level under Article 6.4 of the Agreement on Agriculture should be reduced by 0.5 percent per annum over a period of five years for developed countries, and that the level for developing countries be maintained.
- Whether to place a cap on Green Box payments or the elimination of certain forms of direct payments to producers, although some argued that the Doha mandate excluded reduction in Green Box measures, as they were supposedly to be less trade-distorting.

Other Issues

- There was need to reach agreement that

Least-Developed Countries (LDCs) should not be required to undertake reduction commitments.

- Whether developed countries should provide duty-free and quota-free access to their markets for all imports from least-developed countries.
- Whether recently acceded countries should have special flexibility and, if so, whether that flexibility should be in the form of more time to implement the reductions commitments or more wide-ranging flexibility in the areas of market access and domestic support.
- The need to agree on a new date for the submission of comprehensive draft Schedules based on modalities, since the original deadline was not met.
- The need to consider the fact that provisions of Article 13 of the Agreement on Agriculture, the so-called Peace Clause, expired at the end of 2003 and therefore a decision had to be made as to what would happen thereafter.

The Chairperson of the Committee on Agriculture clearly brought to the attention of the TNC and the WTO membership in general, that there were a number of hurdles which needed to be overcome if the negotiations on agriculture at Cancún were to make progress and the current round of multilateral trade negotiations was to be successfully completed by 1st January 2005. The recent European Union (EU) proposals on the Common Agricultural Policy (CAP) reform, while welcomed, had not moved this process far enough to achieve some convergence. The months to come before Cancún proved critical and the lack of political commitment was an important element of the failure of these negotiations.

Position of Selected WTO Members

A. Proposal by the European Commission and the United States of America.

The European Commission (EC) and the United States of America (US) presented on 13 August 2003 a joint paper (JOB(03)/157), in which they made proposals on agricultural negotiations. The proposals contained suggestions that WTO members agree to reduce the “most trade-distorting support measures”, but without any figures being attached as to the range of the reduction. The EC-US proposal also suggested that members of the WTO might have recourse to “less-distorting domestic support measures” under a set of conditions. The set of conditions were that for direct payments, these payments should be based on fixed areas and yields; or made on 85 percent or less of the base level or production; or made on a fixed number of head for livestock.

Furthermore, support under such payments should not exceed five percent of the total value of agriculture production by the end of the implementation period; and the sum of the allowed support under the AMS for the less distorting support measures and the *de minimis*, should be reduced so that it was significantly less than the sum of *de minimis* payments, under Article 6.5 of the Agreement on Agriculture and the final bound AMS level in 2004. The EC-US proposal also made suggestions for reduction of the *de minimis*, but did not give a figure by how much this should be reduced.

The proposal also acknowledged that the Doha Declaration called for “substantial improvements in market access” and made suggestions on the

formula to be applied for tariff reduction. The proposal was for a “blended formula”, between the “Uruguay Round formula” and the “Swiss formula”, under which each element would be expected to contribute to improvement in market access. The formula proposed cuts in certain tariff lines by an average rate, subject to a minimum rate, but did not give any “figures”. It was also proposed that for “sensitive products”, market access increase would result from a combination of tariff cuts and improved tariff rate quotas (TRQs). The proposal suggested that for “non-sensitive products”, the tariff reduction should be subject to a “Swiss formula coefficient”; and for selected tariff lines they should be duty free.

The EC-US proposal also suggested that the use of the special agricultural safeguard (SSG) would remain under negotiation; and a special agricultural safeguard measure (SSM) should be established for use by developing countries as regards import-sensitive tariff lines. Furthermore, the proposal suggested that all developed countries would seek to provide duty-free access for at least a certain percentage of imports from developing countries, through a combination of Most Favoured Nation (MFN) and preferential access; and that developing countries would benefit from “special and differential treatment”, including lower tariff reductions and longer implementation periods, in order to take into account their development and food security needs.

Regarding export subsidies, the paper proposed that members commit to eliminating them, over a period of time (not specified) for a number of products of particular interest for developing countries (products not indicated); and that for the remaining products, members should commit

to reduce budgetary and quantity allowances for export subsidies. As regards export credits, the proposal was that members commit to eliminating the trade distorting element of export credits for products of export interest to developing countries, over a period of time (not indicated), through disciplines that reduced the repayment terms to commercial practice and in a manner that was equivalent in effect; and that for the remaining products, a reduction effort that was parallel to the reduction as indicated above, in its equivalent effect for export credits should be undertaken.

The EC-US proposal stated that without prejudging the outcome of the negotiations, reductions of all forms of export subsidies indicated above, should occur on a “schedule” (not indicated in the proposal), that was parallel in its equivalence of effect on export subsidies and export credits. The proposal also stated that disciplines should be agreed in order to prevent commercial displacement through food aid operations; and that disciplines, including ending of single desk export privileges, prohibition of special financing privileges, and disciplines on pricing practices should be established for export by state trading enterprises. As for S&D treatment for developing countries, the EC-US proposal was that the rules and disciplines would need to be adjusted for significant net food exporting countries.

The proposal also acknowledged that the issues of the peace clause, non-trade concerns, implementation periods, sectoral initiatives, continuation clause, Geographical Indications (GIs), and other related detailed rules had not been addressed in this EC-US proposal. A number of these issues were of significant importance to developing countries, including African countries.

B. Comments by Selected WTO Members on the EC-US Proposal.

A number of countries made preliminary observations on the EC-US proposal on agricultural reforms. The first observation was that the proposal did not live up to the “**level of ambition**” envisaged in the Doha Declaration for further reform of agricultural markets. Secondly, it was noted that the proposal’s “**lack of detail**”, especially numbers, made it difficult to judge the true scope of the proposed reforms. Thirdly, the “**flexibility**” introduced by the proposal would allow EU and US farm subsidies to continue, with little real change in reducing agricultural subsidies. Fourthly, the proposal left open the “**extent and timing of cuts in tariffs and subsidies.**” Fifthly, the paper was “vague on the central question of how substantial improvements in market access” were to be made. Sixthly, the concept of “**sensitive products**” needs clarification, as differences exist between developed and developing countries on what products are sensitive.

The general opinion of developing countries was that the level of protection by developed countries of their farmers would be maintained, at the expense of farmers in developing countries. As regards the formula for tariff reductions proposed by the EU and US, it was a “**hybrid**”, marrying the gentle across-the-board cuts used in previous farm agreements, and the Swiss formula, which called for capping of duties in some areas. Under the proposal, so-called “sensitive products” would be subject to an average tariff cut, with a minimum to be applied, combined with volume-based TRQs.⁵ Similar, a mixed approach would apply to export subsidies and the export credit system, used mostly by the United States of America; although this commitment would be confined to certain products.⁶

Australia welcomed the move by the EU and the US towards agricultural reforms, but added that the EC-US proposal fell short of the country's expectations, and mostly likely also expectations of the Cairns Group, as it would appear not to provide real reform in the world farm trade. The country said it would study the proposal further. Australia also intended to contest the proposal to end "Single Desk Export Arrangements", which in their opinion did not involve subsidies at all. Australia indicated they would not accept an outcome in these negotiations that falls short of the far-reaching mandate achieved in Doha at the start of this round.

Japan also welcomed the EC-US proposal and was satisfied that the proposal, to some extent, addressed its demands for "flexibility and continuity", especially on sensitive products. Nonetheless, the country expressed concern about proposals touching on tariff ceilings and expanding import quotas on some sensitive farm products, which might cause problems to Japanese agriculture. Japan had been opposing measures that would force the country to cut its tariff significantly on sensitive products, especially rice, or to boost import quotas.

The Africa WTO General Group (AG) also made preliminary observations on the EC-US proposal. The basic comments of the AG were that: "In view of the importance of agriculture to the Doha Work Programme, and in view of the apparent impasse on a possible consensus on the "Revised First Draft of Modalities" (Harbinson Text) contained in document TN/AG/W/1/Rev.1 dated March 18th, 2003, the Africa Group is, first and foremost, grateful for all efforts by the major powers aimed at revitalizing this issue." However,

a number of AG members expressed a variety of opinions during the General Council informals on August 13 and 14 on the "EC-US Paper"; a synopsis of which is to be found below:

Level of Ambition: Since almost all important variables of the "EC-US Paper" had no values or figures attached, it was very difficult to judge the level of ambition proponents were putting on the table. This issue became doubly important in view of the linkages most WTO members made between agriculture and other issues on the Doha Development Agenda (DDA). Over and above this, it had always been the AG's considered opinion that each Round of agriculture negotiations should aim at incremental reform, both in terms of values and rule making. The Paper offered neither.

Coverage: The EC-US Paper seemed to address itself only partially to some elements of the three main pillars. It was, therefore, difficult for the AG to see how, in and by itself, it could constitute a fully-fledged "modalities paper".

Special & Differential Treatment: Harbinson's "First Draft of Modalities" truly enshrined S&D treatment in all areas and under all elements of further reform. Most prominently, the "Draft" introduced a variety of developing and least-developed country-specific concepts (such as the Special Products (SP) and the SSM), which were important to the reform process. On the other hand, the "EC-US Paper" only made vague mention of possible S&D treatment and limited such treatment to lower tariff reductions and longer implementation periods.

LDCs: Nowhere in the "EC-US Paper" did specific modalities for LDCs feature, an issue that

had particular resonance with a majority of AG members. The “Draft” (Harbinson Text) exempted the LDCs from any reduction commitments.

Domestic Support: The EC-US contribution seemed to be retreating from the Doha spirit insofar as domestic support was concerned. It proposed a complex set of rules that appeared to formalize the continued use of the Green Box without new disciplines and a general cap, and re-defined the Blue Box as a non-trade-distorting instrument whose continued use should be allowed. Under this rubric, no mention was made of possible time frames for the elimination of major portions of trade-distorting domestic support, a matter of great importance to the AG.

Export Competition: This was another critical area for all AG members. As presented, the EC-US Paper did not foresee the elimination of all forms of export subsidization, nor did it propose rules that might lead to such. In fact, it seemed to propose a product-specific elimination/reduction (a new and potentially divisive concept), while “other products” were left specific commitments – except a vague “reduction in budgetary and quantity allowances”.

Timing: In view of the brevity of time left before the Cancún Ministerial, in view of the need to arrive at an agreement on a text to be transmitted by the General Council to the Ministers in Cancún, and in view of the effort that had been undertaken in the preparation and debate of the “First Draft” (Harbinson Text), it was the view of the AG that a possible way forward could be to incorporate some positive elements from the EC-US Paper into the former, to achieve the necessary consensus in the shortest possible time-frame.

C. Counter proposal to EC-US Proposal from Selected Developing Countries.

A number of developing countries, including some countries of the Cairns Group submitted a counter proposal to the EC-US proposal on agriculture reforms. The main elements of this proposal may be summarized as follows :⁷

Domestic Support Measures: The proposal was for a “substantial reduction in trade-distorting domestic support” by agreeing on the range for reduction of such measures on a product specific basis. The difference between the upper and lower limits should be no greater than a given number (to be determined) of points. Products that benefit from levels of domestic support above the average during a given period (to be determined), should be subject to the upper levels of reduction. Furthermore, regardless of the percentage reduction applied in each case, a first cut of not less than a given percentage (to be determined) of such reduction should be applied to all trade distorting domestic support measures within the first 12 months of the implementation period.

For products benefiting from domestic support, which were exported and accounted for more than a given percentage (to be determined) of world exports of that product, on average the last number of years (to be determined), the domestic support measures should be subjected to the upper levels of reduction, with a view to elimination. The proposal also suggested that Article 6.5 of the Agreement of Agriculture should be eliminated and that the de minimis for developed countries should be reduced by a certain percentage (to be agreed); and that the sum of the AMS and the de minimis should be subject to, at least, a certain cut (to be agreed). The proposal also suggested for

Green Box direct payments by developed countries to be capped and/or reduced, as appropriate. It was also proposed that the scope of Article 6.2 of the Agreement on Agriculture should be expanded, so as to include focused and targeted programmes; and for the de minimis level to be maintained at the existing levels for developing countries.

Market Access: This proposal supported the EC-US proposal to use as a “blended formula” for tariff reduction in developed countries, under which each element would contribute to substantial improvement in market access for all products, in an effective and measurable way. The proposal suggested that for a certain number of tariff lines (to be agreed), these should be cut by a certain percentage (to be agreed). This proposal differed to EC-US proposal in one important aspect. It suggested that in order to address “tariff escalation”, a factor of a certain number (to be agreed upon) would be applied to the tariff rate cut of the processed product, in the case it is higher than the tariff of the product in its primary form. The proposal was also for a certain number of tariff lines to be subject to a reduction using a “Swiss Formula Coefficient”; and a certain number of tariff lines should be subject to duty free. The proposal was also for tariff rate quotas to be expanded by a certain percentage (to be agreed upon) of domestic consumption and in quota tariff rates should be reduced to zero. Strict rules for their administration would be agreed upon and larger expansion or creation of TRQs could be the result of a request and offer process. It was, furthermore, proposed that the SSG for developed countries should be discontinued.

The proposal also suggested that all developed countries should provide duty-free access to all

tropical products and others mentioned in the Preamble of the Agreement on Agriculture as well as other agricultural products representing, at least, a certain percentage (to be agreed upon) of imports from developing countries. Unlike the EC-US proposal, developing countries also addressed S&D treatment for developing countries. The proposal suggested that taking into account rural development and security needs of developing countries, they should benefit from S&D treatment through lower tariff reductions and longer implementation periods, as well as from the establishment of SP, under conditions to be determined in the negotiations. For developing countries, the proposal was for all tariff lines to be subject to an average tariff cut (to be agreed upon) and subject to a minimum cut of a certain percentage (to be agreed upon), but conditional on agreed S&D treatment provisions agreed under SP. Furthermore, it was also proposed that there would be no commitments regarding TRQ expansion and reduction of in quota tariff lines for developing countries. The proposal was also for a SSM to be established for use by developing countries, the scope of which would depend on the impact of tariff cuts.

Export Subsidies: Developing countries proposed that budgetary and quantity allowances for support of agriculture in developed countries should be eliminated over a given period (to be agreed upon). For products of interest to developing countries, it was proposed that members commit to eliminate export subsidies over a given period of time (to be agreed upon); and for the remaining products, members should also commit to eliminate them over a certain period (to be agree upon). As regards, officially supported export credits, guarantee and insurance programmes, disciplines

should be implemented on rules based approach, without prejudice to existing disciplines on the prevention of circumvention of export subsidies commitments and taking into account paragraph 4 of the Decision on Measures Concerning the Possible Effects of the Reform Programme on LDCs and Net Food Importing Developing Countries (NFIDC). The rules based approach should, inter alia, identify and eliminate the subsidy component. The proposal also suggested that additional disciplines should be agreed upon in order to prevent commercial displacement through food aid operations; for provisions of paragraph 9.4 of the Agreement on Agriculture to be continued; the issues of erosion of preferences to be addressed; and the special situation of LDCs and recently acceded members to be addressed.

General Position of African Countries

As regards negotiation on agriculture, in Mauritius, African Ministers expressed concern at lack of progress and stated:

“(We) are deeply concerned at the failure to meet the deadline for the establishment of the modalities for further commitments in agriculture, which is a major set-back for the reform programme. Agriculture is of critical importance to Africa’s development and holds the potential to lift millions of our people out of poverty. Progress in the agricultural negotiations is essential for the successful conclusion of the Doha Work Programme. We strongly urge WTO members to fulfil the commitments undertaken in Doha as contained in the mandate for the agricultural negotiations.

Recognizing the vital importance of long standing preferences for African countries, we welcome the proposals on preferences as contained in the Harbinson text and we also call upon WTO members to address the issue of the erosion of preferences. We further call upon

WTO members to exempt LDCs from any reduction commitments. Express our full solidarity with African countries that are affected by subsidies on Cotton provided by developed countries and strongly support actions initiated by some African countries in the WTO to urgently remedy the negative consequences of these subsidies that affect millions of African farmers.”

Draft Ministerial text (JOB (03)/150/Rev.1)

On Agriculture, it was proposed that Ministers agreed on a Ministerial Text, which states:

“We reaffirm our commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration. We take note of the progress made by the Special Session of the Committee on Agriculture in this regard and agree to intensify work to translate the Doha objectives into reform modalities. To this end, we adopt the framework set out in Annex A to this document concerning the further commitments and related disciplines on key outstanding issues on market access, export competition and domestic support as the basis for concluding the work in these areas. We direct the Special Session of the Committee on Agriculture to conclude its work on establishing modalities for the further commitments, including provisions for special and differential treatment, by [...]. We agree that participants will submit their comprehensive draft Schedules based on these modalities no later than [...] and confirm that the negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.”

Furthermore, annexed to the Ministerial Declaration was **Annex A: “Framework for Establishing Modalities in Agriculture”**, which spelled out the direction negotiations would take on key issues such as domestic support measures, market access, export competition, and other issues. The Framework also proposed that “Special

and Differential Treatment” should be made an integral part of the proposed modalities in all the three pillars.

Domestic Support Measures: The proposal was that, all developed countries should achieve reductions in trade-distorting support significantly larger than in the Uruguay round, by reducing the final bound total AMS, in a range (to be agreed upon in the negotiations); and by reducing the de minimis by a certain percentage (to be agreed upon). Furthermore, Article 6.5 of the Agreement on Agriculture would be modified, so as to allow members to have recourse to certain support measures, such as direct payments to farmers, based on fixed areas and yields, or base level of production, or fixed number of heads for livestock. Such support would not exceed five percent of the total value of agricultural production in the 2000-2002 period, by a percentage (to be agreed upon). Subsequently, such support shall be subject to an annual linear reduction by a percentage (to be agreed upon) for a further period of years (to be agreed upon). It was also proposed that the sum of allowed support under the AMS and the de minimis, should be reduced in the first period (referred in paragraph 1.3 (ii)), so that it was significantly less than the sum of the de minimis payments under Article 6.5, and the final bound AMS level, in 2000.

It was proposed that in reducing domestic support measures, developing countries should benefit from lower reductions of trade-distorting support and longer implementation periods, as well as provisions of Article 6.2 of the Agreement on Agriculture of the Green Box. This was to take into consideration their development, food security and/or livelihood security needs. Furthermore,

developing countries would be exempt from the requirement to reduce the de minimis trade-distorting domestic support.

Market access: The proposal was that the formula to be applied for tariff reduction by developed countries should be a “blended formula”, under which each element would contribute to substantial improvement in market access. It was proposed that for import-sensitive tariff lines, market access increase would result from a combination of tariff cuts (to be agreed upon) and increase in TRQs (to be agreed upon). For the non-import sensitive tariff lines, these would be subject to reduction using the “Swiss formula coefficient.” It was also proposed that the issue of tariff escalation should be addressed in the negotiations; and the use and duration of the SSG should remain under negotiation.

It was also proposed that for developing countries, the approach for tariff reduction would be similar except that it would take into account S&D treatment provisions. For import-sensitive tariff lines, market access increase by developing countries would also result from a combination of tariff cuts and increased TRQs. However, developing countries would be allowed additional flexibility under conditions to be determined to designate SP, which would only be subject to a linear cut of a minimum (to be agreed upon) and with no new commitments regarding TRQs. Furthermore, for non-import sensitive tariff lines, developing countries would be given the choice between agreeing to a “Swiss formula coefficient” approach and/ or average tariff cut approach, with an agreed minimum. The applicability and/or extent of the provisions of paragraph 2.2 of the Proposed Framework to developing countries

would remain under negotiation, taking into account their development needs. It was also proposed that a SSM should be established for use by developing countries, subject to conditions and for products to be determined.

Additionally, all developed countries would be requested to provide duty-free access for, at least, a certain percentage (to be agreed) of imports from developing countries through a combination of MFN and preferential access. Participants were also requested to take into account the importance of preferential access for developing countries.

Export competition: The Proposed Framework stipulated that disciplines should be established on export subsidies, export credits, export state trading enterprises, and food aid programmes. On export subsidies, it was proposed that members commit to eliminating them over a given period (to be agreed upon) for products of particular interest to developing countries (products to be determined); and that for the remaining products, they should commit to reducing such subsidies with a view to phasing out budgetary and quantity allowances.

As regards export credits, it was proposed that members commit to eliminate them over the same period as in export subsidies, the trade-distorting elements of export credits, through disciplines that reduce the repayment terms to commercial practice over a period (to be agreed), for the products of particular interest to developing countries. For the other products, a reduction effort, with a view to phasing out, that is parallel to the reduction in its equivalent effect for export subsidies should be undertaken. There were attachments made to the implementation of these proposals. It was also

proposed that additional disciplines should be agreed in order to prevent commercial displacement through food aid; the question of the end date of phasing out all forms of export subsidies would remain under negotiation; and strengthening of Article 12 of the Agreement on Agriculture on export prohibition and export restrictions would be addressed in the negotiations.

In order to accommodate the special situation of developing countries, it was proposed that these countries should benefit from longer implementation periods for reductions of all forms of export subsidies, with a view to phasing out these subsidies. Developing countries would continue to benefit from the S&D treatment provisions of Article 9.4 of the Agreement on Agriculture, until such time as the phasing out of all forms of export subsidies is completed. It was also proposed that members agree to ensure that disciplines on export credits (to be agreed upon) should make appropriate provision for differential treatment in favour of LDCs and NFIDC. Furthermore, the Framework proposed that LDCs should be exempt from reduction commitments; and that the objective of duty-free and quota-free market access for products originating in LDCs shall continue to be pursued expeditiously.

The Framework stated that relevant parts of the Revised First Draft Modalities and the related questions specified in the report of the Chairman of the Committee on Agriculture Special Session to the Trade Negotiating Committee (TN/AG/10) would continue to serve as reference documents for further work on modalities, including on such issues as product-specific commitments in domestic support, terms of expansion/opening of TRQs, in-quota tariff rates, single desk export

privileges, export taxes, proposals for flexibility for certain groupings, certain non-trade concerns, implementation period, sectoral initiatives, inter-pillar linkages, peace clause, continuation clause, GIs, and other detailed rules.

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on agriculture along the following lines:

“We reaffirm our commitment to the mandate on agriculture as set out in paragraph 13 of the Doha Ministerial Declaration. We take note of the progress made by the Special Session of the Committee on Agriculture in this regard and agree to intensify work to translate the Doha objectives into reform modalities. To this end, we adopt the framework set out in Annex A to this document concerning the further commitments and related disciplines on key outstanding issues on market access, export competition and domestic support as the basis for concluding the work in these areas. We direct the Special Session of the Committee on Agriculture to conclude its work on establishing modalities for the further commitments, including provisions for special and differential treatment, by [...]. We agree that participants will submit their comprehensive draft Schedules based on these modalities no later than [...] and confirm that the negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole”.

Furthermore, annexed to the Revised Draft Cancún Ministerial Text was **Annex A: “Framework for Establishing Modalities in Agriculture”**, which spelt out the direction negotiations would have

taken on key issues such as domestic support measures, market access, export competition, S&D for developing countries and other issues.

Domestic Support: The proposal in the Framework was for all developed countries to achieve reductions in trade-distorting support significantly larger than in the Uruguay Round that would result in members with higher trade-distorting subsidies making greater efforts. In this respect, it was proposed that all developed countries would reduce the Final Bound Total Aggregate Measure of Support (AMS) in the range of (to be agreed upon) and the product-specific AMS would be capped at their respective average levels during the period (to be agreed upon). Furthermore all developed countries would reduce their de minimis levels by a certain percentage (to be agreed upon). It was also proposed that Article 6.5 of the Agreement on Agriculture would be modified, so that members would be allowed to have recourse to domestic support measures for direct payments. These direct payments would be based on fixed areas and yields; or made on 85 percent or less of the base level of production; or on a fixed number of head in case of livestock. Furthermore, such direct payments would not exceed five percent of the total value of agriculture production in the period 2000-2002 by a certain level (to be agreed upon). It was also proposed that the sum of allowed support under the Total AMS and the de minimis in 2000 would be subject to a cut of at least a certain percentage (to be agreed upon), including an initial cut of a certain percentage (to be agreed upon) in the first year of implementation. Furthermore, Green Box criteria would be reviewed, with a view to ensuring that Green Box measures have no, or at most minimal, trade-distorting effects or effects on production.

In order to take into account the situation of developing countries, it was proposed that they should benefit from special and differential treatment, including lower reductions of trade-distorting domestic support and longer implementation periods and enhanced provisions under Article 6.2 of the Agreement on agriculture and the Green Box. Furthermore, developing countries would be exempt from the requirement to reduce de minimis domestic support.

Market Access: In order to achieve “substantial improvements in market access, especially for developing countries”, as called for in the Doha Ministerial Declaration, the Framework proposed that the formula to be applied for tariff reduction by developed countries would be a “blended formula”, under which each element would contribute to substantial improvement in market access for all products. The formula proposed for developed countries was that for a certain percentage of Tariff lines (to be agreed upon), these would be subject to certain average tariff cuts (to be agreed upon) and a minimum of a certain percentage (to be agreed upon). Furthermore, for such import-sensitive tariff lines market access increase would result from a combination of tariff cuts and Tariff Rate Quotas (TRQs). For a certain percentage of tariff lines (to be agreed upon), tariff cuts would be subject to a Swiss Formula, with a coefficient (to be agreed upon). For the balance of the tariff lines these would be duty-free. Furthermore, it was also proposed that the resulting simple average tariff reduction for all agricultural products would be no less than a certain percentage level (to be agreed upon), in order to ensure increased market access.

It was also proposed that for tariff lines that exceeded a certain maximum (to be agreed

upon), developed countries would either reduce them to that maximum, or ensure effective additional market access in these or other areas through a request-offer process that could include TRQs. It was also proposed that the issue of “tariff escalation” would be addressed by applying a factor (to be agreed upon) to the tariff reduction of the processed product, in case its tariff is higher than the tariff of the product in its primary form. Furthermore, in-quota tariffs would be reduced by a certain percentage (to be agreed upon) and the terms and conditions of any TRQ expansion/opening would remain under negotiation. Similarly, the use and duration of the special agricultural safeguard (SSG) measure would also remain under negotiation.

In order to take into account the situation of developing countries, it was proposed that the formula that would apply to them would be slightly different from that of developed countries. It was suggested that for developing countries a certain percentage of tariff lines (to be agreed upon) would be subject to a certain percentage (to be agreed upon) average tariff cut and a minimum cut of certain percentage (to be agreed upon); and that for these tariff lines market access increase would result from a combination of tariff cuts and TRQs. Within this category, developing countries would have additional flexibility under conditions to be determined to designate Special Products (SP), which would only be subject to a linear cut of a minimum of a certain percentage (to be agreed upon) and no new commitments regarding TRQs. However, where tariff bindings are very low (a figure to be agreed upon) there would be no requirement to reduce tariffs.

It was also proposed that for developing countries a certain percentage of tariff lines (to be agreed upon) would be subject to a Swiss formula with a certain coefficient (to be agreed upon). Furthermore, a certain percentage of tariff lines (to be agreed upon) would be bound between 0 and five percent, taking into account the importance of tariffs as a source of revenue for developing countries. In implementing such tariff reductions, developing countries would benefit from an additional implementation period (length of implementation period to be agreed upon).

It was also suggested that the extent of tariff reductions by developing countries as proposed in the Framework would remain under negotiation, taking into account their development needs. Furthermore, a special agricultural safeguard (SSM) would be established for use by developing countries subject to conditions and for products to be determined. It was also proposed that all developed countries would seek to provide duty-free access for at least a certain percentage (to be agreed upon) of imports from developing countries, through a combination of MFN and preferential access, including particularly all tropical and other products referred to in the preamble of the Agreement on Agriculture. The Framework also suggested that participants would take account of the importance of preferential access for developing countries. The further considerations in this regard would be based on paragraph 16 of the revised First Draft of Modalities for the Further Commitments (TN/AG/W/1/Rev.1 refers).

Export Competition: As regards export competition, taking into account the mandate of Doha, it was proposed that disciplines be established on export subsidies, export credits,

export state trading enterprises, and food aid programmes. It was suggested that reduction commitments be applied in a parallel manner along the following lines for developed countries. With regard to export subsidies, members would commit to eliminate export subsidies for products of particular interest to developing countries. A list of these products would be established for the purpose of tabling comprehensive draft Schedules. Elimination of the export subsidies for these products would be implemented over a period of a number of years (to be agreed upon). Furthermore, for the remaining products, members would commit to reduce, with a view to phasing out, budgetary and quantity allowances for export subsidies.

As regard to export credits, developed country members would commit to eliminate, over the same period as above, the trade-distorting element of export credits through disciplines that reduce the repayment terms to commercial practice (number of months of repayment to be agreed upon), for products of export interest to developing countries, in a manner that was equivalent in effect. Furthermore, for the remaining products, a reduction effort, with a view to phasing out, that was parallel to the reduction as above in its equivalent effect for export credits would be undertaken. It was stated that without prejudging the outcome of the negotiations, reductions of, with a view to phasing out, all forms of export subsidies would occur on a schedule that is parallel in its equivalence of effect on export subsidies and export credits.

Furthermore, it was stated that the provisions related to the reductions of, with a view to phasing out, all forms of export subsidies would apply

equally to all forms of export subsidies related to or provided, directly or indirectly, to, by or through export state trading enterprises. Furthermore, additional disciplines would be agreed in order to prevent commercial displacement through food aid operations and an end date for phasing out of all forms of export subsidies would remain under negotiation. Similarly, strengthening of Article 12 of the Agreement on Agriculture on export prohibitions and export restrictions would also be addressed in the negotiations.

As for developing countries, it was proposed that these countries would benefit from longer implementation periods for reductions, with a view to phasing out, all forms of export subsidies. Furthermore, until such time as the phasing out of all forms of export subsidies was completed, developing countries would continue to benefit from the special and differential treatment provisions of Article 9.4 of the Agreement on Agriculture. Additionally, it was suggested that participants would ensure that the disciplines on export credits to be agreed should make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries as provided for in paragraph 4 of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

Least Developed Countries (LDCs) and Newly Acceding Members: With regards to these, it was proposed that LDCs would be exempt from reduction commitments. Furthermore, developed countries [should] [shall] provide duty-free and quota-free market access for products originating from least-developed countries. Similarly, the

particular concerns of recently acceded members would be effectively addressed through provisions that could include longer time frames and/or lower tariff reduction commitments.

On other issues, including the Peace Clause and on-trade concerns, it was proposed that these should be addressed along these lines. The Peace Clause would be extended by a number of months to be agreed upon. Subject to the provisions of the framework set out in paragraphs 1 to 6, relevant parts of the Revised First Draft of Modalities (TN/AG/W/1/Rev.1 refers) and the related questions specified in the report of the Chairman of the Committee on Agriculture Special Session to the TNC (TN/AG/10 refers) as well as the contributions members have submitted thus far would serve as reference documents for the further work on modalities, including with respect to the following issues of interest but not agreed: single desk export privileges, export taxes, proposals for flexibility for certain groupings, certain non-trade concerns, implementation period, sectoral initiatives, inter-pillar linkages, continuation clause, GIs, and other detailed rules.

Position of AU/ACP/LDC on Agriculture

The joint response of the ACP/AU/LDC countries to the Second Revised Cancún Ministerial Text was contained in the Document WT/MIN(03)/W/17 of 12 September 2003 entitled: Consolidated African Union/ACP/LDC Position on Agriculture, which was translated to the Ministerial Conference by Mauritius on behalf of these countries.⁸ The main elements of this document can be summarized as follows. In the document, the countries of the African Union

(AU) and the African Caribbean and Pacific (ACP) and the Least Developed Countries (LDCs) expressed concerns that the Draft Ministerial Text and the relevant Annex on agriculture fell short of the objectives envisaged in the Doha Declaration for further reform of agricultural markets and that it was their understanding that further reform for agriculture should aim to attain the objectives as set out in the Doha mandate and that each Round of agriculture negotiations should aim at incremental reform, both in terms of value and rule-making. They stressed that the “Framework”, and the associated Modalities to be agreed upon, should address themselves fully on all the three pillars, in a balanced and equitable manner; and reiterated that, in accordance with the Doha mandate, S&D should be an integral part of all elements of the negotiations on agriculture.

Market Access

On market access, these countries expressed concern that the proposed Framework contained in the Second Revised Draft Cancún Ministerial Text did not provide for meaningful tariff reduction by developed countries and, hence, did not address the issue of high tariffs, tariff peaks and tariff escalation. Furthermore, the proposed “blended formula approach” would allow developed countries to place the products with high tariffs under the “import sensitive category” and, hence, subject them to lower reduction commitments.

Accordingly, the AU/ACP/LDC countries called for: improved market access for our agricultural products and for developed countries to reduce tariff peaks and tariff escalation; a programme to support the enhancement of supply capacities in the agricultural sector so as to take full advantage

of market access opportunities; and the setting of an overall target for tariff reductions by developed countries. Furthermore, they also called on developed countries to address issues of non-tariff barriers, such as SPS and TBTs, as well as other market entry barriers; and for a more simplified and transparent tariff quota regimes that provide clear benefits to these countries; for bound duty free and quota free market access by developed countries for products of LDCs; for no ceiling on level of maximum tariffs for developing countries; and for self selection of special products.

They reiterated the vital importance of long standing trade preferences for AU/ACP/LDC States and called on WTO members to provide for the maintenance and security of such preferences through flexible rules and modalities based on development needs. Accordingly, they called for the Framework on Agriculture to incorporate relevant proposals from the Harbinson Text as well as development of a compensatory mechanism to address erosion of preferences for these countries. They further expressed concern that the Draft Ministerial Text and its Annex did not fully take into account a variety of developing and least-developed-country-specific concepts, such as the Special Products (SP) and Special Safeguard Measures (SSM), that are important to these countries. They insisted that the proposed Framework on Agriculture should fully incorporate the proposals contained in the Harbinson’s Revised First Draft Modalities.

Domestic Support

As regards domestic support, these countries called for all forms of trade-distorting domestic support measures by developed countries to be

substantially reduced; for substantial reduction in the Amber and Blue Box measures, with a view to their phasing out and elimination; and for capping of the trade-distorting element of Green Box support measures provided by developed countries. They also called for LDCs to be exempt from reduction commitments under the Agreement on Agriculture.

Export Competition

As regards, export competition the joint proposal of the ACP/AU/LDC countries called for substantial reduction of export subsidies, with a view to phasing out, within a specified period. While welcoming the proposal by the EC to eliminate subsidies on products of interest to African countries, they called for developing countries to be provided the leeway for self-selection of products to benefit from this proposal, and have the scope for product diversification. They also called for the provision of appropriate differential treatment in favour of LDCs and NFIDCs in the development of disciplines on export credits as provided for in the Marrakech Decision.

Other Issues

On other issues related to the Agreement on Agriculture, these countries called for food aid in emergency situations in these countries to be addressed; and for food aid to be continued to meet chronic food deficits and/ or development goals; and for the reaffirmation of the Marrakech Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on LDCs and Net Food Importing Developing Countries and called for its speedy implementation.

State of Post-Cancún Negotiations on Agriculture

For the six months following the failure of Cancún, negotiating “Special Sessions” of the Committee on Agriculture were suspended, as were sessions of other Negotiating Bodies of the WTO. Despite this development, consultations in Geneva and around the world continued in order to unblock the deadlock on agriculture and other issues. There was a general desire by members of the WTO to build on the work already accomplished prior to Cancún and at Cancún and also to use the Derbez Text of Cancún as a basis for further consultations. Furthermore, consensus was developing among WTO members that the most productive process would develop appropriate “Frameworks for Negotiations” in the various areas, including agriculture as a staging process for developing full “Modalities for Negotiations”.

The United Nations Economic Commission for Africa (ECA), in collaboration with the African Union (AU) and the Ministry of Trade and Industry of the Republic of Ghana, organized in Accra, Ghana from 28-29 November, the Post-Cancún Expert Group Meeting for African Trade Negotiators and Officials. The objective of this meeting was to bring together African trade negotiators and officials, as well as trade experts from selected institutions around the world in order to undertake a comprehensive evaluation of the outcome and implications of the Cancún WTO Ministerial Conference for African countries as well as to identify immediate research needs of African countries in the context of these negotiations. The meeting was also intended to assist African countries to adequately prepare for

the forthcoming 15 of December General Council meeting of the WTO. During this meeting, African trade negotiators and officials made a number of recommendations. The experts underscored the critical importance of Agriculture to African economies, especially as regards to poverty reduction and in achieving the Millennium Development Goals (MDGs). They noted that the difficulties encountered in reaching agreement on Modalities for Agricultural Negotiations prior to Cancún and at Cancún partly reflected the importance of this sector to a broad range of members of the WTO and to the livelihoods of millions of people in the world. The experts insisted on the need to address simultaneously all three pillars of the agricultural negotiations in a balanced manner.

The experts were of the view that the Derbez Text, along with other inputs, could serve as a basis for restarting the negotiations on agriculture. However, they reiterated the need to redress the imbalance in the Annex on Agriculture, in order to achieve the level of ambition desired by African countries. This was particularly true as regards the formula to be applied for tariff reductions. It was their view that the formula to be used should produce substantive reductions in trade-distorting agricultural support measures; and provide flexibility to developing countries to deal with strategic products, food security and other developmental aspects of agriculture. Furthermore, such a formula should provide modalities for tackling the issue of special and differential treatment and erosion of preferences. Experts also emphasized the urgent need to establish a framework for agricultural negotiations, as an essential element in the process to move towards defining modalities for the negotiations without delay.

Experts agreed that some proposals that emerged from Cancún on agriculture are a viable means of moving the talks forward in this area. The meeting also focused on procedural and substantive matters, which needed to be considered in order to move the negotiations forward. The meeting discussed strategies, which African countries could pursue in the negotiations on agriculture. Suggestions made included that African countries adopt a flexible and realistic strategy and tactical approach to restart the negotiations. The proposed strategy would nonetheless need to emphasize Africa's interests in the framework for further reforms. Furthermore, such a framework would need to address, in a balanced manner, all the three pillars in the negotiations, i.e. market access, domestic support, and export competition. Experts expressed the need for African countries to continue to build strong strategic alliances with other developing countries.

During the month of December 2003, the General Council of the WTO held its last meeting from 15 to 16 December 2003. The meeting was intended to take stock of developments after Cancún and determine whether much had been achieved to revive the stalled Cancún trade negotiations, ended without any major agreement on crucial issues of importance under the current round of multilateral trade negotiations.

The first Agriculture Week after Cancún was held from 22-26 March 2004, marking a new approach to negotiations. Delegations and groups of delegations were left to meet and negotiate among themselves. The Chairman of the Committee on Agriculture indicated he would serve only as a "Facilitator of Negotiations". Transparency

Meetings were held on 24 and 26 March for delegations to report to the full membership on their consultations. During the Week, meetings were private and between groups of members, such as Cairns Group, G10, G20, G33, the Africa Group and the G90. Key individual members, such as US, EU and Japan also participated in the consultations. By the end of the Agriculture Week the tone of the negotiations had changed, as members were listening to each other. Nonetheless, the discussions had not as yet entered the important phase of “problem-solving”. Many delegates identified “market access” as technically the most difficult of the three pillars to deal with.

The Chairman reported that overall, there was better interaction and understanding between the political process and the Geneva process. There was a need for the right political input for the negotiations to move. The procedure adopted was perceived to be more productive. There was consensus to aim for a “Framework on Agriculture Negotiations” latest by July 2004. There was a broad consensus that a Framework would only be a staging point on the road to “full modalities”. The Chairman would focus on the process, while the content would come from the membership of the WTO. The Cotton Sector Initiative would remain an agenda of the negotiations. The Chairman noted that negotiations in agriculture needed to move in tandem with negotiations in other areas.

The Second Agriculture Week after Cancún was held 19 to 22 April 2004. The Chairman of the Special Session on Agriculture, in launching the Week advised WTO members to continue with consultations among themselves and among their groupings and also to try and move into a stage of “problem-solving” in the negotiations. He urged

them to show flexibility in their positions in order to be able to accommodate each other’s positions.

During this Agriculture Week, the Africa WTO Geneva Group held meetings with a number of other groupings and countries, including meetings with the G10, G33, the Cairns Group, the EU and the US. These meetings were intended to provide an opportunity for the groups to identify common ground as well as divergences in their positions. The basic difficulties in the current agricultural negotiations stem from the fact that in the Doha Declaration members committed themselves to achieve further liberalization of agricultural world markets, while at the same time provide developing countries with the necessary policy space and instruments for them to achieve sustainable development. However, some of the major trading partners appear to be negating from the letter and spirit of the Doha Declaration by wanting to keep agricultural support measures and subsidies, which distort world markets.

Despite the divergence among African countries in respect to agricultural structures, since the continent has both net food-importing developing countries (NFIDCs) and net-food exporting developing countries (NFEDCs), nonetheless there is broad agreement that agricultural subsidies in the OECD markets have tended to distort world agricultural markets. More importantly, these subsidies have resulted in the destruction of the agricultural sector in many African countries. It is noted that while a number of African countries are extremely competitive in production of certain agricultural products, such as cotton in West Africa, subsidies provided by OECD countries to their farmers depress world prices to such levels as to make it uneconomical for these African

countries to continue to produce. Accordingly, dealing with the removal of such trade-distorting agricultural support measures and export subsidies is fundamental to achieve liberalization of world agricultural markets and to give African countries the comparative advantage they have in production of such products.

A second important issue for African countries is that of “policy space” needed to allow them to undertake agricultural policies, which support their development goals and poverty reduction strategies. In this context, African countries have been calling on their partners in the WTO to agree to provide instruments within the framework and modalities to be agreed which provide “special and differential treatment” to developing countries, in the form of exemptions from commitments and/or longer implementation periods. A third aspect is the issue of access to markets of developed countries. The issue of market access is a more difficult one to resolve in the current negotiations, as it straddles a host of other issues including the formula to be applied, the issue of administration of tariff quotas (TRQs), the issue of non-tariff barriers (NTBs) faced by exports of developing countries and the issue of preference erosion. Finally, the issue, of erosion of preferences is one that not only divides WTO members, but also African countries. Some African countries would wish to see all forms of trade-distorting agricultural support measures by developed countries reduced substantially and/or eliminated. There are, however, in Africa preference receiving countries who argue that this would result in erosion of their markets and create serious economic and social conditions in their countries. These countries would like the removal of agricultural subsidies in the OECD countries to be somewhat tempered so that they

are not adversely affected. Accordingly, achieving consensus among African countries on these issues has proved elusive. May be the wiser thing is not to seek such consensus and let individual members argue their cases.

African countries have reiterated their positions during the Second Agricultural Week to remain engaged and to continue to contribute constructively towards developing a “Framework” for agricultural negotiations as well as “Modalities”.

A communication from the European Commission (EC) to the WTO membership, dated 9 May 2004, stated that on agriculture, “there must be a movement on the three pillars-market access, domestic support and export support-in a balanced manner.” The EC also stated that “(..) on market access, a blended formula could, with the necessary modifications, meet the concerns of all participants as well as all our sensitivities. (..) [A]ll of us, should consider how best to address these concerns by focusing on the necessary flexibility particularly in response to developing country sensitivities.”

On domestic support, the EC stated that: “[W]e are prepared to commit ourselves to a large reduction in trade distorting (amber) support as well as reduction in existing blue box payments and their capping. We believe de minimis support should be eliminated for developed countries. There should be new rules, which would prevent subsidising countries from transferring subsidies between and within boxes. Greater transparency, advance notification and consultation are also vital principles for many countries, which we support. [W]e are open to commitments guaranteeing the overall reduction of trade-distorting domestic

support. But non-trade distorting support (green box) should remain free of restrictions. If an acceptable outcome emerges on market access and domestic support, we would be ready to move on export subsidies". The European Commission also noted in this communicate that there should be full parallelism on all forms of export competition including export credits, food aid and STEs and that "parallelism" should be specified so it could be spelt out in the framework agreement.

As regards cotton, the WTO Secretariat organized a workshop on cotton in Cotonou, Republic of Benin during 23-24 March 2003. This workshop was preceded by informal consultations with the WTO Africa Group as well as consultations with the Joint OECD-DAC/WTO Meeting in Paris, 2-3 March 2004. The workshop in Cotonou focused on the analysis of the main factors influencing African cotton production and trade; cotton-specific types and scope for financial and technical assistance; roles and contributions of multilateral and bilateral donors. During this meeting, the position taken by the four proponent countries (Benin, Burkina Faso, Chad and Mali) of the Sector-based initiative in favour of Cotton was reinforced. The aim of the workshop was to address development assistance aspects of this cotton initiative but ended without firm commitment on development assistance. This proposal called for a phase-out of subsidies to developed country cotton producers with a view to their total elimination, and for compensation mechanism to offset the income loss of LDCs' cotton producers until the completion of the phase-out. The workshop ended with no firm commitment on delivery and timelines.

Bilateral donors and multilateral institutions considered that "synergies should be built, with enhanced coordination, around the PRSPs or national development plans, and the African Development Bank's Country Strategy Papers (CSPs), which are derived from priorities reflected in the PRSPs" (WT/L/564). Some participants, especially from West Africa, criticised the meeting arguing that focusing on the development dimension was an attempt to deflect the debate from their main concern- trade issues.

Also, in Dakar, Senegal, the Third LDC Trade Minister's Meeting was held during 4-5 May 2004 where in their final declaration, LDC Ministers called on rich nations to present clear action plans on cotton subsidies. The main LDC's cotton exporters, Benin, Mali, Chad and Burkina Faso, have been leading a campaign to treat cotton as a separate issue in trade talks and not tackled as part of general agriculture negotiations. However, the proponents have given indication that this could change if rich states guarantee that cotton will be treated as a top priority in agriculture talks. The cotton sectoral issue could then be handled within the broader negotiations on agriculture.

The EC communication to the WTO membership, dated 9 May 2004, stated that: "It behoves us all, and in particular developed countries, to eliminate all forms of export support, to provide free and unfettered market access and to significantly reduce and if possible eliminate the most trade distorting domestic subsidies."

Footnotes:

- 5 It should be noted that for the European Union, the most sensitive products are beef, dairy products, sugar and some fruits and vegetables. Furthermore, it should also be noted that the EU is the largest user of domestic support measures and recently under the Common Agricultural Policy (CAP) Reforms the EU has tried to shift agricultural support measures which were under the “Blue Box”, considered to be trade-distorting by WTO Rules, into “Green Box”, considered to be less trade-distorting and therefore acceptable under WTO rules.
- 6 The United States of America is the largest user of export subsidies and export credits and according to the EU-US proposal, the use of many of these would not be reduced substantially, and even increased, since their current use is still below the permissible limits within the WTO rules.
- 7 These developing countries include: Argentina, Brazil, Bolivia, China, Chile, Columbia, Costa Rica, Ecuador, Guatemala, India, Mexico, Paraguay, Peru, Philippines, South Africa and Thailand.

Briefing Paper 3

Negotiations on Non-Agricultural Market Access

Mandate

At Doha, Ministers acknowledged the importance of market access for non-agricultural products (NAMA) in the multilateral trading system by stating that:

“We agree to negotiations which shall aim, by modalities to be agreed, 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. Product coverage shall be comprehensive and without a priori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.”

State of the Negotiations

The Negotiating Group on Market Access (NGMA) was established by the TNC in order to carry out the work related to the negotiations on market access for non-agricultural products. Its work focused mainly on tariffs and non-tariff barriers (NTBs); review of the proposals submitted by members; appropriate studies and capacity building measures; and consideration of possible modalities for negotiations. Following extensive

negotiations in the Group, the Chairman issued “**Draft Elements of Modalities for Negotiations on Non-Agricultural Products**” (TN/MA/W/35). However, the Group failed to agree on the modalities by the deadline of by 31 May 2003. Consultations, nonetheless, have continued.

Formula: The Chairman of the Group reported to the General Council that the “Draft Elements” proposed a harmonizing formula that would apply on a line-by-line basis for all participants, except for LDCs. However, there were differing views on the type of formula to be used and how it would address the issues set out in the mandate, most notably the issues of tariff peaks, and tariff escalation, and “less than full reciprocity.” The Chairman of the Group indicated that generally, there was support for a formula of the type proposed in the text. However, the various elements of the formula would likely need further work. The treatment of “unbound items” in the formula was also the subject of much debate and would need further discussions.

Sectoral Approach: This was the second element of the “Draft Elements of the Modalities”, whereby tariff elimination was proposed for seven sectors of particular export interest to developing countries. The Chairman reported that the reaction to this proposal had been mixed. While some considered it imperative to further mandatory tariff liberalization beyond the formula, others did not see it in their interest. In addition to the flexibility provided in the formula and sectoral approaches for developing countries, additional provisions for developing countries and LDCs had been proposed in the “Draft Elements”. They would, however in turn, be expected to substantially increase their level of binding commitments. The Draft modalities also provided for the possibility

of supplementary modalities- such as zero-for-zero, sector elimination, sectoral harmonization, and request and offer. The issue of “erosions of preferences” continued to be a highly debated matter in the Group, on which there was no consensus.

Non-Tariff Barriers: The “Draft Elements of Modalities” proposed a three-step process of identification, examination, and categorization of those. The process of identification had been underway in the Group for sometime, with 25 submissions from participants. Many of the substantive issues on NTBs relate to the overlap of many of the NTBs with other WTO Agreements, Bodies, or Ministerial mandates. The Draft Elements proposed four ways of dealing with negotiations on NTBs. The NGMA was to address the first category of NTBs and appropriate modalities would need to be determined. Secondly, there are NTBs relating to existing negotiating bodies, e.g. rules, and accordingly it was proposed that NTBs relating to anti-dumping would be referred to the Negotiating Group on Rules. Similarly, NTBs relating to the other parts of the Doha Declaration, but currently without a specific negotiating mandate would be referred to the appropriate body to be addressed, depending on possible decisions at Cancún.

The Chairman of the Group reported that so far, there had been positive appreciation of these suggestions, but some delegations had raised concerns with the issue of referral for a number of reasons. Some were of the view that these issues might not be dealt with adequately in the Groups where they had been referred and others, with small delegations, were concerned that they might

not be able to follow all the negotiations, running concurrently in the various Groups.

Capacity Building: Another issue of concern to developing countries had been that of conducting appropriate studies and capacity building to inform them of the impact of further tariff reductions on their economies, particularly on the revenue implications.

In reporting to the General Council, the Chairman of the TNC stated that the target date of 31 March 2003 for agreement on “modalities” had not been met, despite all the efforts of the Committee on Market Access. He informed the General Council that the Negotiating Group on Market Access for Non-agricultural Products had been working on modalities for both tariffs and non-tariff measures and that discussions on tariff modalities had focused on “harmonizing formula” applied on a line-by-line basis and, more specifically, on how the parameters in the formula would be applied. He stated that there were divergent levels of ambition among members, with respect to how deep formula tariff cuts should be, and thus, what the parameters should be.

There were also divergent views on the sectoral approach and supplementary modalities as suggested in the “modalities.” Although S&D had been treated as an integral part of the draft elements of the modalities, there were still discussions on how to incorporate these in the modalities. Concerns had also been raised by developing countries about the need to preserve the existing margins of preferences for their exports as well as the revenue implications of further tariff reductions. On non-tariff barriers, work had intensified and the basic framework for addressing

NTBs had been presented in the draft elements of the modalities. Further issues, which needed resolution, related to how to deal with tariff peaks and tariff escalation in the modalities.

Positions of Selected WTO Members

The European Commission (EC), the United States (US) and Canada presented on 12 August 2003 a proposal for modalities on Non-Agricultural Market Access (NAMA). The proposal stated that the Chair's document, "Draft Elements of Modalities" (TN/MA/W/35) provided an acceptable broad framework for the negotiations and proposed that some agreement should be reached on finalization of the modalities, which should include a simple, ambitious, harmonizing formula applied on a line-by-line basis (e.g. the Swiss formula), with a single coefficient (to be agreed upon). Furthermore, the proposal was that the formula should incorporate S&D treatment; and that members should devise appropriate mechanisms to deliver flexibility for developing countries, through, for example, a system of credits to accommodate objective differences in the economic situation of these countries.

The proposal suggested that "less than full reciprocity" by developing countries would be achieved by reducing the formula cut applicable to their tariffs by a factor (to be agreed upon) on the basis of credits. Credits could be given for bindings greater than 95 percent which would reduce the overall obligation to reduce by a certain percentage; and by a country narrowing the margins between bound and applied tariff levels. It was also proposed that in addition to this system of credits, members would agree to other elements of flexibility for developing countries, whereby

developing countries would be allowed "less than formula cuts" for a limited number of tariff lines/value of trade, not to be concentrated in any one sector but subject to minimum required cut by a certain percentage (to be agreed upon); agree on the level at which unbound tariffs should be bound (e.g. a certain X times applied rates); and agree for the staggering of reduction commitments for developing countries. The proposal also suggested "less than comprehensive bindings" of all tariff lines by LDCs and IDA-only members of the WTO; and that negotiations would aim at identifying means of enhancing market access opportunities for LDCs.

As regards newly acceded members, it was suggested that they should be given additional time for the implementation of the results of the round (period of transition to be agreed upon). As regards sectoral initiatives, the proposal was for product coverage of and participation in such initiatives would need to be defined. This related particularly to elimination of tariffs on products of export interest to developing countries, for instance harmonization or elimination of tariffs for textiles and apparel and elimination for environmental goods and other sectoral issues.

As regards supplementary measures, the proposal was for a low duty component to be agreed upon; and with respect to non-tariff barriers, the proposal acknowledged that the Chair's Paper provided a useful framework on which to move forward. On preference erosion, the proposal encouraged the Bretton Woods Institutions (BWIs) to establish or enhance programmes to address adjustment needs of members whose exports were significantly affected by erosion of preferences. Finally, the proposal suggested that there should be agreement

on the deadline for tabling of “offers”; and that there should be agreement to commence immediately request and offer negotiations and other supplementary approaches.

On 20 August 2003, the EU, the US and Canada made a formal proposal, JOB(03)/163. The three countries proposed a Framework for defining Modalities for Non-Agricultural Market Access. Although the Framework drew on their first proposal, it contained some revisions. They reiterated that their intention was to achieve commercially significant market access improvements for non-agricultural products. As regards the formula for tariff reduction to be used, they stated that these elements would be finalized by some date (to be agreed) and would include a simple, ambitious, non-linear, harmonizing formula, applied on a line-by-line basis to all non-agricultural tariff lines, with a single coefficient (to be agreed upon). The proposal was also for product coverage to be comprehensive and without a priori exclusions; for base rates for the bound items to be final Uruguay Round or accession bound rates and for unbound items, the base rates to be (n times, to be determined) of the applied rates existing on 14 November 2001 or a level thereto related; and for the base year to be 2001 with its MFN applied rates. Furthermore, it was also proposed that negotiations would be conducted on the basis of the HS 96 nomenclature, with results of the negotiations converted into HS 2002; and the reference period for the import data to be 1999-2001. The proposal was also for credit for autonomous liberalization undertaken since the conclusion of the Uruguay Round to be granted.

The EU/US/Canada formal proposal also proposed that members agreed that the formula to

be applied for tariff reductions would incorporate S&D treatment and gave effect to less than full reciprocity; and for sectoral initiatives to eliminate or harmonized tariffs to be undertaken as an integral part of the modalities applying to members, particular for products of export interest to developing countries. The sectors, their product coverage and participation would need to be defined. Furthermore, sectoral modalities should address the reduction or elimination of NTBs, as appropriate. The Framework also proposed that additional provisions should be included for LDCs and for IDA-only eligible members as well as members with a binding coverage of non-agricultural tariff lines that was less than 35 percent. These members would be exempt from making tariff reductions arising from the application of the formula. These members, with the exception of the LDCs, would be expected to bind 100 percent of non-agricultural tariff lines at the overall level of the average bound tariffs of all developing countries after full implementation of the current concessions.

The EU/US/Canada formal proposal also suggested that negotiations should aim at identifying additional means of enhancing market access opportunities for LDCs; and for newly acceded members to benefit from additional time to implement the results of the Round. This proposal also suggested that supplementary elements, such as additional sectoral harmonization and elimination, request and offer, and elimination of low duties might be included to ensure the maximum possible liberalization. The elimination or reduction of NTBs was proposed to be an integral part of the negotiations and updated notifications on the ones they wished to be pursued, should be done

by no later than 31 October 2003. Members agreed that draft schedules presented to reflect modalities should be tabled no later than a date (to be agreed upon); and for members to refine final non-tariff requests until this date, so that tariff and non-tariff elements could be advanced simultaneously. The proposal also suggested that implementation of tariff reduction commitments should be reached over a period of time (to be agreed upon) for developed countries, and for developing countries over a period (to be agreed) in equal annual reductions, unless alternative staggering was determined for individual sectoral agreements. Finally, the framework also suggested that in order to address erosion of preferences, work should continue with the BWIs to establish or enhance programmes to address adjustment needs of members whose exports were significantly affected by erosion of preferences.

Comments By Selected WTO Members on the EU/US/Canada Proposal

The initial reception by developing countries to the proposal by the EU/US/Canada (12 August 2003) to reduce tariffs for non-agricultural products, was a rather cool one. Although the proposal was for big reductions in the highest tariffs on non-agricultural products, as part of the current round of trade liberalization negotiations, many developing countries appeared unprepared to accept major reductions in tariffs on manufactured goods, until they had guarantees that similar moves would be made in agriculture. Most developing countries would like to see big cuts in programmes of farm subsidies by the EU and the US, before they could even consider any tariff reductions for non-agricultural products.

The EU/US/Canada proposal for reduction of tariffs for non-agricultural products would set a ceiling on duties across the board—although the exact level would vary from product to product (but the proposal gives no specific figures). It would apply to all goods exported from one country to another, except those classified as “agricultural products.” Accordingly, while developing countries in general agreed that tariff cuts should be made, they would like to retain high tariffs in some areas to protect domestic producers from foreign competition.

Pakistan indicated that the joint EU/US/Canada proposal went “completely in the wrong direction”, while some countries of Eastern Europe and former Soviet Bloc welcomed the proposals.

General Position of African Countries

The Statement of African Ministers of Trade stated that:

“We affirm that the objectives of the negotiations on non-agricultural market access are to facilitate the development and industrialization processes in our countries. The modalities and the actual negotiations must reflect these goals appropriately by addressing tariff peaks and tariff escalation, taking fully into account the special needs and interests of developing and least-developed countries, including through less than full reciprocity in reduction commitments and the principle of special and differential treatment. We are deeply concerned that the draft elements of the modalities proposed by the Chairman of the WTO Negotiating Group on Market.

Access for Non-Agricultural products do not take into account the specific vulnerabilities of African industries, especially in the textiles and clothing, leather and fisheries sectors. It is a matter of grave concern to us

that the proposals made by some African countries in Geneva have not been considered, especially with regard to erosion of preferences, and revenue implications which are of critical importance to Africa. We urge that the modalities should take full account of all our concerns, in particular, the erosion of preferences. We welcome the Chairman's proposal to exempt LDCs from making any reduction commitments. While recognizing the special needs of LDCs, the proposed studies on LDCs should be extended to other African countries and should include the effects of previous liberalization measures as well as the potential impact of any proposed modalities."

Draft Ministerial Text (JOB (03)/150/Rev.1)

With regards to NAMA, the Draft Ministerial Text stated:

"We reaffirm our commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration. We take note of the progress made by the Negotiating Group on Market Access in this regard and agree to intensify work to translate the Doha objectives into modalities for these negotiations. To this end, we adopt the framework for modalities for negotiations on non-agricultural products set out in Annex B to this document. We direct the Negotiating Group to conclude its work on establishing modalities by [...] and to take the necessary further steps to ensure the conclusion of negotiations by the agreed date."

The Draft Ministerial Text also contained an annex on NAMA: **Annex B "Framework for Establishing Modalities in Market Access for Non-Agricultural Product."** In the Framework Paper, it was proposed that Ministers:

"Reaffirm that negotiations on market access for non-agricultural products shall aim 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. They should also reaffirm the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities. They should take note of the constructive dialogue on the Chair's Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirm their intention to use this document as a reference for the future work of the Negotiating Group. Furthermore they should instruct the Negotiating Group to continue its work, as mandated by paragraph 16 of the Doha Ministerial Declaration with its corresponding references to the relevant provisions of Article XXVIII bis of GATT 1994 and to the provisions cited in paragraph 50 of the Doha Ministerial Declaration, on the basis set out below."

Furthermore, the Proposed Framework for negotiations on NAMA proposed that Ministers acknowledged that a formula approach was key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation. They should agree that the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis, which would take fully into account the special needs and interests of developing and LDC participants, including through less than full reciprocity in reduction commitments.

The Framework proposed that members agreed on the following elements regarding the formula: product coverage would be comprehensive without *a priori* exclusions; tariff reductions or elimination would commence from the bound rates after full implementation of current concessions. However, for unbound tariff lines, the basis for commencing the tariff reductions would be [two] times the MFN applied rate in the base year); the base year for MFN applied tariff rates would be 2001

(applicable rates on 14 November). The framework also proposed that credit would be given for autonomous liberalization provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round; all *non-ad valorem* duties would be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms; negotiations would commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature; and the reference period for import data would be 1999-2001.

The Framework also proposed that members agreed that, as an exception, participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula. Instead, it was expected them to bind [100] percent of non-agricultural tariff lines at an average level that did not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions. Recognized that a sectorial tariff component, aiming at elimination or harmonization was another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries; and also recognized that participation by all participants would be important to that effect.

As regards developing countries, the Framework proposed that members agreed that developing-country participants would have longer implementation periods for tariff reductions. In addition, they would be given the flexibility of keeping tariff lines unbound, as an exception, or

not applying formula cuts, for up to [5] percent of tariff lines provided they did not exceed [5] percent of the total value of a member's imports. The Framework proposed that members agreed that this flexibility could not be used to exclude entire HS Chapters and also agreed that least-developed country participants would not be required to apply the formula nor participate in the sectoral approach, however, as part of their contribution to this round of negotiations, they were expected to substantially increase their level of binding commitments. Furthermore, in recognition of the need to enhance the integration of LDCs into the multilateral trading system and support the diversification of their production and export base. Members would call upon developed-country participants and other participants who, so decided, to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year [...].

For newly acceded members, it was proposed that they would have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions were still being implemented in many cases. The Negotiating Group would be called upon to further elaborate on such provisions.

The Framework also suggested that pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectoral harmonization, and request & offer, should be kept open. In addition, participants would be requested to consider the elimination of low duties; and that an integral part of these negotiations would

deal with non-tariff barriers and therefore for participants to be requested to intensify their work on NTBs. In particular, all participants would be encouraged to make notifications on NTBs by 31 October 2003 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. The Framework also stated that Ministers took note that the modalities for addressing NTBs in these negotiations could include request & offer, horizontal, or vertical approaches; and should fully take into account the principle of S&D treatment for developing and least-developed country participants and that appropriate studies and capacity building measures would be an integral part of the modalities to be agreed. The Framework also called for the issues of “non-reciprocal preference erosion” and high tariff revenue dependency to be considered in the negotiations.

Draft Cancún Ministerial Text (Second Revision)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on non-agricultural agriculture market access (NAMA) along these lines:

“We reaffirm our commitment to the mandate for negotiations on market access for non-agricultural products as set out in paragraph 16 of the Doha Ministerial Declaration. We take note of the progress made by the Negotiating Group on Market Access in this regard and agree to intensify work to translate the Doha objectives into modalities for these negotiations. To this end, we adopt the framework for modalities for negotiations on non-agricultural products set out in Annex B to this document. We direct the Negotiating Group to conclude its work on establishing modalities by [...] and to take the

necessary further steps to ensure the conclusion of negotiations by the agreed date.”

Position of AU/ACP/LDCs on Non-Agricultural Market Access (NAMA)

The response of the ACP/AU/LDC countries to the Second Revised Draft Cancún Ministerial Text was contained in document WT/MIN(03)/W/18 of 12 September 2003 entitled “Position of the African Union, Least Developed Countries, African Caribbean and Pacific Countries on Non-Agricultural Market Access”.⁹ In this document, these countries stated that, the Mauritius Ministerial Declaration and its Annex, adopted by AU Ministers of Trade at their meeting in Grand Baie, Mauritius in June 2003, endorsed by the AU summit in Maputo in July 2003, endorsed by Second LDC Trade Ministers in Dhaka, in June 2003, and also the Sixth Meeting of ACP Trade Ministers in Brussels in August 2003, have provided the requisite political guidance and the agreed common negotiating objectives for AU, LDCs and ACP.

Accordingly, the countries stated that they would maintain the following position on the NAMA issues. That the non-linear formula approach should not be applied to developing countries as it entailed steep cuts for tariffs at the higher end of the tariff spectrum. They, therefore, called for the deletion of the word “non” from the formula so as to remain with linear formula approach. Furthermore, they stressed that the proposal in paragraph 6 of sectoral tariff elimination or harmonization was widely off the mark as far as these countries were concerned. Recognizing the overarching significance of non-reciprocal preferences for African countries it was emphasized

that any such initiative should address the erosion of preferences that would inevitably arise from tariff reductions.

These countries were also of the view that there was a need for credit to be granted for autonomous liberalization undertaken in the period prior to 1995 as most of our countries undertook such initiatives as from the early 1980s; and for the encouragement to eliminate all low duties to be confined to developed countries, since such duties constitute a considerable share of the revenue base of many of our countries. Furthermore, it was emphasized that negotiations would take fully into account the special needs of developing and least developed countries, including less than full reciprocity in reduction commitments in accordance with the relevant provisions of Article XXVIII bis of GATT 1994.

In this respect, negotiations should have also take into account the principle of S&D treatment for developing and least-developed countries as established in the following provisions: Part IV of GATT 1994; the Decision of 28 November 1979 on Differential and more Favourable Treatment, reciprocity and fuller participation of developing countries; the Uruguay Round Decision on Measures in favour of Least Developing countries; and all other WTO provisions. They also called for developed countries to ensure that duty free and quota free market access was not nullified by non-tariff measures such as dumping; and for targeted technical assistance would be provided to LDCs to address supply-side constraint.

The ACP/AU/LDC countries also urged for the current negotiations on NAMA to facilitate the development and industrialization process in

developing countries and accordingly to achieve this objective they needed to give attention to: providing market access for products of export interest to our countries; ensuring that our countries were allowed to choose their own rate, scope, pace and extent of future liberalization so as not to cause further adverse effects on local industries; addressing the problems that our countries would face from erosion of preferences; and addressing the need for developing countries to build their supply capacity so that they could take advantage of any increased market access opportunities. In conclusion, negotiations for Non-Agricultural Market Access should take into account the developmental needs of developing countries and their goals for industrialization.

State of Post-Cancún Negotiations on Non-Agricultural Market Access (NAMA)

After Cancún, African countries continued to consult in preparation for the 15 December 2003 WTO General Council Meeting. These preparations benefited from the Post-Cancún Expert Group Meeting for African Trade Negotiators and Officials, organised by ECA and the AU in Accra (Ghana) during 28-29 November 2003. This meeting recalled the positions of African countries on different issues, among them NAMA, as explicitly stated in the Mauritius Declaration and associated documents as well as in the consolidated position taken by the ACP/AU/LDC countries in Cancún.

The meeting observed that consultations in Geneva had not progressed beyond the scope where Africa's positions on NAMA needed to be altered significantly. Accordingly, while African countries

were urged to remain engaged, the general view was that African countries should continue to monitor the negotiations and evaluate the proposals of other WTO members. The experts noted that the proposals on NAMA as reflected in Annex B of the Derbez Text did not reflect fully concerns of African countries, raised prior to Cancún at Cancún. On “core modalities”, the meeting reiterated that the “non-linear” formula proposed for tariff reduction would create serious problems for many African countries, particularly as regards its impacts on Africa’s industries and government revenues. Suggestions were made that African countries could consider various options regarding formula approaches for tariff reductions, including the “linear formula” or a “blended formula”.

With respect to the sectoral approach proposed in the NAMA negotiations, the experts noted that sectors identified in Annex B as of export interest to developing countries may also be of interest to developed countries. Accordingly, there was no guarantee that this would benefit only developing countries. Consequently, it was proposed that paragraph 6 should be removed from the Derbez Text. Should this not be the case, the meeting was of the view that the scope and choice of sectors under this approach should not be mandatory and should take into account the sensitive sectors of African economies.

Experts emphasized the role of tariff policy as an instrument of industrial policy in many African countries and, therefore, the need for further trade reforms to take this important aspect into consideration. As regards, levels of binding by countries, the meeting noted the proposals contained in the Annex of the Derbez Text and emphasized that any agreed binding approach

should provide sufficient “policy flexibility” for African countries to pursue industrial policy. Experts recommended that African countries should be allowed to bind tariffs at rates and levels commensurate with their levels of development.

The meeting also discussed the implications of tariff reductions on preferences for developing countries currently enjoying preferential treatment in markets of developed countries. It was noted that further tariff cuts should accordingly take into account the erosion of preferences, which could result from implementation of such tariff reductions. This aspect should be taken into account in any agreement on modalities. The meeting also discussed the need to address non-tariff barriers and other market entry barriers in the negotiations on NAMA.

During the month of December 2003, the General Council of the WTO held its last meeting from 15 to 16 December 2003. The meeting was intended to take stock of developments after Cancún and determine whether much had been achieved to revive the stalled Cancún trade negotiations. Meetings at the WTO in Geneva resumed in March 2004, after the appointment of new chairs for the Negotiating Groups in February 2004. The Negotiating Group on Market Access held its first meeting since Cancún in March 2004, and further meetings are planned to develop the framework. WTO members reaffirmed their commitment to work towards agreement on frameworks for negotiating modalities on NAMA by the end of July 2004.

During the March 2004 meeting, the ACP Group raised some concerns and expressed disappointment that the elements on modalities

proposed by the draft ministerial text did not take into account issues of concern for LDC and ACP States, rather it contained other provisions, including the complete elimination of tariffs in specific sectors, that are likely to have serious consequences for LDCs and ACP States.

The ACP Group (TN/MA/W/47) stated that there is a need to take a more cautious approach to liberalization. The Group stated that: “The ACP believes that the objectives of the current negotiations on NAMA are to facilitate the development and industrialisation processes in this group of countries and thus these negotiations must give attention to: (i) providing and/or maintaining market access for products of export interest to ACP States; (ii) ensuring that ACP States are allowed to choose their own rate and extent of future import liberalisation, so as not to cause further adverse effects on local industries; (iii) addressing the problems that ACP States will face from erosion of preferences; (iv) addressing the need for ACP States to build their supply capacity so that they can take advantage of any increased market access opportunities; (v) the impact of the decline in government revenue on sustainable levels of development and (vi) it would be recommended to undertake impact studies on previous tariff reductions on ACP countries.”

The ACP Group also called for “the adoption of a tariff reduction formula that provides sufficient flexibility and scope to enable ACP States to continue to have adequate and effective levels of preferences necessary for the maintenance of their competitiveness in their export markets.”

Another key element in the NAMA negotiations was that of non-tariff barriers (NTBs), which

are an important element of the work of the Negotiating Group. WTO members were invited to lodge notifications of non-tariff barriers by March 2003 and a number of submissions were made. However, some of the proposals presented would imply, according to the ACP Group “a more rapid or deeper reform” in trade policy than others. While a few developing countries that have already moved far in their own trade reforms might find this to be feasible, for ACP states such an approach may mean going “too far, too fast” with reform, and could entail unacceptable adjustment costs”. It was also stated that: “the modalities to be adopted should allow ACP countries to maintain sufficient margins between the MFN Liberalization and the preferential treatment under the GSP, the AGOA, the EBA, the CBI, the CARIBCAN and the Cotonou Agreement. The modalities to be adopted must not include any sectoral approach which would be detrimental to the interests of the ACP States”

Further to these events, a communication from the EC to the WTO membership, dated 9 May 2004, suggested the possibility that on NAMA, negotiations should focus on a simple, general and ambitious formula for market opening accompanied by a short set of qualifications or exceptions in country or product terms. According to the EC, “the principle of “less than full reciprocity” needs to be made more operational. All developed, as well as advanced developing countries, should afford duty-and quota free treatment to all imports from the least developed countries. These aims could all be achieved with only minimal changes to the Derbez text.”

Footnote::

9 World Trade Organization: Position of the AU/ACP/LDCs on Non-Agricultural Market Access, WT/MIN (03)/W/18, 12 September 2003, Ministerial Conference, Fifth Session, Cancún (México).

Briefing Paper 4

Negotiations on Trade in Services

Mandate

As regards Trade in Services (GATS), the Doha Declaration stated:

“The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons.

We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.”

State of the Negotiations

The Chairman of the TNC reported that Ministers agreed in Doha that initial offers should have been submitted by 31 March 2003, but so far only 30 offers had been received, including 15 from developing countries. The Chairman was of the view that a “critical mass of offers” had not yet been reached for successful negotiations on trade in services and called on members who had not submitted their initial offers to redouble their efforts.

Furthermore, the offers so far received appeared largely to reflect a consolidation of the status quo and therefore, there was a need to improve on the quality of these offers. The Chairman recalled that as stated at Doha, the negotiations should aim at achieving higher levels of liberalization of trade in services and that there should be no a priori exclusion of any service sector or mode of supply and that special attention should be given to sectors and modes of supply of export interest to developing countries. He also noted that there had also been lack of progress on the rules-making side of services negotiations, on such issues as domestic regulation, emergency safeguard measures (EMS), government procurement and subsidies.

Work on one piece of the negotiating architecture was completed on 6 March 2003, when the Council on Trade in Services adopted the “Modalities for Treatment of Autonomous Liberalization.” These modalities defined the scope of the measures eligible for credit, the criteria for assessing the value of such measures, and the procedures through which credit would be determined and granted, particularly for developing countries. The Council had, accordingly, established a tool for the treatment of autonomous liberalization in the context of the negotiations.

Paragraph 3 of Article XIX mandated that the Council for Trade in Services should conduct “an assessment of trade in services” in overall terms and on sectoral basis. The Council had been pursuing this work since 1998 and so far some 145 submissions were made, including those in the context of an information exchange programme. Since Doha, eight written communications were submitted, including a checklist by the WTO Secretariat of issues that members might wish

to take into account when conducting their own assessment at the national level. Similarly, important work on “mandated rule-making” was ongoing since Doha in four areas of “Domestic Regulation”, “Emergency Safeguard Measures”, “Government Procurement”, as it related to services, and “Subsidies”, as they related to services. As regards to domestic regulation, members had recently renewed their focus on the creation of disciplines under GATS Article VI: 4. The key issues on which work focused have included additional disciplines on transparency, the coverage of Article VI:4 measures in relation to schedule measures, understanding the necessity of domestic regulatory measures, and the recognition of qualifications.

Work also continued on emergency safeguard measures, government procurement in services, and subsidies in services. On 15 March 2003, the Council on Trade in Services adopted a fourth Decision on emergency safeguard measures, which extended the deadline of these negotiations until 15 March 2004. On 24 July 2002, the Working Party adopted programmes on emergency safeguard measures, subsidies and government procurement, taking cognisance that these did not prejudice the outcome of the negotiations under the respective agenda items. With respect to emergency safeguard measures, the main elements were to elaborate and consolidate elements for an “Emergency Safeguard Measure”, to address the questions of desirability and feasibility of such a measure, to encourage members to put forward submissions as early as possible and to finalize the negotiations by 15 March 2004. As regards “Modalities for the Special Treatment for LDCs”, the Council on Trade in Services considered a submission made by these countries.

Broadly, although some countries made offers, the quality of some of these offers left much to be desired in respect of coverage of sectors and modes of supply as well as the depth of commitments. Furthermore, the Negotiating Guidelines stated: “This process should aim to achieve progressively higher levels of liberalization on trade in services with no a priori exclusion of any service or mode of supply and shall give special attention to the sectors and modes of supply of export interest to developing countries. It shall also take place with due respect for the right of members to regulate in pursuance of national objectives.”

The negotiations on rule-making under the GATS was underway since 1995 and lack of progress was indeed a matter of concern. On safeguard measures, members needed to make effort to narrow the gaps between positions; and members needed to devote the necessary time and efforts to advance negotiations on domestic regulation under Article VI: 4; government procurement under Article XIII; and subsidies under Article XV.

Positions of Selected WTO Members

In accordance with the Doha Declaration, a number of countries, both developed and developing, made initial offers on trade in services. These countries include the EU, the US, Japan and Canada. Very few African countries made initial offers and three African countries made initial requests (Kenya, Tunisia and Senegal). The general concern regarding these negotiations was that not many WTO members made initial offers, and even those who did, the quality in their offers was not that high. There was still need for progress in this respect in order to achieve progressively higher levels of liberalization for trade in services.

Furthermore, negotiations on rule-making needed also to move rapidly, as well as those that would provide policy space for developing countries to promote national development goals. It was to be understood that negotiations would be conducted taking into account the “right of members” to regulate trade in services in pursuance of national policy objectives, as stated in the Doha Declaration.

Least-Developed Countries Proposal

The LDCs submitted to the Council on Trade in Services (JOB (02)/205)¹⁰ a proposal on trade in services. The proposal stipulated that considering the serious difficulties of LDCs in undertaking negotiated specific commitments, in view of their special economic situation, due consideration should have been made to take into account their situation in the negotiation on trade in services. More specifically, members of the WTO were called upon to present requests to LDCs, which were compatible with the developmental, economic and financial needs of LDCs.

The proposal also stated that LDCs would retain maximum flexibility in undertaking commitments, in a manner consistent with their development needs. Members would grant full market access and national treatment to LDCs in the sectors and modes of supply of export interest to them; and developed country members would promote and strengthen their investment and export/import promotion programmes for LDCs, with the view to building domestic services capacity and its efficiency and export competitiveness. Furthermore, members would assist least-developed countries in obtaining training and transfer of technology, and would undertake other specific measures that

support the development of their infrastructure and services exports; and members would facilitate and ensure the improvement of access to services and service suppliers of LDC members to distribution channels and information networks, especially in tourism, transport, audiovisual and construction services.

The LDC proposal also stated that the temporary movement on natural persons (Mode 4), particularly of unskilled and semi-skilled persons, provided the greatest benefit to LDCs and accordingly, WTO members would undertake commitments to provide access to all categories of natural persons of LDCs, without application of economic needs test. The proposal also stipulated that LDCs would be granted maximum credit for their autonomous trade liberalization, without scheduling them as binding commitments; and other members would not request credit from LDCs. Furthermore, the LDCs proposal stated that in developing multilateral rules and disciplines in trade in services, members would specifically take into account interests and difficulties of LDCs; and that targeted and coordinated technical assistance and capacity building, would be provided to these countries for their effective participation in trade in services.

General Position of African Countries

On services, the Mauritius Ministerial Declaration stated:

“We note that the Services Council has not satisfactorily met the requirement of carrying out the assessment of trade in services as stipulated in the GATS. We reiterate the need to respect the principle of progressive liberalization and promote and facilitate the participation of African countries in international trade

in services, and liberalization by developed countries in sectors and modes of export interest to them, particularly through movement of natural persons. We further reiterate that due respect must be given for the Member's right to regulate trade in services and liberalize according to their national policy objectives. We call for the full implementation of the Guidelines and Procedures adopted in March 2001, particularly giving due consideration to the needs of small service suppliers of Africa. We call for the expeditious completion of the work on modalities for LDCs."

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

"We are committed to intensifying our efforts to bring the negotiations on specific commitments to conclusion. We stress the importance of full engagement by all participants, inter alia through the continuous exchange of requests and offers. With a view to providing effective market access to all members, due regard shall be given to the quality of offers, particularly in sectors and modes of supply of export interest to developing countries. We call upon those participants who have not yet submitted their initial offers to do so as soon as possible. Improved offers should be submitted by [...]. We are also committed to intensifying our efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII, and XV in accordance with their respective mandates and deadlines, noting the deadline of 15 March 2004 for emergency safeguard measures.

The Special Session of the Council for Trade in Services shall review progress in these negotiations by 31 March 2004. We reaffirm that the negotiations shall aim to achieve progressively higher levels of liberalization with no a priori exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. We note the interest of developing countries, as well as other members, in Mode 4. In accordance with GATS provisions, there shall be due respect for

the right of members to regulate and to introduce new regulations in pursuance of national policy objectives. Text to be added on modalities for the special treatment of least-developed country members, depending on the outcome of the ongoing consultations."

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on trade in services along these lines:

"We are committed to intensifying our efforts to bring the negotiations on specific commitments to conclusion. We stress the importance of full engagement by all participants, inter alia through the continuous exchange of requests and offers with a view to concluding the negotiations by the agreed date. With a view to providing effective market access to all members, due regard shall be given to the quality of offers, particularly in sectors and modes of supply of export interest to developing countries. We call upon those participants who have not yet submitted their initial offers to do so as soon as possible. Improved offers should be submitted by [horizontal date].

We are also committed to intensifying our efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII, and XV in accordance with their respective mandates and deadlines, noting the deadline of 15 March 2004 for emergency safeguard measures. The Special Session of the Council for Trade in Services shall review progress in these negotiations by 31 March 2004. We reaffirm that the negotiations shall aim to achieve progressively higher levels of liberalization with no a priori exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. We note the interest of developing countries, as well as other members, in Mode 4. In accordance

with GATS provisions, there shall be due respect for the right of members to regulate and to introduce new regulations in pursuance of national policy objectives. We welcome the adoption of the Modalities for the Special Treatment for Least-Developed Country members in the Negotiations on Trade in Services and look forward to their implementation by all participants.”

The Second Revised Draft Cancún Ministerial Text also contained **Annex B: Framework for Establishing Modalities in Market Access for Non-Agricultural Products**. It was stated in the Annex that negotiations on market access for non-agricultural products would aim 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. Furthermore, it was to be reaffirmed the importance of special and differential treatment and less than full reciprocity in reduction commitments as integral parts of the modalities.

It was proposed that WTO Ministers took note of the constructive dialogue on the Chair’s Draft Elements of Modalities (TN/MA/W/35/Rev.1) and confirmed their intention to use this document as a reference for the future work of the Negotiating Group; and instructed the Negotiating Group to continue its work, as mandated by paragraph 16 of the Doha Ministerial Declaration with its corresponding references to the relevant provisions of Article XXVIII bis of GATT 1994 and to the provisions cited in paragraph 50 of the Doha Ministerial Declaration. The Draft Ministerial Text also called on the Ministers to recognize that a formula approach was key to

reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation and to agree that the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis, which would take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments.

As regards the formula to be applied for tariff reductions, the following elements were suggested: product coverage would be comprehensive without a priori exclusions; tariff reductions or elimination would commence from the bound rates after full implementation of current concessions. However, for unbound tariff lines, the basis for commencing the tariff reductions would have been [two] times the MFN applied rate in the base year; and the base year for MFN applied tariff rates would have been 2001 (applicable rates on 14 November).

It was also proposed that credit would have been given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round; all non-ad valorem duties would have been converted to ad valorem equivalents on the basis of a methodology to be determined and bound in ad valorem terms; negotiations would have commenced on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature; and the reference period for import data shall be 1999-2001.

In the proposed Framework it was also suggested that members agreed that, as an exception, participants with a binding coverage of non-

agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula; but would be expected to bind [100] percent of non-agricultural tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions. Furthermore, it was also proposed that Ministers agreed that a sectorial tariff component, aiming at elimination or harmonization, was another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries and thereby instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants.

As regards to developing countries, it was proposed that developing-country participants would benefit from longer implementation periods for tariff reductions. In addition, they would have been given flexibility along the following lines: by applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts were no less than half the formula cuts and that these tariff lines did not exceed [10] percent of the total value of a Member's imports; or keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they did not exceed [5] percent of the total value of a Member's imports. However, such flexibility could not be used to exclude entire HS Chapters.

In relation to LDCs and newly acceded countries, it was proposed that LDC participants would not

be required to apply the formula nor participate in the sectoral approach. However, as part of their contribution to this round of negotiations, they were expected to substantially increase their level of binding commitments. Furthermore, in recognition of the need to enhance the integration of LDCs into the multilateral trading system and support the diversification of their production and export base, developed-country participants and other participants who so decide, were to be called upon to grant on an autonomous basis duty-free and quota-free market access for non-agricultural products originating from least-developed countries by the year (to be determined). As for newly acceded members, it was suggested that they had recourse to special provisions for tariff reductions, in order to take into account their extensive market access commitments undertaken as part of their accession and that staged tariff reductions were still being implemented in many cases.

On other issues, it was proposed that WTO members agreed that pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectorial harmonization, and request & offer, would be kept open; and request developed-country participants and other participants, who so decided, to consider the elimination of low duties. Furthermore, Ministers were called upon to recognize that NTBs were an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, all participants were to be encouraged to make notifications on NTBs by 31 October 2003 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. Modalities

for addressing NTBs in these negotiations could include request/offer, horizontal, or vertical approaches; and would fully take into account the principle of special and differential treatment for developing and least-developed country participants. Appropriate studies and capacity building measures would be an integral part of the modalities to be agreed; and the challenges that may be faced by non-reciprocal preference beneficiary members and those members that were at present highly dependent on tariff revenue as a result of these negotiations on non-agricultural products would also be addressed. Finally the Negotiating Group on NAMA was to be encouraged to work closely with the Committee on Trade and Environment in Special Session, with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration.

State of Post-Cancún Negotiations on Trade in Services

After Cancún, negotiations have not really progressed on this area. There has been about 42

offers being made by April 2004, and no African country member of the WTO has made an initial offer to date. Despite the fact that the majority of the WTO members have not submitted their initial offers, some members are pushing for the commencement of the submission of improved offers. Such a course of action has the potential to disenfranchise the many WTO members that have not submitted their initial offers. African countries could critically evaluate the causes of this dismal African participation in the services negotiations in view of the increasingly critical role of the services sector to both developed and developing country economies.

Footnote:

10. This informal proposal on modalities for the Special Treatment for LDCs in Trade in Services negotiations tabled by Zambia, on behalf of the LDCs built on an earlier informal submission tabled by Uganda (JOB/(02)/30).

Briefing Paper 5

Negotiations on Trade-Related Intellectual Property Rights

Mandate

The Doha Declaration stated:

“We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in this connection, are adopting a separate declaration. With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference.

We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this declaration. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this declaration, to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement

and shall take fully into account the development dimension.”

Doha Declaration on TRIPS and Public Health: Mandate

At Doha, due to the importance of the issues of TRIPS and Public Health, a separate Ministerial Declaration was adopted, which stated as follows:

“We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics. We stress the need for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems. We recognize that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices. We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health.

Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all. In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:

- i. In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.

- ii. Each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted.
- iii. Each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it is being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics can represent a national emergency or other circumstances of extreme urgency.
- iv. The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

We recognize that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002. We reaffirm the commitment of developed-country members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to least-developed country members pursuant to Article 66.2.

We also agree that the least-developed country members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016, without prejudice to the right of least-developed country members to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement. We instruct the Council for TRIPS to take the necessary action to give effect to this pursuant to Article 66.1 of the TRIPS Agreement.”

State of the Negotiations

Following substantive discussions and negotiations on the Doha Declaration on the TRIPS Agreement and Public Health, the Chairman of the TRIPS Council circulated in 16 December 2002, a Draft Decision on “Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, JOB (02)/217;” stating that it represented his best assessment, based on the extensive consultations that had been held, of how to take into account, in a balanced way, the positions and concerns of the WTO membership.

He also stated that the text was being circulated on the Chair’s own responsibility and that some members expressed concerns about the language of paragraph 1(a) of the draft text, as it relates to the coverage of diseases/public health problems. While some countries would like the coverage of such diseases to be determined by countries as emergencies arise, others would like coverage to be limited to HIV/AIDS, malaria, tuberculosis other infectious epidemics of comparable gravity and scale.

The main elements of the Chairman’s Draft Decision covered firstly definitional issues, such as “pharmaceutical product”, “eligible importing member”, and “exporting member”; defining the obligations of an exporting member under Article 31 (f) of the TRIPS Agreement; conditions for waiver of compulsory licensing; the elements of a compulsory licensing when waived by the patent holder; remuneration where a compulsory licensing was granted by an exporting member under the Decision; and conditions for use of products produced under compulsory licensing.

The Draft Decision stipulated the conditions, under which “(t)he obligations of an exporting member under Article 31(f) of the TRIPS Agreement shall be waived with respect to the grant by it of a compulsory license to the extent necessary for the purposes of production of a pharmaceutical product (s) and its export to an eligible importing Member (s). The Draft Decision also stipulates that “where a compulsory license is granted by an exporting member under the system set out in this Decision, adequate remuneration pursuant to Article 31(h) of the TRIPS Agreement shall be paid in that member taking into account the economic value to the importing member of the use that has been authorized in the exporting member.”

The Draft Decision also stipulated that: “In order to ensure that the product imported under the system set out in the Decision, are used for the public health purposes underlying their importation, eligible importing member shall take reasonable measures within their means, proportionate to their administrative capacities to the risk of trade diversion to prevent re-export of the products that have actually been imported into their territories under the system (...). Members shall ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under the system set out in the Decision and diverted to their markets inconsistently with its provisions, using the means already required to be available under the TRIPS Agreement.”

The Draft Decision stated that with a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products,

“(w)here a developing or least-developed country WTO member is party to a regional trade agreement, within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), the obligation of that Member under Article 31(f) of the TRIPS Agreement shall be waived to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory license in that member to be exported to the markets of those developing or least-developed country parties to the regional trade agreement that share the health problem in question. It is understood that this will not prejudice the territorial nature of the patent rights in question.” Furthermore, “it is recognized that the development of systems providing for the grant of regional patents to be applicable in the above members should be promoted.”

The Draft Decision also referred to the desirability of promoting transfer of technology and capacity building in the pharmaceutical sector in order to overcome the problem identified in paragraph 6 of the Decision and the need for the Council for TRIPS to review annually the functioning of the system set out in the Decision. The draft Decision also stated that: “(This) decision is without prejudice to the rights, obligations and flexibilities that members have under the provisions of the TRIPS Agreement other than paragraph (f) and (h) of Article 31, including those reaffirmed by the Declaration, and to their interpretation.” It is stated in the draft Decision that “members shall not challenge any measures taken in conformity with the provisions of the waivers contained in this Decision under paragraph 19b) and 1(c) of Article XXIII of GATT 1994.” Finally the draft Decision

states “This Decision, including the waivers granted in it, shall terminate for each member on the date on which an amendment to the TRIPS Agreement replacing its provisions takes effect for that member. The TRIPS Council shall initiate by the end of 2003 work on the preparation of such an amendment, with a view to its adoption within six months.”

While most of the members of the WTO appeared content with the Draft Decision as prepared by the Chairman of the TRIPS Council, the US was holding back consensus on the text. Pharmaceutical companies in the US had been urging the government not to agree to this “consensus” Decision, for fear that drugs manufactured under this Decision could be re-exported to developed countries and because of the possibility of creating trade diversion. At the centre of this debate was the issue of how to inject flexibility on the requirements of international patent laws; to allow poorer countries with no pharmaceutical industry to import needed drugs- often, cheaper generic copies of the original ones. The US was the only one of the WTO’s 146 Member countries to oppose the “compromise text of 16 December 2002”. Major drug producing companies in the US were concerned that generic drug firms in third world countries could use it to steal market share in richer developing countries or to sell so-called lifestyle remedies.

Furthermore, initially the United States demanded an agreement on the sort of diseases that would be covered by the accord. The country was now softening on this issue as a result of pressures being exerted. The United States tried to contribute to a compromise by suggesting a number of amendments to the proposed Decision. These included that

members would voluntarily declared that they would not resort to the proposed “mechanism”, unless they faced a health emergency; made a commitment to prevent drugs sold under the system from returning to or reaching rich country markets; and agreed on a “system for monitoring” the use of the patents’ waiver.

Most members of the WTO would have liked to see this issue of the TRIPS Agreement and Public Health resolved before Cancún (as an early harvest), so that it was not used by some members to extract further concessions in other areas at Cancún. Furthermore, the application of non-violation situations compliant to the TRIPS Agreement continued to raise fundamental concerns to many developing countries, which developing countries had raised in the TRIPS Council. Developing countries were suggesting that the Cancún Ministerial Conference should adopt a Decision that the non-violations of the type identified in Article XXIII: 1(b) and (c) of the GATT 1994 be determined inapplicable to the TRIPS Agreement.

General Position of African Countries

On the TRIPS Agreement, the Mauritius Ministerial Declaration stated:

“(We) are deeply concerned at the failure to find a multilateral solution that would enable members with insufficient or no manufacturing capacities, make effective use of the compulsory licensing under the TRIPS Agreement as mandated by Paragraph 6 of the Doha Declaration on TRIPS and Public Health. We reiterate our support for the Chairman’s text of 16 December 2002, which was done in a spirit of compromise and enjoys the overwhelming support of WTO members. We call upon other members who

have not joined the consensus on this text to do so. We believe that members acting in accordance with the terms of the Chairman's text, will be properly discharging their obligations to address public health problems in accordance with the Doha Declaration on TRIPS and Public Health."

Draft Ministerial Text (JOB (03)/150/Rev.1)

The language proposed in the Ministerial Text was:

"We welcome the decision on implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health set out in document [...]. Ministers take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations by [...]. It is agreed that, in the meantime, members will not initiate such complaints under the TRIPS Agreement."

On TRIPS and Public Health, it was also assumed in the Draft Ministerial Text that a Decision would be agreed in the General Council to implement Paragraph 6 of the Doha Declaration on TRIPS and Public Health before Cancún. However, the General Council did not reach agreement during the meeting of 28 August 2003 to adopt the 16 December 2002 Chairman's Draft Decision. Some countries were uneasy about the contents of the Chairman's text, which was to be annexed to the Decision.

The issues contained in the Chairman's Statement highlighted, firstly, the fact that members had to recognize that the system established by the

Decision should be used in good faith to protect public health and not as an instrument to pursue industrial or commercial policy objectives.¹¹ A number of developing countries were finding this terminology unacceptable, since no pharmaceutical company would establish itself in a developing country purely "for humanitarian" purposes and not to make profits.

Secondly, it was stated that reasonable measures should be taken, in accordance with the relevant paragraphs of the Decision, to prevent products supplied under this Decision to be diverted from the market for which they were intended. In this regard, the provisions of paragraphs 2(b)(ii), of the Decision relating to specific labelling or marking, would apply not only to formulated pharmaceuticals produced and supplied under the system but also to active ingredients produced and supplied under the system and to finished products produced using such active ingredients. In general, special packaging and/or special colouring or shaping should not have a significant impact on the price of pharmaceuticals. This Statement also included a guidelines of "Best Practices" to be used in this respect, drawing on the experiences of companies. However, it was pointed out that members and producers were encouraged to draw from and use these practices as well as to share information on their experiences in preventing diversion. Some countries were of the view that these "Best Practices Guidelines" could become a requirement for countries to fulfil, when they manufactured drugs under the Decision.

Thirdly, members were encouraged to seek to resolve any issues from the use and implementation of the Decision expeditiously and amicably. These were the proposals:

- “For transparency and to avoid controversy, members should provide notification on how the member in question had established that it has insufficient or no manufacturing capacities in the pharmaceutical sector:
- In accordance with the normal practice of the TRIPS Council, notifications made under the system shall be brought to the attention of its next meeting;
- Any member may bring any matter related to the interpretation or implementation of the Decision, including issues related to diversion, to the TRIPS Council for expeditious review, with a view to taking appropriate action; and
- If any member has concerns that the terms of the Decision have not been fully complied with, the member may also utilize the good offices of the Director-General or Chair of the TRIPS Council, with a view to finding a mutually acceptable solution”

Fourthly, all the information gathered on the implementation of the Decision should be brought to attention of the TRIPS Council on its annual review as set out in paragraph 8 of the Decision. In addition, as stated in footnote 3 paragraph 1(b) of the Decision, certain countries already agreed to opt out of using the system as importers and others agreed that they would only use the system as importers under situations of national emergency or other circumstances of extreme urgency [...].

The General Council of the WTO Adopted the Decision on Paragraph 6 of the Doha Declaration on TRIPS and Public Health and the Chairman’s Statement annexed to the Decision on Saturday 30th August 2003, after intense pressures was put on developing countries to agree to the Chairman’s Statement as drafted. Nonetheless, this was a

significant achievement in that it would allow access of poorer countries to cheaper drugs for health pandemics, such as HIV/AIDS, malaria and tuberculosis. This Decision would apply pending further work on amending the TRIPS Agreement, which would start after Cancún, and would most likely be even more difficult to agree upon.

The General Council Decision of 30 August 2003 on TRIPS and Public Health would allow poorer countries without pharmaceutical manufacturing capacity to set aside “patent rights” to import cheaper generic medicines to deal with public health problems, such as HIV/AIDS, malaria and tuberculosis.¹² The pact has temporarily plugged a gap in the TRIPS Agreement. The TRIPS Agreement aimed to strike a balance between the long-term social objective of providing incentives for future inventions and creation, and the short-term objective of allowing people to use existing inventions and creations. A patent owner could legally prevent others from making, using or selling the new invention for a limited time unless they “pay for the privilege”. Under the TRIPS Agreement, governments would have to provide patent protection for at least 20 years for any invention, which was found to be new, useful and had an “inventive step”.¹³

The TRIPS Agreement provided some flexibility for governments to fine-tune the protection granted to patent holders in order to meet social goals, and more importantly, to deal with public health emergencies. It permitted governments to let someone else produce a “patented product”, provided they have first sought an agreement with the patent holder. Such an action was called “compulsory licensing” and production permitted under this action must mainly be for the domestic

market. The General Council Decision of 30 August 2003 would temporarily extend this right to countries without pharmaceutical manufacturing capacity to import under “compulsory licenses”, usually cheaper drugs. This Decision only provided temporary rights to poorer countries, because in the long run, the TRIPS Agreement still needed to be formally amended in order to provide a long-term solution. The process of negotiating the amendment of the TRIPS Agreement would start after Cancún.

State of Post-Cancún Negotiations on TRIPS and Public Health

After Cancún, negotiations have not really progressed on this area. There has been about 42 offers made by April 2004, and no African country member of the WTO has made an initial offer to date. Despite the fact that the majority of the WTO members have not submitted their initial offers, some members are pushing for the commencement of the submission of improved offers. Such a course of action has the potential to disenfranchise the many WTO members that have not submitted their initial offers. African countries could critically evaluate the causes of this dismal African participation in the services negotiations in view of the increasingly critical role of the services sector to both developed and developing country economies.

Members have, since December 2003, been engaged in informal consultations aimed at putting in place the permanent amendment envisaged in Paragraph 11 of the Decision on TRIPs and Public Health adopted by the WTO General Council on 30 August 2003. Paragraph 11 stated: “This Decision, including the waivers granted in it, shall

terminate for each member on the date on which an amendment to the TRIPS Agreement replacing its provisions takes effect for that member. The TRIPS Council shall initiate by the end of 2003 work on the preparation of such an amendment with a view to its adoption within six months, on the understanding that the amendment will be based, where appropriate, on this Decision and on the further understanding that it will not be part of the negotiations referred to in paragraph 45 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1).”

The Africa Group has taken the position that “the amendment should be in the form of an Art. 31 bis, which should capture only the elements in the Decision that do not already feature in the TRIPS Agreement”. The US has suggested that a footnote be added to the existing Article 31, making it clear that this article should be read in the light of the Decision of 30 August 2003 and the Chairman’s statement, which describes members’ “key shared understandings”, on how the Decision is to be interpreted and implemented. The majority of developing countries, the Africa Group included, are against the use of a footnote and the inclusion in the amendment of the Chairman’s statement. They argue that it is not usual to amend an agreement using a footnote, whose function is normally to clarify rather than amend substantive text. Indications are that this process will be equally difficult, if not more difficult than the earlier process.

Other Issues in the TRIPS Agreement: Mandate

On other issues than TRIPS and Public Health the Doha Declaration stated:

“With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this declaration.

We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this declaration, to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.”

State of the Negotiations

In his Report to the General Council, the Chairman focused on other issues of the TRIPS Agreement, rather than TRIPS and Public Health. He informed the Council that the task of the Special Session of the TRIPS Council was to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference and that these negotiations were seen as an “early harvest” item of the Single Undertaking. The Chairman noted that while some progress had been made in

these discussions, there remained a wide division of views on the key issues of the legal effects that the registration of geographical indications should have in individual members. Furthermore, there also remained important differences of views as to costs and benefits of different types of notification and registration systems proposed. Accordingly, the Chairman advised that if the deadline set by the Ministers at Doha was to be respected, there was a need to move rapidly to try and resolve key issues and finalize the details of the system.

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on TRIPS along these lines:

“We take note of the progress made in the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits and instruct the Special Session of the Council for TRIPS to continue the work as mandated in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration. We agree that the negotiations shall be completed by [horizontal date].

We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the first Ministerial Conference to be held after 1 August 2004.¹⁴ It is agreed that, in the meantime, members

will not initiate such complaints under the TRIPS Agreement.

We take note of the work undertaken by the Council for TRIPS pursuant to paragraph 19 of the Doha Ministerial Declaration and agree that this work shall continue on the basis of paragraph 19 of the Doha Ministerial Declaration and the progress made in the Council for TRIPS to date. The General Council shall report on its work in this regard to our next Session.”

State of Post-Cancún Negotiations on Other Issues in the TRIPS Agreement

While some individual African countries have pronounced themselves on issues in the negotiations, Africa as a region has not come up with a common position or presented one in the negotiations. As it was mentioned in one of the reports submitted by the African WTO Group, “it is important that Africa begins and finalises a process of adopting a common position that protects its interest and development concerns. Such a process could include, preparation of inventories on relevant products that could benefit from protection

with geographical indications, evaluation of the importance of the issue for individual countries on the basis of current or potential products, and submission of communications to the TRIPs Council as contributions to the negotiations that could squarely put the common interests and concerns of Africa as a group on the table.”

Footnote:

- 11 For further details, see World Trade Organization, World Trade News n. 862, 29 August 2003.
- 12 Generic drugs are products that are not under patent law. According to the TRIPS Agreement, all developing countries were supposed to adopt the TRIPS provisions by 2000, but some countries negotiated an extension to 2005. All LDCs have until 2016 to adopt the TRIPS provisions.
- 13 For more details see, World Trade Organization: World Trade News, No. 863, 1 September 2003
- 14 The exact formulation of this date may depend on the decision to be taken on the timing of the next Session of the Ministerial Conference.

Briefing Paper 6

Doha Decision on Implementation- Related Issues and Concerns

Mandate

On these issues, the Doha Declaration stated that:

“We attach the utmost importance to the implementation-related issues and concerns raised by members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation-Related Issues and Concerns in document WT/MIN(01)/17 to address a number of implementation problems faced by members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below.

In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by the end of 2002 for appropriate action.”

State of the Negotiations

The Chairman reported that work in the Negotiating Group on Rules continued on anti-dumping and subsidies and countervailing measures, including fisheries subsidies. This

work focused on identification, clarification and preliminary exchange of views on the issues. The Chairman reported that the process of identification of issues had been efficient and productive and members had a good idea of the range of issues, which needed to be addressed.

In his opinion, the active and constructive approach of participants provided a basis for optimism. However, that should not give rise to complacency. For many countries, negotiations on anti-dumping and subsidies and countervailing measures were a critical element in the overall balance of the DDA. The Negotiating Group considered issues of regional trade agreements (RTAs) in order to agree on modalities of how to make such agreements consistent with the multilateral trading system. The Chairman was optimistic that a framework would be agreed on how to deal with RTAs in the multilateral system.

In the Doha Declaration, it was agreed that negotiations on outstanding implementation issues would be an integral part of the Doha Work Programme. However, progress was rather slow and many of the important issues to developing countries remained unresolved.

General Position of African Countries

The Mauritius Declaration stated:

“(We) express our concern about the lack of progress and missed deadlines regarding the implementation-related issues. We call upon the WTO to conclude this work, as a matter of priority, before the Cancún Fifth WTO Ministerial Conference. We further urge the full operationalization of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on LDCs and Net Food Importing Developing Countries.”

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“We note that, while some progress has been made under the mandates we gave at Doha concerning implementation-related issues and concerns, a number of the issues and concerns raised in this context remain outstanding. We reaffirm the mandates we gave in paragraph 12 of our Doha Ministerial Declaration and our Decision on Implementation-Related Issues and Concerns, and we renew our determination to find appropriate solutions to these issues. We instruct the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority, and we request the Director-General to continue the consultations he has undertaken on certain issues, including issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits. The General Council shall review progress and take any appropriate action no later than [...].”

We instruct the Negotiating Group on Rules to accelerate its work on anti-dumping and subsidies and countervailing measures, including fisheries subsidies, with a view to shifting its emphasis from identifying issues to seeking solutions. We note the progress that has been made in the negotiations on improving transparency in Regional Trade Agreements and encourage the Group to reach a provisional decision soon on its work on transparency and to accelerate its work on the clarification and improvement of RTA disciplines under existing WTO provisions, taking into account the developmental aspects of RTAs.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed

that Ministers adopt a text on Implementation-Related Issues and Concerns along these lines:

“We note that, while some progress has been made under the mandates we gave at Doha concerning implementation-related issues and concerns, a number of the issues and concerns raised in this context remain outstanding. We reaffirm the mandates we gave in paragraph 12 of our Doha Ministerial Declaration and our Decision on Implementation-Related Issues and Concerns, and we renew our determination to find appropriate solutions to these issues. We instruct the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority, and we request the Director-General to continue the consultations he has undertaken on certain issues, including issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits. The General Council shall review progress and take any appropriate action no later than [...].”

AU/ACP/LDC Joint Position on Development Issues

On implementation-related issues and concerns, the ACP/AU/LDC countries stated that the text admitted that a number of issues and concerns remained outstanding. Being a longstanding agenda pursued by developing countries, the lack of progress, despite the political and negotiating capital expended by developing countries, illustrated the lack of willingness by the developed countries to engage on issues of interest to developing countries.¹⁵

Accordingly AU/ACP/LDC Ministers called for the completion of the work on implementation issues by the negotiating groups as a matter of priority; setting up of a negotiating group,

under the auspices of the Trade Negotiations Committee, to address all remaining outstanding implementation issues and put forward decisions for adoption by March 2004; and the protection of traditional knowledge systems.

State of Post-Cancún Negotiations on Implementation-Related Issues and Concerns

During the Post-Cancún Expert Group Meeting for African Trade Negotiators and Officials, organised by ECA and the AU in Accra (Ghana) during 28-29 November 2003, it was noted that not much progress had been made on implementation-related issues and concerns in the post-Cancún consultations process. The meeting urged for momentum to be injected in trying to effectively deal with these issues, which are designed to create a level playing field and for the multilateral trading system to yield benefits

to its most disadvantaged members. Dealing with implementation-related issues and concerns and special and differential treatment is fundamental for the effective integration of African countries in the global trading system. In this regard, the Meeting emphasized the need to find modalities for resolving the impasse in the negotiations on these issues.

Further to this meeting, there has been a lack of progress on these issues, despite the priority and urgency it represents for developing countries.

Footnote:

- 15 World Trade Organization: AU/ACP/LDC Joint Position on Development Issues, WT/MIN (03)/W/20, 12 September 2003.

Briefing Paper 7

The Singapore Issues

Trade and Investment

Mandate

The Doha Declaration stated:

“Recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly foreign direct investment, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, we agree that 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.

We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

In the period until the Fifth Session, further work in the Working Group on the Relationship Between Trade and Investment will focus on the clarification of: scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes

between members. Any framework should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest.

The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable members to undertake obligations and commitments commensurate with their individual needs and circumstances. Due regard should be paid to other relevant WTO provisions. Account should be taken, as appropriate, of existing bilateral and regional arrangements on investment.”

State of the Negotiations

Reports on the Singapore Issues, which are Trade and Investment, Trade and Competition Policy, Transparency in Government Procurement and Trade Facilitation, were also presented and tabled for discussion by the General Council at the meeting of 24 to 25 July 2003.

On the relationship between trade and investment, the work of the Group had focused on the scope and definition of the relationship between trade and investment; the importance of transparency of policies in creating a predictable, stable and secure climate for foreign investment; development dimensions, especially how to strike a balance between members’ needs for both to secure “policy space” for development and other purposes, and to create a transparent, stable and predictable framework for investment; non-discrimination and modalities for pre-establishment commitments; balance-of-payments safeguards; investors’ and home governments’ obligations; and the relationship between a multilateral framework

on investment and the General Agreement on Trade in Services (GATS).

The Chairman noted that during the discussions of the Report, some suggested that the work done since the Doha Ministerial Conference had successfully clarified the core issues on the relationship between trade and investment and their interlinkages as mandated at Doha. This would facilitate the conceptualisation of a realistic, meaningful and integrated multilateral framework for investment under the WTO. Others observed that they might be open to investment negotiations, provided that the concerns of developing countries were sufficiently taken into account. Furthermore, others felt that the Working Group's deliberations had revealed the extent to which the substance, implications and rationale of a prospective multilateral investment framework were still unclear. They urged for further analysis of the issues and that moving into a negotiating phase would be premature.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“[Taking note of the work done by the Working Group on the Relationship between Trade and Investment under the mandate in paragraphs 20-22 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex D to this document.] [We take note of the discussions that have taken place in the Working Group on the Relationship between Trade and Investment since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group.]”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopted a text on Trade and Investment along these lines:

“We note with appreciation the valuable work that has been carried out in the Working Group on the Relationship between Trade and Investment under paragraphs 21 and 22 of the Doha Ministerial Declaration. In accordance with relevant provisions of the Doha Ministerial Declaration, we commit ourselves to provide strengthened and adequately resourced technical assistance to developing and least-developed countries to respond to their needs for enhanced support in this area. We agree:

To intensify the clarification process called for in paragraph 22 of the Doha Declaration, covering the elements listed in that paragraph as well as other elements raised by members, including the elements identified in WT/MIN (03)/W/4;

To convene the Working Group in Special Session to elaborate procedural and substantive modalities on the basis of paragraphs 20, 21 and 22 of the Doha Declaration, and other elements raised by members. We reiterate that the special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable members to undertake obligations and commitments commensurate with their individual needs and circumstances. Consideration should be given to the relationship of the negotiations to the Single Undertaking; Modalities that will allow negotiations on a multilateral investment framework to start shall be adopted by the General Council no later than [date]”.¹⁶

Position of the AU/ACP/LDC on the New (Singapore) Issues

The response of this group of countries to the Second Draft Revised Cancún Ministerial Text on the Singapore Issues was contained in Document WT/MIN(03)/W/19 of 12 September 2003, communicated to the Ministerial Conference by Mauritius. Once more, the countries stated that the Mauritius Ministerial declaration and its Annex, reflecting the African common position adopted by the AU Ministers of Trade at their meeting in Grand Baie, Mauritius, in June 2003, and endorsed by the AU summit in Maputo in July 2003; the Second LDCs Trade Ministers' Meeting in Dhaka, in June 2003; the Sixth Meeting of ACP Trade Ministers in Brussels, in August 2003, provided the requisite political guidance and the agreed common negotiating objectives for AU, LDCs and ACP trade negotiators in Geneva.¹⁷

Accordingly, the countries indicated they would maintain the following position on the New (Singapore) Issues. That further clarification be sought on certain issues in the Doha mandate in order to take away the ambiguity set there-in; the adoption of option 2 of the text; the attaching of an annex to option 2; and the need to give clear mandate to the relevant WTO bodies dealing with the four New (Singapore) Issues.

Furthermore, it was stated that the African Union, Least-Developed Countries, African, Caribbean and Pacific countries were reaffirming this position and that since the Doha Ministerial Conference in 2001, there had been divergent views on the New Issues, hence negotiations on the modalities should not start until there was “**explicit consensus**”. In

this respect, they stated that they wanted to make it clear at this point that progress in New Issues should not be linked to progress in Agriculture or any other negotiation issues in the WTO.

Trade and Competition Policy: Mandate

On Trade and Competition Policy, the Doha Declaration stated:

“Recognizing the case for a Multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 24, we agree that 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. We recognize the needs of developing and LDCs for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development.

To this end, we shall work in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. Full account shall be taken

of the needs of developing and LDC participants and appropriate flexibility provided to address them.”

State of the Negotiations

The work of the Working Group focused on elements of the Doha mandate as contained in the Ministerial Declaration; the nature and scope of the compliance mechanisms that might be applicable under a multilateral framework on competition policy; possible elements of progressivity and flexibility that might be included in it; technical assistance and capacity building of developing countries; and stock-taking on national experience and legislation.

The discussions included the application of a multilateral framework on competition policy to developing countries; specific elements of flexibility and progressivity, including exclusions and exemptions; the compatibility of a multilateral framework on competition policy with members’ industrial and other policies; S&D treatment core principles; the cost of compliance with a multilateral framework on competition policy; and S&D treatment and hard core cartels.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“[Taking note of the work done by the Working Group on the Interaction between Trade and Competition Policy under the mandate in paragraphs 23-25 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex E to this document.] [We take note of the discussions that have taken place in the Working Group on the Interaction between Trade and Competition Policy since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that

further clarification of the issues be undertaken in the Working Group.]”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Trade and Competition Policy along these lines:

“We note with appreciation the discussions that have taken place in the Working Group on the Interaction between Trade and Competition Policy since the Fourth Ministerial Conference. We decide that further clarification of the issues be undertaken in the Working Group, including consideration of possible modalities for negotiations based on the elements contained in paragraph 25 of the Doha Ministerial Declaration, and that the Working Group shall report to the General Council on this work by [date].¹⁸ In accordance with relevant provisions of the Doha Ministerial Declaration, we commit ourselves to continue to provide strengthened and adequately resourced technical assistance to developing and least-developed countries to respond to their needs for enhanced support in this area.”

Transparency in Government Procurement: Mandate

The Doha Declaration stated as follows:

“Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, we agree that 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. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account

participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion."

State of the Negotiations

The Report of the Working Group on Transparency in Government Procurement to the General Council indicated that work of the Group had focused on transparency-related provisions in existing international instruments on government procurement and national procedures and practices; definition and scope of an Agreement on Transparency in Government procurement; domestic review of procedures and WTO Dispute Settlement procedures; S&D treatment; and technical assistance and capacity building.

The Chairman of the Group reported to the General Council that members of the Group were of the view that firstly, it was necessary to reiterate that an agreement on transparency in government procurement would only be limited to "transparency" and would exclude market access commitments and would have no impact on members' rights to use government procurement to support domestic enterprises and purchasing national goods. Secondly, the elements of the agreement would need to be identified. Thirdly, the Working Group would have to establish a timetable for an agreement on transparency in government procurement, which did not specify a deadline for the conclusion of the agreement. Finally, S&D treatment should be ensured for developing countries, given the respective levels

of development of government administrations. Some members expressed the view that the four Singapore issues, including transparency in government procurement, were part of the Single Undertaking. However, other members of the WTO disagreed with this view.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

"[Taking note of the work done by the Working Group on Transparency in Government Procurement under the mandate in paragraph 26 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex F to this document.] [We take note of the discussions that have taken place in the Working Group on Transparency in Government Procurement since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group.]"

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Transparency in Government Procurement along these lines: "Taking note of the work done by the Working Group on Transparency in Government Procurement under the mandate in paragraph 26 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex D to this document."

On Transparency in Government Procurement, Annex D: Transparency in Government Procurement, was proposed to be attached to the

Cancún Ministerial Text. It was proposed that Ministers appreciated the work that was carried out by the Working Group on Transparency in Government Procurement under paragraph 26 of the Doha Ministerial Declaration; and agreed that the negotiations on a multilateral agreement on transparency in government procurement would be based on paragraph 26 of the Doha Ministerial Declaration and would build on the progress made in the Working Group on Transparency in Government Procurement. Pursuant to paragraph 26 of the Doha Ministerial Declaration, they would reaffirm that such negotiations would be limited to the transparency aspects and therefore would not restrict the scope for countries to give preferences to domestic supplies and suppliers

Furthermore, the Ministers were called upon to agree that any coverage of the agreement beyond goods and central government entities was not prejudged. Only procurements above certain value thresholds, to be negotiated, would be covered. The issue of the applicability of the DSU would also not be prejudged, with the exception that individual contract awards should not be subject to challenge or recommendations under the WTO dispute settlement system. In regard to domestic review mechanisms, the agreement would address the transparency of such mechanisms, but not otherwise prescribe their characteristics.

It was also proposed that Ministers reaffirm that the negotiations would take into account participants' development priorities, especially those of least-developed country participants. Special and differential treatment would include transitional periods for the implementation of the agreement and higher thresholds for developing

countries, with additional periods and higher figures applicable to least-developed countries. Ministers were also called upon to reiterate their commitment to ensuring adequate technical assistance and support for capacity building both during the negotiations, to facilitate participation in them, and after their conclusion, to assist developing and least-developed countries to benefit from the outcome of the negotiations.

In this respect, it was proposed that paragraphs 45–51 of the Doha Ministerial Declaration would apply to these negotiations and that at its first meeting after the Cancún Session of the Ministerial Conference, the Trade Negotiations Committee would establish a Negotiating Group on Transparency in Government Procurement and appoint its Chair. The first meeting of the Negotiating Group would agree on a work plan and schedule of meetings.

Trade Facilitation: Mandate

Doha mandate on trade facilitation was derived from the followings elements of the Doha Declaration:

“Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that 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. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed

countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.”

State of the Negotiations

The Chairman of the Council on Trade in Goods, in which the issues of trade facilitation were discussed, reported that while many countries had highlighted the benefits of trade facilitation, at the same time they also appreciated concerns that had been raised with the difficulties of developing binding rules on trade facilitation. Some delegations suggested working on guidelines, which could serve as target for internal reform endeavours and for the identification of technical assistance needs, and could then be transformed into binding rules once developing countries had sufficiently developed their internal capacities. Broadly, members were of the view that any evolution of trade facilitation had to reflect the needs and the specific situations of members, and their ability to implement whatever might be agreed upon in the future, to allow for the full enjoyment of the benefits accruing from trade facilitation. The issue of whether a multilateral framework was needed remained unresolved.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“[Taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex G to this document.] [We take note of the discussions that have taken place on Trade Facilitation in the Council for Trade in Goods since the Fourth Ministerial Conference. The situation does not provide a basis for the commencement of negotiations in this area. Accordingly, we decide that

further clarification of the issues be undertaken in the Council for Trade in Goods.]”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Trade Facilitation along these lines: “Taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex E to this document.”

Attached to the Draft Cancún Ministerial Text on Trade Facilitation was Annex E: Trade Facilitation. In this proposed Framework, it was suggested that negotiations should aim, by clarifying and improving relevant aspects of GATT Articles V, VIII and X of the GATT 1994, at the establishment of an agreement to further expedite the movement, release and clearance of goods, including goods in transit. In the case of developing and least-developed countries, it was to be agreed that the implementation capacities of these countries would be an important factor to take into account in the negotiations. The negotiations would also take fully into account the principle of special and differential treatment for developing and least-developed countries as well as their need for enhanced technical assistance and capacity building in this area.

In this respect WTO members would commit themselves to ensuring adequate technical assistance and support for capacity building for developing countries, both during the negotiations and after

their conclusion. Furthermore, in order to make the process of identification and assessment of needs related to technical assistance and capacity building effective and operational and to ensure better coherence, a collaborative effort would be undertaken by the WTO with other international organizations, including the World Bank, IMF, UNCTAD and the WCO, in this regard; and due account would be taken of the relevant work undertaken by other international organizations in this area.

Accordingly, paragraphs 45-51 of the Doha Ministerial Declaration would apply to these negotiations and was, at its first meeting after Cancún Session of the Ministerial Conference, where the Trade Negotiations Committee would establish a Negotiating Group on Trade Facilitation and appointed its Chair. The first meeting of the Negotiating Group would agree on a work plan and schedule of meetings.

Positions of Selected WTO Members on Singapore Issues

The Doha Declaration stated: “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.”

This statement gave rise to various interpretations. While some developed countries were of the view that what was agreed at Doha was to enter into negotiations on these issues, what was needed was only to agree on “modalities”, developing countries were of the view that no such agreement was reached. Many developing countries remained opposed to enter into a negotiating mode on these issues for a variety of reasons. Firstly, they were

of the view that there was need to have sufficient convergence on many of the issues identified for clarification, in order to draw up substantive modalities on an informed basis. Secondly, many remain unconvinced how multilateral frameworks on these issues would address fundamental development objectives of developing countries, and needs and concerns of these countries. Thirdly, they were of the view that the timeframe suggested for drawing up modalities on these issues was not sufficient enough to allow meaningful participation by many developing countries, especially African countries that lacked capacity.

In summary, recognizing that WTO members did not have a common understanding on how these issues should be dealt with procedurally and substantively, and, taking into account the potential serious implications of these issues on their economies, many developing countries were calling for the process of clarification to be continued.

General Position of African Countries

The Mauritius Declaration of African Ministers of Trade stated:

“(We) recognize the complexity and importance of the Singapore issues and note that WTO members do not have a common understanding on how these issues should be dealt with procedurally and substantively. Taking into account the potential serious implications of these issues on our economies, we call for the process of clarification to be continued.”

State of Post-Cancún Negotiations on Trade Facilitation

The Post-Cancún Expert Group Meeting for African Trade Negotiators and Officials, organised by ECA and the AU in Accra (Ghana) during 28-

29 November 2003, noted that various suggestions on dealing with the Singapore Issues had emerged during the consultations in Geneva. The proposals included suggestions to “unbundle” the Singapore Issues, and/or maintaining these issues as part of a “Single Undertaking”. Suggestions for unbundling the Singapore Issues included the 1+3 approach, whereby one of the issues (such as trade facilitation) would be tabled to agree on modalities for negotiations and dropping the other three (trade and investment, trade and competition policy and government procurement); and the 2+2 approach, where two issues would be tabled to agree on modalities (trade facilitation and government procurement) and the other two are either referred to the Working Groups for further work and/or dropped from the WTO agenda.

During the discussions, concerns were expressed about the dangers of creating a two-tier WTO organization, which the proposal for an opt-in and opt-out approach for dealing with the Singapore Issues would inevitably imply. Participants expressed the need for coherence and consistency of Africa’s positions on the Singapore Issues in the framework of the WTO and Economic Partnership Agreements (EPAs) of the European Union. It was noted that while African countries are resisting agreeing on multilateral frameworks on these issues in the WTO, they are being pressurized to agree to bilateral agreements in the framework of the EPA and other bilateral trade negotiations.

The meeting held the general opinion that African countries should monitor what proponents will be tabling at the 15 December 2003 WTO General Council Meeting and prepare the appropriate response, while remaining consistent with their longstanding position.

The Meeting called on ECA and AU, in collaboration with other relevant organizations, to undertake appropriate studies on these issues in order to facilitate the adoption of informed positions by African countries as they engage their trading partners.

Further to these discussions, the Working Groups dealing with three of the Singapore subjects namely, Investment, Competition policy and transparency in Government Procurement have not been reactivated as no officers for them were appointed by the WTO General Council Meeting of 11-12 February 2004. The fourth issue is trade facilitation, which is discussed as a special agenda item under the Council for Trade in Goods.

There is increasing convergence regarding the need to develop a more precise and focussed work programme on the issue of trade facilitation, with a view to the possible development of multilateral disciplines in this area, with the caveat that the rest of the Singapore subjects are dropped entirely from the WTO work programme. This view was enforced by the communication from the European Commission to the WTO membership, dated 9 May 2004, where it was stated that EU would be ready to launch negotiations. As regards investment and competition policy, there was clearly no consensus to begin negotiations. “This leaves the question of transparency in government procurement, where the picture is less clear, but we are ready to join the consensus view on this. So, to be clear that would leave only trade facilitation, and perhaps transparency in procurement inside the DDA”

In this EC Communication to the WTO membership was also stated that as regards rules,

G90 countries would be only asked to participate actively in these discussions.

Footnote:

- 15 World Trade Organization: AU/ACP/LDC Joint Position on Development Issues, **WT/MIN (03)/W/20**, 12 September 2003.
- 16 The date will coincide with the date for agreeing on modalities on agriculture and NAMA.
- 17 World Trade Organization: Position of the African Union, Least-Developed Countries, African, Caribbean and Pacific Countries on the New (Singapore) Issues, document **WT/MIN(03)/W/19** of 12 September 2003.
- 18 The date will coincide with the date for agreeing on modalities on agriculture and NAMA.

Briefing Paper 8

Negotiations on Trade and Environment

Mandate

Doha Declaration stated:

“With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations without prejudging their outcome on:

- i. The relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any member that is not a party to the MEA in question;
- ii. Procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
- iii. The reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- i. The effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;

- ii. The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- iii. Labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee should report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system shall not add to or diminish the rights and obligations of members under existing WTO agreements, in particular, the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and take into account the needs of developing and least-developed countries.

We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular, the least-developed among them. We also encourage that expertise and experience be shared with members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.”

State of the Negotiations

On this issue, the Chairman reported that progress was made in developing a common understanding of the Doha mandate and that delegates had agreed early on in the negotiations that they would start with preparatory work, in which they would examine the various concepts contained in the mandate. Accordingly, in the preparatory process participants discussed the concepts of a

“Multilateral Environmental Agreement (MEA)”, and the nature of the “specific trade obligations (STOs)” set out in the MEAs. Furthermore, participants examined the relationship between existing WTO rules and the STOs set out in the MEAs.

The Chairman also noted that, while progress had been made in identifying avenues for increased cooperation and information exchange between UNEP, MEA Secretariats and the WTO, progress was more limited in the development of criteria for granting of observer status, as called for by the Doha Declaration.

General Position of African Countries

African countries while appreciating the importance of preserving the environment were less enthusiastic at the proposal for a multilateral environmental agreement. It is the view that such agreement would produce an added burden on these countries capacities to fulfil their obligations in the WTO.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“We take note of the report transmitted by the General Council on the work undertaken by the Committee on Trade and Environment pursuant to paragraphs 32 and 33 of the Doha Ministerial Declaration. We agree that this work shall continue on the basis of the progress made thus far and instruct the General Council to report to our next Session.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO

Ministerial Conference, it was proposed that Ministers adopt a text on Trade and Environment along these lines:

“We take note of the progress made by the Special Session of the Committee on Trade and Environment in developing a common understanding of the concepts contained in its mandate in paragraph 31 of the Doha Ministerial Declaration. We reaffirm our commitment to these negotiations. We agree that the Committee on Trade and Environment Special Session continue to invite to its meetings, in accordance with its current practice, the secretariats of the multilateral environmental agreements (MEAs) invited thus far and of the United Nations Environment Programme (UNEP) and the United Nations Conference on Trade and Development (UNCTAD). This invitation shall be for the duration of the negotiations. It shall be without prejudice to any additional invitations that the Committee on Trade and Environment Special Session extends in future, and to paragraph 31 negotiations. We take note of the report transmitted by the General Council on the work undertaken by the Committee on Trade and Environment pursuant to paragraphs 32 and 33 of the Doha Ministerial Declaration. We agree that this work shall continue on the basis of the progress made thus far and instruct the General Council to report to our next Session.”

State of Post-Cancún Negotiations on Trade and Environment

The Committee on Trade and Environment met for the Eight Special Session (CTESS) on 19 April 2004 (Doc: TN/TE/8). “The meeting was marked by discussion on the three components of trade and environment negotiating mandate. Under paragraphs 31(i) and (ii), one new submission had been tabled-document TN/TE/W/39 by the European Communities (EC). The EC submission argued that it could be useful for the CTESS to

explore the Multilateral Environmental Agreement (MEA)/WTO relationship in the context of global governance principles. These principles included emphasizing the importance and necessity of MEAs; the need to design environmental policy within multilateral environmental fora; the need for close cooperation and increased information flow at the national level between various international bodies for the mutual supportiveness of trade and

environmental policies; the fact that MEAs and the WTO were equal bodies of international law; and the need to interpret WTO rules in “clinical isolation” from other bodies of international law. The EC indicated that its submission did not preclude analytical discussions in the CTESS on the specific trade obligations (STOs) in MEAs” (TN/TE/8).

Briefing Paper 9

Negotiations on Electronic Commerce

Mandate

On Electronic Commerce, the Doha mandate stated:

“We take note of the work which has been done in the General Council and other relevant bodies since the Ministerial Declaration of 20 May 1998 and agree to continue the Work Programme on Electronic Commerce. The work to date demonstrates that electronic commerce creates new challenges and opportunities for trade for members at all stages of development, and we recognize the importance of creating and maintaining an environment, which is favourable to the future development of electronic commerce.

We instruct the General Council to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference. We declare that members will maintain their current practice of not imposing customs duties on electronic transmissions until the Fifth Session.”

State of the Negotiations

Pursuant to this mandate, The General Council of the WTO agreed in October 2002 to maintain for the duration of the work until the Fifth WTO Ministerial Conference, the current institutional arrangements for handling the work programme on electronic commerce, namely that the Councils for Trade in Services, Trade in Goods, and TRIPS and the Committee on Trade and Development would examine and report on aspects of electronic

commerce relevant to their respective areas of competence, and that the General Council would continue to play a central role in the entire process.

The Chairman of the General Council reported that during a number of dedicated sessions on electronic commerce held by various organs and Committees of the WTO, the issues discussed included; classification of the content of certain electronic transmissions; development-related issues; fiscal implications of electronic commerce; imposition of customs duties on electronic transmissions; competition; jurisdiction and applicable law/other legal issues; general objectives to be applied to the consideration of electronic commerce. Furthermore, submissions by WTO members on a number of issues were also considered during these dedicated discussions.

The Chairman reported that broadly participants during these dedicated discussions were of the view that the examination of cross-cutting issues related to electronic commerce was not yet complete, and that further work to clarify these issues was needed. Among the issues of interest to developing countries was the “revenue implications of electronic commerce” and applicable legal and jurisdictional law. The Chairman Council, therefore, stated that: “having regard to paragraph 34 of the Doha Ministerial Declaration, the General Council should consider whether to recommend continuing the examination of all trade-related issues relating to electronic commerce under the ongoing Work Programme on Electronic Commerce, with the current institutional arrangements, having the General Council report on further progress to the next Ministerial Session, and maintaining members’ current practice of not imposing

customs duties on electronic transmissions until the next Ministerial Session.”

General Position of African Countries

This was an area in which African countries were less engaged, although they participated in discussions forums.

Draft Ministerial Text JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“We take note of the reports from the General Council and subsidiary bodies on the Work Programme on Electronic Commerce, and agree to continue the examination of issues under that ongoing Work Programme, with the current institutional arrangements. We instruct the General Council to report on further progress to our next Session. We declare that members will maintain their current practice of not imposing customs duties on electronic transmissions until that Session.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Electronic Commerce along these lines:

“We take note of the reports from the General Council and subsidiary bodies on the Work Programme on Electronic Commerce, and agree to continue the examination of issues under that ongoing Work Programme, with the current institutional arrangements. We instruct the General Council to report on further progress to our next Session. We declare that members will maintain their current practice of not imposing customs duties on electronic transmissions until that Session.”

Briefing Paper 10

New Working Groups in the WTO

Trade, Debt and Finance

Mandate

On this issue the Doha Declaration stated:

“We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade, debt and finance, and of any possible recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.”

State of the Negotiations

The Chairman of the Working Group on Trade, Debt and Finance informed the General Council that its work had focused on understanding the relationship between trade and finance; the relationship between trade and debt; and the need for greater coherence between the WTO and the BWIs in the global economy and trading system. The Chairman expressed appreciation for the contributions made by UNCTAD, the WB, the IMF, and the UN Regional Commissions (including ECA) to the analytical work and studies for the Group.

The Chairman informed the General Council that in order to expedite its work, the Group had identified the following issues: trade as source of growth; WTO rules and financial stability; the importance of market access and the reduction of other trade barriers in the Doha Development Agenda; trade and financial markets; trade financing; the need for better coherence in the design and implementation of trade-related reforms and monitoring; the interlinkages between external liberalization and internal reforms; and external financing, commodity markets and export diversification. These were the issues on which the Working Group would wish to focus on after Cancún.

General Position of African Countries

The Mauritius Declaration stated: “We reaffirm the need for a coherent and holistic approach at the multilateral level on issues of trade, debt and finance. We also stress the need to operationalize WTO provisions that relate to the transfer of technology. We consider these issues to be of significant developmental importance to our continent and call for the continuation of the work of these Working Groups beyond the Fifth Ministerial Conference.”

Draft Ministerial Text JOB (03)/150/Rev.1

The Draft Ministerial Text stated: “We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade, debt and finance and agree that this work shall continue on the basis of the mandate contained in paragraph 36 of the Doha Ministerial Declaration and the progress made in the Working Group to date. The General Council shall report further to our next Session.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Trade, Debt and Finance along these lines:

“We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade, debt and finance and agree that this work shall continue on the basis of the mandate contained in paragraph 36 of the Doha Ministerial Declaration and the progress made in the Working Group to date, including consideration of any possible recommendations on steps that might be taken within the mandate and competence of the WTO. The General Council shall report further to our next Session.”

AU/ACP/LDC Joint Position on Development Issues

In addition, on Trade, Debt and Finance, the AU/ACP/LDC joint position on Development Issues (WT/MIN (03)/W/20) stated that Minister called for a more focused work programme to be undertaken by the Working Group and instructed it to make recommendations for concrete action by 31 March 2004.¹⁹

State of Post-Cancún Negotiations on Trade, Debt and Finance

The Working Group on Trade, Debt and Finance (WT/WGTDF/W/24) met on 5 May 2004. During this meeting, the IMF presented a document titled “Exchange Rate Volatility and Trade Flows - New Evidence”. Not much progress has taken place in the discussion on this subject

since Cancún. The agenda for the next coming meetings has been drafted. First meeting on trade-financing (13 May 2004), second meeting (4-5 October 2004), third meeting (late November-early Dec 2004).

Trade and Transfer of Technology: Mandate

Doha Declaration stated as follows:

“We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.”

State of the Negotiations

The Working Group on Trade and Transfer of Technology focused on presentations of country experiences; review of presentations on transfer of technology issues by intergovernmental organizations, such as UNCTAD and UNIDO; review of inputs from other WTO Bodies on trade and transfer of technology; and relationship between trade and transfer of technology. On the relationship between trade and transfer of technology, the focus was on definition of transfer of technology; transfer of technology and the enabling environment; transfer of technology and the role of the home and host countries; transfer of technology and intellectual property rights; transfer of technology and foreign direct investment; transfer of technology and WTO Agreements; and transfer of technology and technical assistance.

General Position of African Countries

The Declaration of African Ministers of Trade stated:

“We reaffirm the need for a coherent and holistic approach at the multilateral level on issues of trade, debt and finance. We also stress the need to operationalize WTO provisions that relate to the transfer of technology. We consider these issues to be of significant developmental importance to our continent and call for the continuation of the work of these Working Groups beyond the Fifth Ministerial Conference.”

African countries considered these issues to be of significant developmental importance to the continent and therefore called for the continuation of the work of these Working Groups beyond the Fifth Ministerial Conference, within which to deal with the debt problems of developing countries in a broader context of their overall development.

Accordingly, African countries stated that, in preparing reports to the General Council for submission to the Fifth Session of the Ministerial Conference, the Working Groups should reflect adequately the concerns of the Africa Group as articulated in their submission. Greater coherence in global economic policy-making should be fostered between the WTO and the BWIs, and these institutions should implement the relevant Ministerial Decisions and Declarations adopted on this subject in previous conferences. Interaction should be strengthened between governments and donor/international agencies on trade at the country level, including where appropriate, giving trade a more prominent role in Poverty Reduction Strategy Programmes (PRSPs) and other national development plans.

Market access opportunities should be improved for products originating from African countries, as this was the key for generating resources for debt servicing, development finance, and in general, financing the MDGs. The various WTO provisions pertaining to transfer of technology should be operationalized with a view to making technology easily accessible to African countries.

Draft Ministerial Text JOB (03)/150/Rev.1

The Draft Ministerial Text stated:

“We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade and transfer of technology and agree that this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration and the progress made in the Working Group to date. The General Council shall report further to our next Session.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Trade and Transfer of Technology along these lines: “We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade and transfer of technology and agree that this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Ministerial Declaration and the progress made in the Working Group to date, including consideration of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to

developing countries. The General Council shall report further to our next Session.”

AU/ACP/LDC Joint Position on Development Issues

On Trade and Transfer of Technology, the Joint AU/ACP/LDC position on Development Issues (WT/MIN (03)/W/20) stated that Ministers called for a more focused work programme that would include the identification of elements for a possible multilateral agreement. Further, Ministers instructed the Working Group to submit to the Sixth Session of the Ministerial Conference clear recommendations on decisions that would allow

for increased flows of technology to developing countries ²⁰.

Footnote:

- 19 World Trade Organization: AU/ACP/LDC Joint Position on Development Issues, **WT/MIN (03)/W/20**, 12 September 2003.
- 20 World Trade Organization: AU/ACP/LDC Joint Position on Development Issues, **WT/MIN(03)/W/20**, 12 September 2003.

Briefing Paper 11

Development Dimensions of the Doha Agenda Special and Differential Treatment

Mandate

Doha Declaration stated:

“We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree 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 connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns.”

State of the Negotiations

The discussions and negotiations in the WTO on S&D treatment focused on how to transform statements of “best endeavours on S&D treatment”, as currently stated in most WTO agreements, into more precise, effective and operational clauses.

The negotiations in Geneva on S&D treatment in the Committee on Development and various other Committees, therefore, focused on how to attain some level of agreement on modalities for operationalizing the S&D treatment provisions of WTO agreements, in order to provide developing countries with the “policy space” needed for

them to address development issues and goals in the implementation of the WTO Agreements. Following lack of progress in the Committee on Development to move the process forward on S&D treatment, the Chairman of the General Council assumed the duties of trying to coordinate work in this area.

The Chairman of the General Council attempted to classify the negotiations into three categories. Category I were Agreement-specific proposals, which were proposals that were agreed to in principle in February 2003 and those which were agreed to ad referendum during the consultations in May 2003; proposals where there was an agreement in principle and were considered by the Friends of the Chair; and proposals considered in the regular process of consultations under the Chairman of the General Council; and proposal which the Friends of the Chair were of the view should be withdrawn from the proposals. These proposals include 12 proposals, which members agreed, in principle, in the February Special Session of the Committee on Trade and Development, whose adoption they had decided to defer, as well as 2 proposals agreed to ad referendum during the Chairman’s consultations on 21 May 2003. In addition to these, it includes 12 proposals for which, after first round consultations, the Chairman sought the help of the Friends of the Chair, as well as 12 proposals, which were addressed in the regular process of consultation.

Category II were proposals which, the Chairman referred to the Negotiating Groups and other WTO bodies, with directions that they be considered as soon as possible, and that a report is made to the last meeting of the General Council before Cancún on their status and the progress

made. These proposals were 38 in number. Possible recommendations from discussions on these proposals could be included in the “early harvest”. Category III was another set of proposals, where there was wide divergence among members and the Chairman of the General Council intended to explore ways of how to bridge the gap among members. These proposals were 12 in number and might have to be redrafted in a way more agreeable to all Member countries.

While the Africa WTO Geneva Group welcomed the efforts by the Chairman of the General Council to try and obtain an “early harvest” on some of the S&D treatment provisions, they remained concerned that other issues of greater importance to them may have not been dealt with adequately. It was worth noting that member states made 88 Agreement-specific proposals on S&D treatment. Consultations in the Africa WTO Geneva Group on these issues continued and African countries continued to emphasize the developmental dimensions of S&D treatment.

Many of the proposals on S&D treatment were designed to turn formerly non-mandatory provisions into binding and mandatory measures and to operationalize what so far had only been “best endeavours” by developed countries. Developed countries appeared reluctant to deliver tangible benefits to developing countries, through S&D treatment provisions. The first hurdle, therefore, was how to persuade developed countries to live up to their proposals at Doha and to agree to S&D treatment provisions which would deliver tangible results to developing countries.

The Chairman of the TNC reported to the meeting of the General Council of 24-25 July 2003, that

work on S&D treatment within the Committee on Trade and Development was suspended since February 2003, due to lack of progress and that the Chairman of the General Council had taken over the process of supervising this work. He informed the General Council that since February 2003, the Chairman of the General Council had been making extensive consultations on a number of agreement-specific proposals that had been forwarded by member countries. The Chairman had also referred some of the agreement-specific proposals to relevant Negotiating Groups and other WTO bodies with the request that they be considered as soon as possible, and that a report be made to the last meeting of the General Council before the Cancún Ministerial Conference.

General Position of African Countries

The Mauritius Declaration stated:

“(We) emphasize the importance of completing the work programme on special and differential treatment (S&D) we endorsed at Doha. We reiterate that all S&D provisions in the WTO Agreements must be reviewed with a view to strengthening them and making them more precise, effective, binding and operational. We are deeply concerned that the mandate on S&D treatment has not been met. We call upon the WTO to conclude this work, as a matter of priority, before the Cancún Fifth WTO Ministerial Conference.”

African countries had been evaluating progress in these negotiations, and the general assessment was one of disappointment. They emphasized the importance of completing the work programme on S&D treatment, as endorsed at Doha. African countries were concerned that the Draft Ministerial Text (JOB (03)/150 of 18 July 2003) by the Chairman of the General Council delinked the work on cross-cutting issues, the monitoring

mechanism and work on the agreement-specific proposals. It was the view of African countries that the Committee on Trade and Development was mandated to undertake the work on S&D treatment and underscored the need to ensure that work on agreement-specific proposals did not overshadow the operationalization of all S&D provisions in the WTO Agreement.

As “*demandeurs*” on this subject, African countries would like to see progress before Cancún and that the focus of the Chairman’s proposals on S&D treatment should be on those issues that fulfil four basic criteria. The extent to which the proposal contributed to providing “policy space” for developing countries; the extent to which the proposal contributed to “improved market access” for these countries; the extent to which such proposals contributed to increase transfer of resources” to developing countries; and the extent to which the proposal resulted in “improved WTO processes and procedures.” African countries noted that the current focus of the Chairman of the General Council was on agreement specific proposals, which did not have real economic value to African countries.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Ministerial Text stated:

“We reaffirm that provisions for special and differential treatment are an integral part of WTO Agreements. We recall our decision in Doha to review special and differential treatment provisions with a view to strengthening and making them more precise, effective and operational. We note the progress that has been made towards meeting these objectives and adopt the decisions in Annex C to this document. We instruct the General Council to continue to monitor closely work

on the proposals referred to negotiating groups and other WTO bodies, and direct these bodies to report to the General Council no later than [...]. We instruct the Committee on Trade and Development in Special Session to pursue expeditiously, within the parameters of the Doha mandate, the work on remaining agreement-specific proposals and other outstanding issues referred to in TN/CTD/7 and report with recommendations, as appropriate, to the General Council by [...]. The General Council shall submit a report on all these issues to our next Session.”

An Annex is to be attached to the Draft Ministerial Text, along these lines:

Annex C: Special and Differential Treatment is proposed to be attached to the Ministerial Text if agreement can be reached to do so by the General Council. The Annex contains a number of proposals, among many others, issues of special and differential treatment, which have been discussed in the Committee on Trade and Development and the General Council. It is proposed that agreement on these issues would constitute an “early harvest” and could include Agreement on GATT 1994 - Article XVIII: C; GATT 1994 - Article XXXVI; GATT 1994 - Article XXXVI; and GATT 1994 - Article XXXVIII. The Annex would also contain an agreed text on Understanding on the Interpretation of Article XVII of the GATT 1994; Understanding on Balance-of-Payments Provisions of the GATT 1994 –Paragraph 8; the Enabling Clause; Agreement on Agriculture – Article 15.2; PSI Agreement - Article 3.3; Agreement on Rules of Origin; and Agreement on Import Licensing Procedures – Article 1.2. Furthermore, the Annex would also contain agreed language relating to the Agreement on Import Licensing Procedures – Article 1.2; GATS – Article IV; GATS - Article

IV.3; GATS – Article XXV; and GATS Annex on Telecommunications – Paragraph 6. It would also include some form of agreement on TRIPS Agreement – Article 66.2; TRIPS Agreement – Article 67; and TRIPS Agreement – Article 70.9.

The other elements of the Annex C would be an Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10; Decision on Measures in Favour of Least-developed Countries – Paragraph 2 (v); Rules Relating to Notification Procedures; Enabling Clause;²¹ [Review of Progress on Market Access for Least-developed Countries] 1; and Decision on Measures in Favour of Least-developed Countries – Paragraph 2 (ii) 1.

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Special and Differential Treatment (S&D) along these lines:

“We reaffirm that provisions for special and differential treatment are an integral part of WTO Agreements. We recall our decision in Doha to review special and differential treatment provisions with a view to strengthening and making them more precise, effective and operational. We note the progress that has been made towards meeting these objectives and adopt the decisions in Annex C to this document. We instruct the General Council to continue to monitor closely work on the proposals referred to negotiating groups and other WTO bodies, and direct these bodies to report to the General Council no later than [...]. We instruct the Committee on Trade and Development in Special Session to pursue expeditiously, within the parameters of the Doha mandate, the work on remaining agreement-

specific proposals and other outstanding issues referred to in TN/CTD/7 and report with recommendations, as appropriate, to the General Council by [...]. The General Council shall submit a report on all these issues to our next Session.”

As was the case in the First Draft Cancún WTO Ministerial Text, Annex C: Special and Differential Treatment, was attached to the Second Revised Draft Cancún Ministerial Text. It contained many of the proposals that were in the initial Annex on GATT 1994 - Article XVIII:C; GATT 1994 - Article XXXVI; GATT 1994 - Article XXXVII; GATT 1994 - Article XXXVIII; Understanding on the Interpretation of Article XVII of the GATT 1994; Understanding on Balance-of-Payments Provisions of the GATT 1994 –Paragraph 8; Enabling Clause; Agreement on Agriculture – Article 15.2; PSI Agreement - Article 3.3; Agreement on Rules of Origin; Agreement on Import Licensing Procedures – Article 1.2; GATS – Article IV; GATS - Article IV.3; GATS – Article XXV; GATS, Annex on Telecommunications – Paragraph 6; TRIPS Agreement – Article 66.2; TRIPS Agreement – Article 67; TRIPS Agreement – Article 70.9; Understanding on Rules and Procedures Governing the Settlement of Disputes – Article 8.10; Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (v); Rules Relating to Notification Procedures; Enabling Clause; Review of Progress on Market Access for Least-Developed Countries; Decision on Measures in Favour of Least-Developed Countries – Paragraph 2 (ii); Decision on Measures in Favour of Least-Developed Countries – Paragraph 2; Decision on Measures in Favour of Least-Developed Countries – Market Opportunities; Enabling Clause– Paragraph 3(b); and GATT 1994 – Article XVIII:B.

Furthermore, on the issue of Special and Differential Treatment, the AU/ACT/LDC countries expressed concern over the lack of tangible progress in dealing with S&D work in the DDA. In as far as the Annex was concerned, the proposals contained therein, while welcome, were perceived to be neither of economic value nor provided policy space for their countries in the conduct of their trade policy. Accordingly, Ministers from these countries insisted that the Draft Cancún Text should accurately reflect the lack of progress in dealing with S&D work. As such Annex C should not be adopted as the proposals contained therein were of no economic value and did not provide any policy space for developing countries; reaffirmed that the Committee on Trade and Development in Special Session, as established by the TNC, was the appropriate body to deal with S&D issues; should detail actions on all S&D proposals and set early deadlines to accomplish them; and that agreement-specific proposals should be addressed as a priority in post-Cancún work before embarking on cross-cutting issues.²²

State Post-Cancún Negotiations on Special and Differential Treatment

The Post-Cancún Expert Group Meeting for African Trade Negotiators and Officials, organized by ECA and the AU in Accra (Ghana) from 28-29 November 2003, showed that African countries have always urged for development issues to be made an integral part of the multilateral trading system. This meeting reviewed the Derbez Text regarding development issues and expressed concern that the Text did not reflect the positions taken by African countries prior to Cancún at Cancún. Observations made by participants

showed that on Special and Differential Treatment (S&D) for example, the items which were being proposed for “early harvest” were neither of economic value, nor did they provide policy space for African countries in the conduct of their trade policy. The meeting expressed the need to include development issues in the current consultations taking place in Geneva and to ensure that decisions taken at 15 December 2003 WTO General Council Meeting should address these issues of importance to Africa. In this regard, the meeting recommended the replacement of paragraph 12 of the Derbez Text with the African Group proposal, WT/MIN(03)/W/13 dated 11 September 2003.

The ACP Group (TN/MA/W/47, 30 March 2004) noted that “it is crucial that in this round of negotiations the principle of less than full reciprocity and the issue of special and differential treatment be fully addressed. Hence, among the important variables for consideration in the formulation of the modalities are the percentage rates for tariff reductions, special treatment for sensitive products and sectors, exemption from tariff cuts and implementation time periods”.

A communication from the European Commission to WTO members, dated 9 May 2004, noted that development issues, more specifically S&D and implementation issues are key to progress for a large number of developing countries. Therefore, the EU proposed that for “agriculture and NAMA, the LDCs and other small or vulnerable developing countries in a similar situation - essentially the G90- should not have to open their markets beyond the existing commitments, and should be able to benefit from increased market access offered by both developed and advanced developing countries. For purposes of encouraging

domestic reform, these countries should increase their tariff bindings to a reasonable level, which would increase predictability.”

Technical Assistance for Trade Capacity Building: Mandate

Doha Declaration stated:

“We confirm that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system, and we welcome and endorse the New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration. We instruct the Secretariat, in coordination with other relevant agencies, to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance shall be designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system. Priority shall also be accorded to small, vulnerable, and transition economies, as well as to members and observers without representation in Geneva.

We reaffirm our support for the valuable work of the International Trade Centre, which should be enhanced. We underscore the urgent necessity for the effective coordinated delivery of technical assistance with bilateral donors, in the OECD Development Assistance Committee and relevant international and regional intergovernmental institutions, within a coherent policy framework and timetable. In the coordinated delivery of technical assistance, we instruct the Director-General to consult with the relevant agencies, bilateral donors and beneficiaries, to identify ways of enhancing and rationalizing the Integrated Framework for Trade-Related Technical Assistance to

Least-developed Countries (IF) and the Joint Integrated Technical Assistance Programme (JITAP).

We agree that there is a need for technical assistance to benefit from secure and predictable funding. We therefore instruct the Committee on Budget, Finance and Administration to develop a plan for adoption by the General Council in December 2001 that will ensure long-term funding for WTO technical assistance at an overall level no lower than that of the current year and commensurate with the activities outlined above. We have established firm commitments on technical cooperation and capacity building in various paragraphs in this Ministerial Declaration. We reaffirm these specific commitments contained in paragraphs 16, 21, 24, 26, 27, 33, 38-40, 42 and 43, and also reaffirm the understanding in paragraph 2 on the important role of sustainably financed technical assistance and capacity-building programmes. We instruct the Director-General to report to the Fifth Session of the Ministerial Conference, with an interim report to the General Council in December 2002 on the implementation and adequacy of these commitments in the identified paragraphs.”

General Position of African Countries

The Declaration by African Ministers of Trade stated:

“We reiterate that technical cooperation and capacity building are core elements of the developmental dimensions of the MTS and the Doha work programme. We urge for the increased collaboration among all agencies in the delivery of requisite technical assistance. Priority should be given to assistance aimed at strengthening the supply-side capacity and competitiveness of African countries. Welcome the launching and commencement of the second phase of the Joint Integrated Technical Assistance Programme (JITAP II) for least-developed and selected African countries by the ITC, UNCTAD and the WTO and the extension of the programme to additional eight

African countries. We are confident that the programme will build on its successful track record. We commend the three agencies for their work and request our development partners to avail the requisite resources to enable them deliver the programme and expand it to all African countries in an expeditious manner. Welcome the revamping of the Integrated Framework (IF) and expect that it will be fully and effectively implemented in order to contribute to trade-related capacity building needs and overall development objectives of LDCs. We underscore the need to ensure country-ownership both at the pre-Diagnostic Trade Integration Studies (DTIS) and the post-DTIS follow-up, particularly in respect of implementation of trade-related capacity building projects at country level and the mainstreaming of trade in national development plans and the PRSPs. In this context, we welcome the donor initiative for the use of IF Trust Fund Window II resources for this purpose. We therefore call upon bilateral and multilateral donors to enhance their contributions to the IF Trust Fund in order to enable the core agencies deliver on the projects and programmes identified by the recipient countries.”

Draft Ministerial Text (JOB (03)/150/Rev.1)

It was stated:

“We welcome the report by the Director-General on the implementation and adequacy of the commitments on technical cooperation and capacity building we made in our Doha Ministerial Declaration and request him to report further to our next Session. We note with satisfaction the establishment of the Doha Development Agenda Global Trust Fund since our last meeting and encourage members to ensure adequate financing for future technical cooperation and capacity building programmes. We direct that in the planning of such programmes, consultations should be undertaken with beneficiary countries and priority given to their individual needs through both regional and national activities. We welcome the improved collaboration and coordination with other agencies, including under the Integrated Framework for Trade-Related Technical

Assistance for the Least-developed Countries and Joint Integrated Technical Assistance Programme. We commend the work undertaken in this respect by the Director-General and the Secretariat, and encourage the continuation of these and other efforts so as to facilitate the greater participation of developing countries in the multilateral trading system.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopted a text on Technical Cooperation along these lines:

“We welcome the report by the Director-General on the implementation and adequacy of the commitments on technical cooperation and capacity building we made in our Doha Ministerial Declaration and request him to report further to our next Session. We note with satisfaction the establishment of the Doha Development Agenda Global Trust Fund since our last meeting and encourage members to ensure adequate financing for future technical cooperation and capacity building programmes. We direct that in the planning of such programmes, consultations should be undertaken with beneficiary countries and priority given to their individual needs through both regional and national activities. We welcome the improved collaboration and coordination with other agencies, including under the Integrated Framework for Trade-Related Technical Assistance for the Least-Developed Countries and Joint Integrated Technical Assistance Programme. We commend the work undertaken in this respect by the Director-General and the Secretariat, and encourage the continuation of these and other efforts so as to facilitate the greater participation of developing countries in the multilateral trading system. We also recognize the successful efforts of the International Trade Centre to involve the business communities of the developing and transition economies in the context of the Doha

Development Agenda and encourage it to continue in the same direction.”

AU/ACP/LDC Joint Position on Development Issues

On Technical Cooperation, the AU/ACP/LDC joint position on development issues (WT/MIN (03)/W/20) stated that at Doha, Ministers confirmed technical assistance and capacity-building “as core elements of the development dimension of the multilateral trading system”. Developed countries undertook to provide technical assistance and capacity support to developing and in particular, least-developed partners to adequately finance all technical assistance programmes on a demand-driven basis. Further, Ministers called for the delivery of targeted technical assistance and capacity-building support to address the special needs of AU/ACP/LDC countries in post-war and conflict situations.”

WTO Accession Issues: Mandate

Doha Declaration stated:

“We note with particular satisfaction that this conference has completed the WTO accession procedures for China and Chinese Taipei. We also welcome the accession as new members, since our last session, of Albania, Croatia, Georgia, Jordan, Lithuania, Moldova and Oman, and note the extensive market-access commitments already made by these countries on accession. These accessions will greatly strengthen the multilateral trading system, as will those of the 28 countries now negotiating their accession. We therefore attach great importance to concluding accession proceedings as quickly as possible. In particular, we are committed to accelerating the accession of least-developed countries.”

State of the Negotiations

In order to accelerate the process of integration of least-developed countries in the multilateral trading system and the WTO, the General Council took a Decision on 10 December of 2002 (WT/L/508) to facilitate the accession process of LDCs into the WTO. The Decision stated that the General Council decided that: “(N)egotiations for the accession of LDCs to the WTO, be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the stipulated guidelines.” The Decision then stipulates these guidelines as follows: For market access: “WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs’ members; and acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services.”

As regards “WTO rules”, the Decision stipulated that: “Special and Differential Treatment shall be applicable to all acceding LDCs from the date of entry into force of their respective Protocols of Accession; transitional periods/transitional arrangements shall be granted in accession negotiations taking into account individual

development, financial and trade needs; and transitional periods/arrangements shall be accompanied by Action Plans for compliance with WTO rules. Furthermore, commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market initiatives shall not be a precondition for the accession to the Multilateral Trade Agreement of the WTO.”

As regards “processes”, the Decision stipulated that: “The good offices of the Director General shall be available to assist acceding LDCs and Chairpersons of the LDCs Accession Working Parties in implementing this Decision; efforts shall be made to facilitate exchange of information and streamlined accession procedures for LDCs; and WTO members may adopt additional measures in their bilateral negotiations to streamline and facilitate the process. The Decision also calls for targeted and coordinated technical assistance and capacity building in LDCs and effective and broad-based technical cooperation and capacity building measures.”

General Position of African Countries

The Mauritius Declaration stated:

“(We) take note of the adoption by the General Council in December, 2002 of new guidelines on WTO accession procedures for LDCs and call upon WTO members to fully implement these guidelines. In view of the difficulties experienced by LDCs and other African countries in their accession process, WTO members should refrain from making excessive or onerous demands on their applications.”

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“We note with particular satisfaction that this Conference has completed the accession procedures for Cambodia and Nepal. This marks the entry of the first two LDCs into the WTO under Article XII of the WTO Agreement. In this regard, we take the opportunity to reaffirm our commitment to the Guidelines on the Accession of LDCs adopted by the General Council on 10 December 2002, and to facilitate and accelerate their accession. We also welcome Armenia and the Former Yugoslav Republic of Macedonia as new members since our last Session. We confirm that these accessions, as those of the 25 governments now negotiating accession, will greatly strengthen our multilateral trading system. We shall therefore continue to give our attention and priority to concluding the ongoing accession proceedings as rapidly as possible.”

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on WTO Accession Issues along these lines:

“We note with particular satisfaction that this Conference has completed the accession procedures for Cambodia and Nepal. This marks the entry of the first two LDCs into the WTO under Article XII of the WTO Agreement. In this regard, we take the opportunity to reaffirm our commitment to the Guidelines on the Accession of LDCs adopted by the General Council on 10 December 2002, and to facilitate and accelerate their accession. We also welcome Armenia and the Former Yugoslav Republic of Macedonia as new members since our last Session. We confirm that these accessions, as those of the 25 governments now negotiating accession, will greatly strengthen our multilateral trading system. We shall therefore continue to give our attention

and priority to concluding the ongoing accession proceedings as rapidly as possible.”

Least-Developed Countries Issues Mandate

On the LDCs, the Doha Declaration stated:

“We acknowledge the seriousness of the concerns expressed by the least-developed countries (LDCs) in the Zanzibar Declaration adopted by their ministers in July 2001. We recognize that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building. We agree that the meaningful integration of LDCs into the trading system and the global economy will involve efforts by all WTO members. We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs. In this regard, we welcome the significant market access improvements by WTO members in advance of the Third UN Conference on LDCs (LDC-III), in Brussels, May 2001.

We further commit ourselves to consider additional measures for progressive improvements in market access for LDCs. Accession of LDCs remains a priority for the membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs. We instruct the Secretariat to reflect the priority we attach to LDCs’ accessions in the annual plans for technical assistance. We reaffirm the commitments we undertook at LDC-III, and agree that the WTO should take into account, in designing its work programme for LDCs, the trade-related elements of the Brussels Declaration and Programme of Action, consistent with the WTO’s mandate, adopted at LDC-III.

We instruct the Sub-Committee for LDCs to design such a work programme and to report on the agreed work programme to the General Council at its first meeting in 2002. We endorse the Integrated Framework for Trade-Related Technical Assistance to LDCs (IF)

as a viable model for LDCs’ trade development. We urge development partners to significantly increase contributions to the IF Trust Fund and WTO extra-budgetary trust funds in favour of LDCs. We urge the core agencies, in coordination with development partners, to explore the enhancement of the IF with a view to addressing the supply-side constraints of LDCs and the extension of the model to all LDCs, following the review of the IF and the appraisal of the ongoing Pilot Scheme in selected LDCs. We request the Director-General, following coordination with heads of the other agencies, to provide an interim report to the General Council in December 2002 and a full report to the Fifth Session of the Ministerial Conference on all issues affecting LDCs.”

General Position of African Countries

The special situation of African LDCs was covered in the Dhaka Declaration adopted by Ministers at the Dhaka (Bangladesh) Conference and endorsed by African Ministers of Trade in Mauritius.

Draft Ministerial Text (JOB (03)/150/Rev.1)

The Draft Ministerial Text stated:

“We welcome the report by the Director-General on issues affecting Least-developed Countries (LDCs). We reaffirm our commitment to effectively integrate LDCs into the multilateral trading system. In this regard, we acknowledge the seriousness of the concerns of the LDCs, as expressed in the Dhaka Declaration, adopted by their Ministers in June 2003. We take note that issues of interest to LDCs are being addressed in all areas of the negotiations. Building upon our commitment in the Doha Declaration we shall continue to expeditiously pursue the objective of duty-free and quota-free market access for products originating from LDCs. We urge members to adopt and implement rules of origin so as to facilitate exports from LDCs. In this regard, we appreciate the improved market access measures adopted by several members.

Furthermore, in accordance with our commitment in the Doha Ministerial Declaration, we shall take additional measures for progressive improvements in market access, both at the border and otherwise. In services, we [shall give priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under Mode 4.] We further commit ourselves to provide effective trade-related technical assistance and capacity building to LDCs on a priority basis in helping to overcome their weak human, institutional and trade-related capacity.

In this regard, we reiterate our endorsement of the Integrated Framework (IF) and agree that it can truly become a viable model for LDCs' trade development if it effectively contributes to reducing supply-side constraints including through mainstreaming trade into their national development and poverty reduction strategies. We welcome the joint communiqué adopted by the six IF core agencies at their Third Heads of Agency meeting and urge them to intensify their assistance in trade-related infrastructure, private sector development and institution building to help countries expand and diversify their export base. We also urge cooperation with other bilateral and multilateral development partners. We request the Director-General to report to our next Session on further developments."

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Least Developed Countries (LDCs) along these lines:

"We welcome the report by the Director-General on issues affecting Least-Developed Countries (LDCs). We reaffirm our commitment to effectively integrate LDCs into the multilateral trading system. In this regard, we

acknowledge the seriousness of the concerns of the LDCs, as expressed in the Dhaka Declaration, adopted by their Ministers in June 2003. We take note that issues of interest to LDCs are being addressed in all areas of the negotiations. Building upon our commitment in the Doha Declaration we shall continue to expeditiously pursue the objective of duty-free and quota-free market access for products originating from LDCs.

We urge members to adopt and implement rules of origin so as to facilitate exports from LDCs. In this regard, we appreciate the improved market access measures adopted by several members. Furthermore, in accordance with our commitment in the Doha Ministerial Declaration, we shall take additional measures for progressive improvements in market access, both at the border and otherwise. In services, we shall give priority to the sectors and modes of supply of export interest to LDCs, particularly in regard to movement of service providers under Mode 4.

We further commit ourselves to provide effective trade-related technical assistance and capacity building to LDCs on a priority basis in helping to overcome their weak human, institutional and trade-related capacity. In this regard, we reiterate our endorsement of the Integrated Framework (IF) and agree that it can truly become a viable model for LDCs' trade development if it effectively contributes to reducing supply-side constraints including through mainstreaming trade into their national development and poverty reduction strategies. We welcome the joint communiqué adopted by the six IF core agencies at their Third Heads of Agency meeting and urge them to intensify their assistance in trade-related infrastructure, private sector development and institution building to help countries expand and diversify their export base. We also urge cooperation with other bilateral and multilateral development partners. We request the Director-General to report to our next Session on further developments."

AU/ACP/LDC Joint Position on Development Issues

On LDCs, the AU/ACP/LDC joint position on development issues (WTO/MIN (03)/W/20) stated that the implementation of the work programme on LDCs and the rejuvenation of the Integrated Framework were two important elements to pursue on the relevant part of the draft text. Moreover, the conflicting mandates of the six core agencies needed to be flagged for prompt action if the objective of the integration of LDCs into the multilateral trading system was to be attained. In this respect, Ministers called for the improvement of the Integrated Framework and closer coordination between the six core agencies. Ministers also reiterated the need to grant bound duty-free market access for LDC products in developed country markets. Ministers also called for the removal of brackets in paragraph 24 of the Draft Ministerial Text.

Small and Island Economies Issues Mandate

Doha Declaration stated:

“We agree to a work programme, under the auspices of the General Council, to examine issues relating to the trade of small economies. The objective of this work is to frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, and not to create a sub-category of WTO members. The General Council shall review the work programme and make recommendations for action to the Fifth Session of the Ministerial Conference.”

State of the Negotiations

The discussions on “small and island economies issues” was mainly undertaken in the Committee

on Trade and Development (CTD). The Chairman reported that the work on this matter had centred on literature review on issues of small and island economies; trade and economic performance; the role of economic size; and measures of economic size. The discussions also centred on the share of global trade as a potential measure for economic size; how economies of scale and transport costs affected small economies’ competitiveness in the global markets; the extent to which economic size affects economies’ openness to trade and the diversification of their export structure; data on volatility in export earnings and volatility in GDP; and vulnerability of such economies to external shocks.

The Chairman reported that issues relating to the trade of small economies had been examined in the dedicated sessions of the Committee on Trade and Development and proposals had been made. However, there was need for further work in order to achieve the mandate of the Doha Ministerial Declaration. The CTD therefore proposed that the General Council recommended to the Fifth Ministerial Conference that Ministers instructed the CTD to continue its work in the dedicated sessions under the overall responsibility of the General Council in accordance with the mandate contained in the Doha Ministerial Declaration.

General Position of African Countries

The Declaration by African Ministers of Trade stated:

“We welcome the adoption the work programme on small economies and request the General Council to use the proposals made by the group of small economies, pursuant to the framework and procedures of the work programme on Small Economies, as the basis for making the recommendations for action at the Fifth

Session of the WTO Ministerial Conference, for the fuller integration of small, vulnerable economies into the MTS. We take note of the WTO Director-General's initiative of establishing "trade policy clinics."

Draft Ministerial Text (JOB (03)/150/Rev.1)

The proposal was for the Ministerial Text to state:

"We reaffirm our commitment to the Work Programme on Small Economies and urge members to adopt specific measures that would facilitate the fuller integration of small, vulnerable economies into the multilateral trading system. We take note of the report of the Committee on Trade and Development in Dedicated Session on the Work Programme on Small Economies to the General Council and the recommendations made therein. We instruct the Committee on Trade and Development, under the overall responsibility of the General Council, to continue the work in the dedicated sessions with the aim of completing it as soon as possible but no later than 1 January 2005. We instruct the General Council to report on progress and action taken, together with any further recommendations as appropriate, to our next Session."

Draft Cancún Ministerial Text (Second Revision) (JOB (03)/150/Rev.2)

In the Second Revised Draft Ministerial Text (JOB (03)/150/Rev.2) issued during the Cancún WTO Ministerial Conference, it was proposed that Ministers adopt a text on Trade Facilitation along these lines:

"We reaffirm our commitment to the Work Programme on Small Economies and urge members to adopt specific measures that would facilitate the fuller integration of small, vulnerable economies into the multilateral trading system. We take note of the report of the Committee on Trade and Development in Dedicated Session on the Work Programme on Small Economies to the General Council and the recommendations made therein.

We instruct the Committee on Trade and Development, under the overall responsibility of the General Council, to continue the work in the dedicated sessions with the aim of completing it as soon as possible but no later than 1 January 2005. We instruct the General Council to report on progress and action taken, together with any further recommendations as appropriate, to our next Session."

AU/ACP/LDC Joint Position on Development Issues

On small economies, the ACP/AU/LDC joint position on Development Issues (WT/MIN (03)/W/20) stated that the Draft Cancún Text, *inter alia*, reaffirmed the commitment on the Work Programme on Small Economies and urged members to adopt measures that would facilitate the fuller integration of small, vulnerable economies into the multilateral trading system. It was also noted that in this regard, Ministers should direct that members adopt substantive, results-oriented trade related measures in favour of small, vulnerable economies no later than 1 January 2005.

Additional Issues Proposed in the Draft Ministerial Text (JOB (03)/150/Rev.1)

The Chairman of the General Council and the Director General of the WTO included additional developmental issues in the Cancún WTO Ministerial Text. These related to Sectoral Initiative on Cotton, Commodity Issues, and Coherence issues.

The Draft Ministerial Text stated:

"We take note of the proposal by Burkina Faso, Benin, Chad and Mali entitled "Poverty Reduction: Sectoral Initiative in Favour of Cotton" and agree that [...].

Furthermore, taking into account the dependence of many developing countries on a few commodities and the problems created by long-term declines and sharp fluctuations in the prices of these commodities, we instruct the Committee on Trade and Development, within its mandate, to continue with its work on this issue in cooperation with other relevant international organizations and report on progress to the General Council before our next Session.

We recognize also that various trade-related aspects of this issue could be addressed in the ongoing negotiations, particularly in the framework of the negotiations on agriculture and non-agricultural market access. We appreciate the efforts that have been made by the Director-General to strengthen the WTO's collaboration with the IMF and the World Bank in the context of our Marrakesh mandate on achieving greater coherence in global economic policy-making. We encourage the Director-General and the General Council to follow-up on the General Council meeting on Coherence that was held in May 2003.

We particularly welcome the statement of support from the Executive Heads of the IMF and the World Bank, contained in their letter to the Director-General of 20 August 2003, to work with the WTO to address problems that some developing-country members may encounter in adjusting to a more liberal trade environment, through preference erosion, loss of tariff revenue, or other factors. We invite the Director-General to report to us at our next Session on initiatives that have been taken in this area.”

Additional Issues Proposed in the Second Revised Draft Ministerial Text

The Chairman of the General Council and the Director General of the WTO included Additional Developmental Issues in the Second Revised Cancún WTO Ministerial Text (JOB (03)/150/Rev.2). These related to Sectoral

Initiative on Cotton, Commodity Issues, and Coherence issues.

“We recognize the importance of cotton for the development of a number of developing countries and understand the need for urgent action to address trade distortions in these markets. Accordingly, we instruct the Chairman of the Trade Negotiations Committee to consult with the Chairpersons of the Negotiating Groups on Agriculture, Non-Agricultural Market Access and Rules to address the impact of the distortions that exist in the trade of cotton, man-made fibres, textiles and clothing to ensure comprehensive consideration of the entirety of the sector. The Director-General is instructed to consult with the relevant international organizations including the Bretton Woods Institutions, the Food and Agriculture Organization and the International Trade Centre to effectively direct existing programmes and resources toward diversification of the economies where cotton accounts for the major share of their GDP. Members pledge to refrain from utilizing their discretion within Annex A, paragraph 1 to avoid making reductions in domestic support for cotton.

Taking into account the dependence of many developing countries on a few commodities and the problems created by long-term declines and sharp fluctuations in the prices of these commodities, we instruct the Committee on Trade and Development, within its mandate, to continue with its work on this issue in cooperation with other relevant international organizations and report on progress to the General Council before our next Session. We recognize also that various trade-related aspects of this issue could be addressed in the ongoing negotiations, particularly in the framework of the negotiations on agriculture and non-agricultural market access.

We appreciate the efforts that have been made by the Director-General to strengthen the WTO's collaboration with the IMF and the World Bank in the context of our Marrakesh mandate on achieving greater coherence

in global economic policy-making. We encourage the Director-General and the General Council to follow up on the General Council meeting on Coherence that was held in May 2003. We emphasize the importance of promoting, without cross-conditionalities or additional conditions, consistent and mutually supportive policies. We note the new trade initiatives announced by the IMF and World Bank at this Session to work with the WTO to address problems that some developing country members may encounter in adjusting to a more liberal trade environment, and we invite the Director-General to report to us at our next Session on initiatives that he is taking in cooperation with the Executive Heads of the IMF and World Bank in this area.”

AU/ACP/LDC Joint Position on Development Issues

On commodity issues, the AU/ACP/LDC Joint Position on Development Issues (WT/MIN(03)/W/20) stated that the long-term decline and fluctuations of the prices of commodities,

and the continued dependence of the AU/ACP/LDC countries on few commodity exports, made it imperative that they pursued an agenda on this subject in the WTO, with a view to finding a lasting solution to this matter, which was at the core of their development problematic. In this regard, Ministers called on the Committee on Trade and Development to continue its work in this area and present recommendations to the General Council by December 2003, with the proposal by Kenya, Uganda and Tanzania as the basis of this work.

Footnote:

- ²¹ These proposals have been agreed to *ad referendum*.
- ²² World Trade Organization: AU/ACP/LDC Joint Position on Development Issues, **WT/MIN(03)/W/20** of 12 September 2003.