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**THE NEW WORLD TRADE ARRANGEMENTS WITH
SPECIAL FOCUS ON POST-LOME PERIOD:
IMPLICATIONS FOR SOUTHERN AFRICA**

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TABLE OF CONTENTS

1.0 INTRODUCTION

2.0 MAIN CHANGES OF THE GLOBAL TRADING SYSTEM UNDER THE WTO AGREEMENT

- 2.1 Binding Nature of Agreements
- 2.2 Detailed Multilateral Agreements on Goods
- 2.3 New Areas
- 2.4 GATT 1994 Obligations

3.0 CHALLENGES FACED BY EASTERN AND SOUTHERN AFRICAN STATES UNDER THE WTO

- 3.1 Capacity of Developing Countries to benefit from world liberalisation
- 3.2 Lack of Human and Financial Resources
- 3.3 Trade Liberalisation
- 3.4 Southern Africa and WTO: Post-Lome
 - 3.4.1 Industrialisation Strategies
 - 3.4.2 Market Access
 - 3.4.3 Electronic Commerce

4.0 ROLE OF THE REGIONAL GROUPS IN SUPPORTING THE MEMBER STATES OPERATE IN THE MULTILATERAL TRADING SYSTEM

- 4.1 Regional Training in WTO Matters

1.0 INTRODUCTION

1. Following the conclusion of the Uruguay Round Negotiations culminating in the Marrakesh Agreement 1994 establishing the World Trade Organisation, the world economy is undergoing complete transformation through globalisation. The Uruguay Round Agreement has brought about a liberalised Multilateral Trading and Investment System opening up trading and investment opportunities across the globe with minimal interventions by governments.

2. The consequences have been to put the African continent in a unique dilemma. The African States hardly participated effectively in the negotiations leading to the current multilateral trading and investment system. Compounding the problem, the business communities of the Member States never participated even at national level in these negotiations. The sub-regional organisations in Eastern and Southern Africa equally have marginal information and knowledge about the agreements, as they too never participated in the negotiations. Yet the Uruguay Round Agreements are profoundly transforming international trade and investment relations and flows which must be taken into account in any development endeavours of African States.

3. It is against this background that the critical areas and issues arising from the Uruguay Round Agreements need to be identified.

2.0 MAIN CHANGES OF THE GLOBAL TRADING SYSTEM UNDER THE WTO AGREEMENT

4. The WTO Agreement is a framework agreement covering various agreements on quite specific matters. The WTO Agreement deals with trade in goods and services, sets a minimum standard for protection of intellectual property, and establishes various regulatory institutions and mechanisms for international trade.

5. Each of those areas is dealt with under a separate agreement in the annexes. Thus, goods fall under the General Agreement on Tariffs and Trade - GATT and various new multilateral agreements negotiated in the Uruguay Round. Services fall under the General Agreement on Services - GATS. Intellectual property is covered by the Agreement on Trade-Related Aspects of Intellectual Property - TRIPS. In addition to the administrative organs set up to run the World Trade Organisation, such as the Councils and the Secretariat, settlement of disputes is covered by the quite elaborate Dispute Settlement Understanding - DSU, and the Trade Policy Review Mechanism is set up to facilitate compliance with the WTO Agreement by promoting transparency in the understanding of members' trade policies and practices.

2.1 Binding Nature of Agreements

6. The first major change to the multilateral trading system is that the separate agreements bind all signatories to the WTO Agreement. This has become known as the principle of **single undertaking**. But the plurilateral agreements were signed separately and bind only those member countries, which signed those specific agreements.

2.2 Detailed Multilateral Agreements on Goods

7. Prior to 1994, all the Trade in Goods were covered by the GATT 1947. The GATT 1947 is a continuous part of the WTO Agreement now known as the GATT 1994. In addition to the GATT 1994, there are twelve multilateral agreements on trade in goods, covering agriculture, sanitary and phytosanitary measures, textiles and clothing, technical barriers, trade-related investment measures - TRIMS, dumping and subsidies, valuation, pre-shipment inspection, rules of origin, licensing procedures and safeguards.

2.3 New Areas

8. The Uruguay Round added trade in services and quite considerable protection for intellectual property rights to the regime regulating trade in goods. The new areas were added at the insistence of developed countries, but the result was shaped by the strained and complicated negotiations that followed. Developing countries initially objected to regulation of these areas within the GATT framework basically on the ground that inclusion would deprive them of the power to act in their best interests. Though the new areas were as a result negotiated separately, they were subsequently incorporated into the WTO Agreement.

9. The primary aim under the GATS is to give service suppliers access to markets that were initially protected, especially through exclusion of stringent regulation of foreign investment. The access to market is given through the principles of MFN treatment, transparency, market access and national treatment. The GATS also details rules and obligations. Under the TRIPS, the primary aim is to set minimum standards for protection of intellectual property rights and eliminate discriminatory treatment against non-nationals, in order to redress forms of infringement perceived by developed countries to be particularly rife in some developing countries.

2.4 GATT 1994 Obligations

10. The GATT 1994 which includes the GATT 1947, 12 Multilateral Agreements and past decisions amending, applying and interpreting GATT also contains primary obligations on the WTO Member States. Those primary obligations include:

- (a) the Most Favoured Nation Treatment, Clause;

- (b) the National Treatment (i.e. non-discrimination) Clause;
- (c) the need to maintain transparency on the part of all Member States. This entails the requirement to publish relevant laws and impartiality in the administration of national authorities;
- (d) the prohibition of quantitative restrictions;
- (e) the non-discriminatory administration of permitted quantitative restrictions;
- (f) the need for notification of restrictive measures taken for balance of payment purposes;
- (g) the need for notification of State Trading Enterprises and a review of State Trading Policies to ensure transparency;
- (h) the need to use the Dispute Settlement System in the event of impairment and nullification of benefits accruing to a member under the Agreement;
- (i) the need for notification of Regional Trade Agreements; and
- (j) entering notifications for compensation in the event of modification of schedules.

11. The twelve Multilateral Agreements also contain specific provisions that place additional rights and obligations on the Member States. Those specific provisions include under the:

- (a) Agreement on Agriculture – the control of the level of trade-distorting support or subsidies in the field of agriculture;
- (b) Agreement on the Sanitary and Phytosanitary Measures (SPM) - the right to take measures for protection of human animal or plant life or health, and not to arbitrarily or unjustifiably discriminate between members;
- (c) Agreement on Textiles and Clothing - the integration of textiles and clothing sector into GATT 1994 (previously Multifibre Agreement (MFA)) over a maximum period of 120 months from January 1, 1995. All States are also required to bring into conformity with GATT 1994 all restrictions not falling under the MFA;
- (d) Agreement on Technical Barriers to Trade - members are to ensure that regulations on technical barriers to trade are not an obstacle to international trade and that the regulations are published promptly;

- (e) Agreement on Trade Related Investment Measures (TRIMS) - members are not to apply an investment measure that breaches the National Treatment principle. Developing countries were expected to eliminate TRIMS within 5 years and Least Developed Countries (LDCs) within 7 years. While the periods for eliminating TRIMS can be extended by the Committee on Trade in Goods for developing and LDCs, the onus to apply for such an extension lies with the Member States; and
- (f) Agreement on Rules of Origin - which requires the Member States to maintain certain principles and disciplines before and after the completion of the harmonisation of rules of origin.

12. All the WTO Agreements also include the need to maintain transparency through provision of information on all measures (NOTIFICATIONS) and the setting up of national enquiry points on many of the trade aspects.

13. In addition, each Agreement contains a built-in agenda for future negotiations. Under the Agreement on Agriculture, work is to be carried out towards the development of international disciplines on **export** credits and export credit guarantees. Under the Agreement on the Sanitary and Phytosanitary Measures (SPM), work is to be carried out towards harmonisation of the measures by basing the measures on international standards, guidelines or recommendations. Under the General Agreement on Trade in Services, members are to periodically enter rounds of negotiations for progressive liberalisation.

3.0 CHALLENGES FACED BY AFRICAN STATES UNDER THE WTO

14. The major challenges faced by African States in the understanding and implementation of the WTO Agreement relate to two basic problems obtaining in developing States.

3.1 Capacity of Developing Countries to benefit from world liberalisation

15. Firstly, the developing countries contribute less than 1% of world trade. The major contribution of that trade is mainly composed of raw materials. Unfortunately, growth sectors, such as manufacturing contribute negligibly to their exports. As such developing countries cannot benefit from the liberalisation of world trade made possible through the Uruguay Round Agreements.

16. The capacity of developing countries to benefit from the liberalised multilateral trading system is limited by their heavy dependence on the export of raw materials and the lack of capacity to produce competitive manufactured goods. In order for developing countries to produce competitive goods, there is need for an improvement in their foreign direct investment flows.

17. The developing countries have also been slow in accessing markets of developed countries due to the absence of vibrant private sector.

3.2 Lack of Human and Financial Resources

18. Secondly, the developing countries lack both human and financial resources to execute their commitments made under the WTO. The complexity of the WTO regime requires adequate allocation of human and financial resources.

19. Most of the developing countries face serious difficulties in implementing the complex provisions of the WTO. These difficulties include:

- (a) compliance with the voluminous NOTIFICATION requirements due to the enormous work involved which far exceeds national institutional capacities.
- (b) attempting to fulfill the wide range of WTO obligations entails the difficult exercise of introducing appropriate national legislation. Most developing States are unable to achieve this objective due to lack of institutional, manpower and financial capacity.
- (c) the notification periods are too short for developing countries, thereby putting undue pressure on the already overstrained administrative and technical resources of developing countries.
- (d) developing countries have not obtained the technical assistance envisaged under the Agreement on Customs Valuation and yet they are also required to adopt the measures required by the year 2000.
- (e) developing countries require financial and technical assistance to implement the complex and far-reaching provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPs). Otherwise, their lack of compliance, whether in full or in part, could bar them from access to technology or new plant varieties, endanger their traditional practices or lose some of their traditional practices, genetic names, geographic indications and other property rights to sophisticated multinationals.

3.3 Trade Liberalisation

20. Developing countries are also unable to benefit from the whole process of trade liberalisation due to other pre-existing problems faced by their economies, such as:

- (a) the limited capacity to increase export of finished and semi-finished goods with a crippling debt burden and structural problems.

- (b) the tendency for developed countries to place obstacles and barriers of all kinds against exports of developing countries. Those barriers include the use of subsidies and the often unwarranted use of sanitary and phytosanitary measures and other barriers, such as technical regulations and standards.
- (c) the continued existence of quotas on textiles and clothing.
- (d) inspite of the far-reaching trade and macro-economic reforms, developing countries continue to struggle with continued falling production and productivity in its strategic sectors, in particular, agriculture and industry, negative balance of payments and weak export performance.

3.4 Southern Africa and WTO: Post-Lome

3.4.1 Industrialisation Strategies

21. The advent of the World Trade Organisation and the rule-based global trading arrangement has redefined trading and investment regimes in almost all economies of the World. Under the pre-1994 arrangement (GATT 1947), undertakings and obligations were not compulsory and could be subscribed to in a 'piece-meal', selective manner based on the perceived benefits of each agreement or undertaking to a member country. With the **Single Undertaking** principle of the WTO, this is no longer the case.

22. The 4 basic principles of GATT (especially MFN and National Treatment principles) were not strictly observed nor enforced. This was true for a lot of other commitments as well. In addition, very little censure could ensure from non-observance. This '*laxity*' was even greater for least-developed and developing country members of GATT.

23. Under this scenario, countries in Southern Africa, like many other developing countries, could pursue industrialisation strategies of import substitution favouring locally produced as against imported products; export-led development based on a package of incentives, national empowerment policies offering domestic investors and other national entrepreneurs more preferential terms of finance, access to factors of production and concessionary fiscal arrangements than non-nationals.

24. Under the new rule-based regime such strategies and policies are deemed **WTO-unfriendly** and will not be tolerated. And so, even incentives offered under Export Processing Zones, Economic Development Zones or Industrial Zones must come under strict WTO scrutiny to ensure that they are WTO compliant.

25. Under the Lome Convention, African, Caribbean and Pacific (ACP) countries could access relatively cheap investment finance (subsidised credit) at the European Investment Bank (EIB) and technical assistance under the

Centre for the Development of Industry (CDI). Such subsidies and discriminatory technical assistance (against other LDCs) may come under WTO scrutiny and, if found *WTO-unfriendly*, may be ruled **not permissible**.

26. Technology transfer which hitherto could be arranged between just two parties – the patent owner and the transferee or buyer, now has to conform to MFN and transparency principles, which means that the patent owner cannot discriminate, for any reason, between two possible buyers of his technology. At the same time, while TRIMS offer justifiable protection against piracy, technological exposure, familiarisation and experimentation such as industrial site tours occasionally arranged by CDI for ACP entrepreneurs, may be viewed in a less friendly and less co-operative manner.

3.4.2 Market Access

27. One of the key strengths of the Lome Convention has been the non-reciprocal preferential market access terms contained therein for ACP exporters. This market access is deemed discriminatory (against other LDCs) and has been declared WTO-unfriendly. To allow ACP States time to adjust to the new trading regime, the Lome trade preferences were '*allowed*' to continue under a WTO waiver. This waiver expires on 29th February 2000.

28. Southern African countries who are party to the Lome Convention will, therefore, face stiffer competition and, most likely, less preferential market access terms. It is most likely that duty-free imports into the European Union market may be significantly reduced in favour of the less preferential GSP schemes; quotas and fixed producer prices for ACP exports (e.g. for sugar¹ and bananas) to the EU may similarly be discontinued.

29. The offer of increased market access for LDCs ***pledged*** by developed members of WTO under the ***Decision on Measures in Favour of Least-Developed Countries***, the ***Singapore Ministerial Declaration*** adopted at the 1st Ministerial Conference in Singapore in 1996, and the ***Comprehensive and Integrated WTO Plan of Action for the Least-Developed Countries*** also adopted at the 1st Ministerial Conference in Singapore on 13th December, 1996 appear flawed as they are voluntary, non-contractual and can be applied selectively.

30. All 3 pronouncements recognise the special status of Least-Developed Countries and re-affirm the global commitment to take positive action aimed at:-

- a) improving the capacity of LDCs to respond to opportunities offered by the new trading system;

¹ There are meetings and discussions being held between ACP and EU representatives seeking to ensure that the Sugar Protocol continues after February 2000 as it is not entirely dependent on trade preferences under the Lome Convention.

- b) enhancing conditions for investment and providing predictable and favourable market access conditions for LDCs' products;
- c) fostering the expansion and diversification of LDC exports to the markets of all developed countries.

31. The **WTO Plan of Action for the Least-Developed Countries** further emphasises the urgent need for human and institutional capacity building both in the public and private sectors of LDCs. Provisions for market access elaborated in the *Plan of Action* urging developed country members of WTO to explore possibilities of granting duty-free access for exports of Least-Developed Countries currently lack a definitive framework and serious follow up.

32. The **WTO Plan of Action** provides for developed WTO members to extend, unilaterally and on an autonomous basis, market access benefits to least-developed country suppliers. The *Plan of Action* further urges developed WTO members to adopt preferential policies and liberalisation undertakings in order to further facilitate access to their markets for LDC exports.

33. All these are yet to be adopted, implemented and tested in practical terms. It is ironic that while Southern African (and other ACP) countries are headed for reduced market access into the EU, WTO members are making declarations that appear to favour LDCs in word only.

3.4.3 Electronic Commerce

34. The fiscal fragility of Southern African countries cannot be doubted. Their already narrow tax base is shrinking further with economic liberalisation. Trade taxes are one source of revenue. Taxation of imported publications, especially non-educational material, is clearly a source of government revenue.

35. However, the current WTO stand on trade, or the transmission of publications electronically maintains that such trade should remain non-taxable. It is possible for magazines, brochures, pamphlets, journals and the like to be **imported** into a Southern African country electronically and be reproduced in the country without payment of any duty to government.

36. Electronic commerce, in its current form, poses significant revenue implications for developing countries.

4.0 ROLE OF THE REGIONAL GROUPS IN SUPPORTING THE MEMBER STATES OPERATE IN THE MULTILATERAL TRADING SYSTEM

37. The Preamble to the Marrakesh Agreement provides that "there was need to ensure that developing countries, especially the LDCs secure a share in International Trade Commensurate with their needs of economic development".

38. In order for the multilateral agreements to be supportive of the national development policies, mere recognition of their predicament without actual measures being undertaken to address those problems will only serve to increase their marginalisation.

39. Implementation of WTO obligations requires the extension of technical and financial assistance to the developing countries, particularly in fulfilling notification obligations.

40. There is compelling need to address the development dimension in WTO Agreement, in the work of the multilateral trading system as a whole. Developing countries require complementary measures and resources to improve their production and economic infrastructural development, so as to enable their goods compete on the world market. This support should include:

- (a) improvement of the private sector capacity.
- (b) human resources training in trade policy.
- (c) providing access to market information at affordable prices.
- (d) providing support for the improvement in the diversification of the export base.
- (e) providing assistance in research and development in the utilisation of end-use products of export interest to African countries.

41. The new world trading regime is a reality that Southern African countries must take most seriously and take all necessary steps and measures to build capacity within their public and private sectors to ensure they benefit from, or at least are not disadvantaged by, the new system. They must ensure they participate fully in all crucial deliberations of WTO and its various Committees and sub-committees.

42. Southern African countries (like other LDCs) must begin, now, to prepare in earnest for the much heralded *millennium round* of negotiations.

43. African countries need to combine their efforts through **regional bodies** to negotiate under the multilateral trading system. Through regional bodies, African countries shall be able to pool their human and financial resources to identify their interests under the WTO arrangements – and negotiate technical and financial assistance in various areas, such as market access.

4.1 Regional Training in WTO Matters

44. As a first step, the Common Market for Eastern and Southern Africa (COMESA) is organising regional seminars and workshops on WTO and its various agreements and provisions for the private and public sectors of its member States.

45. COMESA has sourced extra-budgetary funding for this training activity which is scheduled to commence in December 1998 in Lusaka to be followed by similar workshops in other capitals in the region. This training is complementary to training programmes currently being undertaken at national level by individual countries or groups of countries with assistance from such agencies as UNCTAD, the WTO secretariat, ITC and the Commission of the European Union.

46. COMESA would like to urge public and private sector practitioners in Southern and Eastern African countries to take full advantage of these and other training opportunities to ensure that they get fully acquainted and are fully conversant with the intricacies of the new world trading regime and are abreast with developments at WTO.