

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

# **DEVELOPMENTS AND ISSUES IN THE DOHA WORK PROGRAMME**

**OF PRIORITY INTEREST TO AFRICAN COUNTRIES,  
PARTICULARLY LDCs**

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## **EXECUTIVE SUMMARY**

This report was prepared for the AU Conference of Ministers of Trade: the Third Ordinary Session, 5-9 June 2005, Cairo, Egypt. The report reviews developments in multilateral trade negotiations under the WTO Doha Work Programme since the eleventh session of UNCTAD (UNCTAD XI), from 13 to 18 June 2004 (São Paulo, Brazil), and particularly since the WTO General Council Decision of 1 August 2004. It examines issues of interest to African countries in their preparation for the Sixth WTO Ministerial Conference, from 13 to 18 December 2005, in Hong Kong (China). The Doha negotiations need to deliver “a fair deal for Africa” if they are to realize the development promises made at the Doha Ministerial Conference and contribute to achieving the Millennium Development goals.

UNCTAD has provided valuable support to African and other developing countries during its 40 years of existence. The Spirit of São Paulo, as well as the São Paulo Consensus (SPC), two major outcomes of UNCTAD XI, further enhanced UNCTAD’s mandate on the integrated treatment of trade and development and its role in the implementation of the MDGs. UNCTAD will continue to support Africa in its efforts to ensure development gains from the international trading system and trade negotiations through the three pillars of its work, namely intergovernmental deliberations and consensus-building, research and analysis, and technical cooperation and capacity-building.

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## **I. A FAIR DEAL FOR AFRICA**

1. The Doha negotiations have been taking place against the backdrop of trade's increasing role in, and contribution to, economic growth and development. The world's average trade-to-GDP ratio increased from about 40 per cent in 1990 to 60 percent in 2003. The increased prominence of developing countries' participation in international trade has given rise to a new geography of world trade. In 2003, the world's merchandise exports reached \$7.4 trillion and those of developing countries \$2.4 trillion. Developing countries' share in world merchandise exports increased from 24 per cent in 1990 to 32 per cent in 2003 owing to a robust export growth at an annual average rate of 8.1 percent during the period, and contributed substantially to the steady expansion of world trade (5.9 per cent annually). As regards trade in services, world exports in commercial services amounted to \$1.8 trillion in 2003, while developing countries exports were worth \$406 billion. The share of developing countries in world commercial services trade also increased from 18 per cent in 1990 to 21.8 percent in 2003. The major markets for developing countries' exports continue to be developed countries, which account for some 60 per cent of total developing country exports. Significantly, in 2003, for the first time ever, the United States imported more goods from developing countries than from developed countries. At the same time, the importance of South-South trade has increased steadily and substantially to account for some 40 per cent of total developing country exports and some 13 per cent of total world exports. Thus, developing countries in general have a large stake in international trade and trade negotiations.

2. However, Africa's continued marginalization in the international trade constitutes another facet of the context in which Doha negotiations take place. The expansion of many developing countries' trade and economic growth contrasts sharply with difficulties faced by African countries in integrating themselves beneficially into world trade in goods and services and into the global economy. While Africa recorded real annual growth of 4.6 per cent in 2004, the highest almost in a decade, this falls short of the 7 per cent per annum growth rate necessary for attaining the MDGs. The target growth rate was met only by six countries in 2004, namely Chad (39.4 per cent), Equatorial Guinea (18.3 per cent), Liberia (15.0 per cent), Ethiopia (11.6 per cent), Angola (11.5 per cent) and Mozambique (8.3 per cent). Africa's merchandise exports stood at \$174 billion in 2003, accounting for a modest share 2.3 per cent of world exports. This share represented a decline from 3.1 per cent in 1990 as a result of a slower pace of export growth during the same period. The situation is no more promising in trade in services. Africa's share in the world's commercial services exports declined from 2.5 per cent in 1990 to 2.1 percent in 2003, while the service economy has become a driving force of economic growth, competitiveness and development in other developing countries. For Africa, services represent an important avenue for diversification from commodity dependence. A successful conclusion of the Doha negotiations with development content should substantially contribute to reversing this adverse trend of continued marginalization of Africa in world trade in goods and services.

3. The Doha negotiations will enter this year a stage that will be crucial for their successful, timely and development-oriented conclusion. There is an evolving international consensus that the Doha round should be concluded no later than the end of 2006, particularly in view of the scheduled expiry of the US trade promotion authority in 2007, but also to contribute to the timely implementation of the MDGs. The Hong Kong WTO Ministerial Conference (MC) is expected to take key decisions on full modalities on agriculture and NAMA and on other issues in the Doha Work Programme (DWP). This requires that

technical work be advanced substantially by the first half of 2005, most notably with completion of “approximation” of full modalities in agriculture and NAMA by the end of July 2005. Although African countries have been actively participating in negotiations by submitting technically sound proposals and influencing negotiations, there is a need to further enhance their engagement in the negotiations at this critical moment so as to enable them to realize their essential economic and developmental interests in the negotiations and to ensure the achievement of the MDGs.

4. This year also stands at a crucial crossroads in the international effort to promote development and combat poverty through timely implementation of the MDGs. By resolution 58/291 of 6 May 2004, the General Assembly of the United Nations decided to convene in New York in September 2005 a high-level plenary meeting at the level of Heads of State and Government to review comprehensively the implementation of the UN Millennium Declaration in the last five years. It will provide the international community and Africa with a unique opportunity to give new political impetus to the pursuit of an open, equitable, rule-based, predictable and non-discriminatory multilateral trading system, as stipulated in the Millennium Declaration and Goal 8 of the MDGs. The UN Secretary-General’s report, *In Larger Freedom: Towards Development, Security and Human rights for all*, as well as the United Nations Millennium Development Project report (*Investing in Development: Practical Plan to Achieve the Millennium Development Goals*), recommended specifically that “the Doha round of multilateral trade negotiations should fulfil its development promise and be completed no later than 2006.” Both reports also advocated that special attention be given to addressing the unique and serious development challenges facing Africa. Indeed, improved and expanded trade of developing countries can substantially bridge the financing gap for the timely implementation of MDGs and the follow-up to the Monterrey Consensus. According to UNCTAD estimates, the liberalization of trade in goods and services of interest to developing countries can generate an additional financial flow in the order of \$310 billion. The recent initiative by the United Kingdom to reach an agreement at the G8 Summit to double aid for Africa from US\$ 25 billion to US\$ 50 billion a year has been a welcome development in this respect.

5. Accordingly, the time is ripe for a “fair deal for Africa” that enhances its production and trade capacity and competitiveness, provides it with effective and favourable market access, secures it genuine market entry opportunities, and responds to its specific trade and development concerns. *Our Common Interest*, the report by the African Commission, an initiative of Prime Minister Tony Blair of the United Kingdom, recommended a concrete “coherent package” to make serious inroads into alleviating poverty and Africa’s continued marginalization (see box 1). Africa needs a genuine “development round” and a development-oriented sustainable and dynamic trading system. To this end, a course correction is required from a mercantilist approach to trade negotiations to an approach based on MDGs and the São Paulo Consensus (SPC), emphasizing fairness, equity and development solidarity. The following could form the basis for a fair deal for Africa:

- (a) Eliminating immediately market access and entry barriers for products and services of export interest to Africa, including agricultural products, labour-intensive manufactures and Mode 4 supply of services;
- (b) Eliminating export subsidies and all trade-distorting support to agriculture by 2010, as proposed by the African Commission;
- (c) Eliminating immediately trade-distorting support to cotton;

- (d) Extending immediately bound duty-free and quota-free market access for all products to all LDCs with simple, flexible and realistic rules of origin;
- (e) Providing operationally effective special and differential treatment (SDT) in all areas of negotiations and agreements, while taking into account specific trade and development needs and concerns of African and other developing countries, including food security, rural development, NFIDCs and LDCs, de-industrialization and revenue loss, preference erosion, access to essential services and essential drugs, access to technology and, more broadly, poverty alleviation. Any WTO agreement should integrate a binding commitment on a “development and capacity-building package”;
- (f) Addressing adequately the adverse impacts of preference erosion and over-dependence on commodities;
- (g) Preserving legitimate policy space for African countries to pursue policies suited to their specific trade and development needs;
- (h) “An aid for trade fund” for Africa and LDCs, as proposed by the African Commission and the UN Millennium Project report, to address challenges facing African countries in undertaking adjustment consequent upon trade liberalization.

**Box 1. Some recommendations of the African Commission**

**Building the capacity to trade**

- Support Africa to achieve greater economic efficiency through regional integration and trade facilitation at both the regional and national levels.
- Integrate trade facilitation into their national development strategies and urgently reduce non-tariff trade barriers by undertaking reforms in air and sea transport, customs administration, and improving governance
- Follow up on commitments to supporting trade facilitation made in the 2004 WTO July Framework Agreement.
- The Integrated Framework should continue to be supported and expanded to all African low-income countries.
- Improve the economic environment for farmers and firms, backed by major investments of aid from developed countries. Funding for infrastructure should, in part, be spent on improving African transport and communications.

**Ambitions for Doha**

- Make development under Doha negotiations urgent and an absolute priority for the achievement of MDGs.
- Agree at the Hong Kong MC to immediately eliminate trade-distorting support to cotton and sugar, and commit to end export subsidies and all trade-distorting support to agriculture by 2010;
- Agree at the end of the Doha negotiations to progressively eliminate all tariffs by 2015 and reduce NTBs;
- Agree that developed countries do not invoke exemptions for “sensitive products”;
- Reduce tariffs in higher income developing countries;
- Conclude the Doha talks no later than the end of 2006;
- Reduce reciprocal demand in WTO and EPA negotiations to a minimum and allow for appropriate timeframes, up to 20 years or more if necessary. A review of Article XXIV of the GATT may be useful in support of this;
- Make SDT work better by making legal recourse to disputes conditional on applying a “development test”;
- Prioritise development under EPAs through up-front commitment to EBA for all sub-Saharan Africa and reform rules of origin;
- Apply a development test when designing product standards, to assess impacts and minimise barriers they may create, and should provide resources to help Africa meet them;
- Shift the resources allocated to OECD agricultural protection (US\$ 350 billion) away from waste and into rural development and environmental investments;

**Making preference work for Africa**

- Immediately extend bound quota and duty-free access to all exports from low-income sub-Saharan African countries, and simplify and relax rules of origin to include allowance for “global cumulation” and a minimum value added of 10 per cent in the country of origin for all products;

## **II. OVERVIEW OF DEVELOPMENTS SINCE AUGUST 2004 IN THE DOHA WORK PROGRAMME**

6. The setback at the Fifth WTO Ministerial Conference caused uncertainty about the prospects of the Doha negotiations and the viability of the MTS itself. It was in this rather pessimistic context that the agreement was reached on 1 August 2004 by the WTO General Council on a Decision on frameworks (“the July Package”) for further negotiations.<sup>1</sup> The July Package reaffirmed first and foremost the value of multilateralism, re-established the viability of the DWP, reconfirmed the centrality of development concerns, and recommitted WTO Members to fulfilling the development dimension of the DWP. It also reconfirmed SDT as an integral part of WTO Agreements. It helped reduce uncertainty in the MTS, and calmed protectionist fears.

7. The Decision was a culmination of complex and difficult negotiation processes, involving intensive consultations in Geneva, capitals and elsewhere and critical trade-offs among trading partners, including issue- and concern-based coalitions and groupings (G20<sup>2</sup>, G10<sup>3</sup>, G33<sup>4</sup>, G90<sup>5</sup> and Five Interested Parties (FIPs)<sup>6</sup>). The strengthened coalitions of developing countries have been successful in focusing the Doha negotiations on the core trade agenda and in advancing their specific development concerns. As the first major intergovernmental conference held after the Fifth WTO Ministerial Conference, UNCTAD XI and the SPC instilled a constructive spirit and confidence among Governments, which created a positive atmosphere for WTO negotiations, leading to the July Package.

8. The July Package sets out the framework, structure and direction for future negotiations in four core areas, namely agriculture and cotton, non-agricultural market access (NAMA), services and development issues. It reaffirmed the importance of longstanding trade preferences and of addressing the issue of preference erosion and of cotton. By explicit consensus, the July Package mandates negotiations on trade facilitation. The Decision provided a more flexible and realistic approach to the time frame for the conclusion of the DWP negotiations by extending the deadline for negotiations beyond 1 January 2005 and at least until the sixth session of the WTO Ministerial Conference. It also set out new time lines for some aspects of the Work Programme, including SDT review (July 2005), implementation-related issues and concerns (July 2005) and services (May 2005 for submission of revised offers). No timelines were set for agriculture and NAMA. It was

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<sup>1</sup> General Council Decision of 1 August 2004 (WT/L/579, 2 August 2004).

<sup>2</sup> Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Guatemala, India, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Venezuela.

<sup>3</sup> Bulgaria, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Republic of Korea Switzerland, Taiwan Province of China.

<sup>4</sup> Antigua and Barbuda, Barbados, Belize, Botswana, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, Indonesia, Jamaica, Kenya, Korea, Mauritius, Mongolia, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe, United Republic of Tanzania.

<sup>5</sup> G90 essentially comprises ACP States, Africa and LDCs.

<sup>6</sup> Australia, Brazil, EC, India and the United States



significant that the Decision explicitly dropped the three Singapore issues<sup>7</sup> from the DWP by providing that “no new work towards negotiations” would be undertaken during the Doha Round and that they would not form part of the single undertaking. In a related development, the deadline for the amendment of the TRIPS Agreement in accordance with the August 2003 Decision was extended to March 2005.

9. However, a number of important issues and key parameters still needed to be resolved from the perspective of African and other developing countries before and in the course of negotiations. This was the view shared by a large number of countries in a comprehensive debate that took place at the fifty-first session of the Trade and Development Board of UNCTAD in October 2004. UNCTAD member States recognized that the August 2004 Decision marked the beginning of a new and difficult stage of negotiations that will be more technical and politically challenging, and agreed on the need to maintain and reinvigorate the momentum for negotiations regained in the immediate process leading to the July Package. They emphasized that a major challenge facing WTO Members in the new phase of negotiations was to deliver, through substantive negotiations, the Doha mandate to place the needs and interests of developing countries at the heart of the Work Programme.

10. The post-July Package negotiations have focused on technical specifics and parameters that were left out of, or not clearly defined in, the Frameworks on agriculture and NAMA. Services negotiations continued on the basis of the request and offer process. Negotiations were launched on trade facilitation. The Sub-Committee on Cotton was established under the auspices of the Special Session of the Committee on Agriculture. Political impetus was given to the negotiations by a series of mini-ministerial meetings, including in Davos (23 January 2005), Kenya (2 – 4 March 2005) and Paris (3 – 4 May 2005). Another mini-ministerial is planned in China (June/July). Ministerial preparatory meetings of developing countries include the South Summit (12 – 16 June 2005), the AU Conference of Ministers of Trade (5 – 9 June) (see box 2), Ministerial meeting of LDCs (25 – 26 June 2005, Livingstone, Zambia) and the ministerial meeting of the ACP Group of States (2005). Recently, in Paris, agreement emerged with regard to a contentious issue in agriculture negotiations regarding the methodology for converting non-ad valorem duties into ad valorem equivalents (AVEs). It is expected that this methodology will be agreed by WTO Members at the special session of the Committee on Agriculture in the first week of June 2005. This will open the way to substantive discussions on the market access formula. The immediate objective of negotiations has been to reach by July 2005 an agreement on a first approximation of full modalities on agriculture and NAMA and on any other meaningful package for Africa and other developing countries. It is likely that the July approximation will be mainly a stock taking in all areas of negotiations and a progress report, a listing of key issues and the roadmap to the Ministerial Conference in Hong Kong (China).

**Box 2:**  
**LDC-related provisions of the Cairo Declaration and road map on the Doha work programme of the African Union (9 June 2005)**

LDCs

- Exemption from undertaking any reduction commitments;
- A moratorium by developed countries on contingency measures that include anti-dumping actions against African LDC exports;

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<sup>7</sup> The other three Singapore issues included trade and investment, trade and competition, and transparency in government procurement.

- Enhanced support towards improving the export competitiveness of LDCs including capacity to meet SPS and other standards;
- Demand driven trade-related technical assistance in all areas of the DWP negotiations with appropriate provisions for implementation and adjustment support;

#### Technical cooperation

- Fully support the call for increased aid for trade proposed by the Commission for Africa. Call on development partners to adequately finance technical assistance programmes through the existing delivery mechanisms especially the Integrated Framework, the JITAP and other complementary mechanisms.

#### Accession

- Call upon all WTO Members to facilitate and accelerate the accession of African countries to the WTO;
- Call upon development partners to intensify the provision of technical assistance and capacity building support to acceding African countries at all stages of the accession process;
- Underscore the urgent need to effectively implement the accession guidelines for LDCs adopted by the General Council in December 2002;
- Stress that acceding countries must neither be compelled to negotiate concessions going beyond generally accepted rules within the institutions nor subscribe to some exigencies about the clauses still under discussion within the framework of the Doha Round.

11. To date, there has been no notable substantive progress in the negotiations. There is thus a need to further re-energize the negotiating process and for a new political momentum on the part of all, especially the developed trading partners, to take ambitious steps forward in delivering on the development contents of the Doha agenda. There is also a need to achieve balance and parallelism within and across negotiating issues while keeping in mind that agriculture is the key. African countries need to identify specific pre-commitments and down payments, as well as the type and level of flexibilities, contained in the frameworks,<sup>8</sup> along with the balance thereof in the overall negotiations, and their implications for the direction of future negotiations.

12. The increased complexities of the international trading system, with the expansion, proliferation and deepening of RTAs and bilateral trade agreements, affect trade negotiations. A positive interface and coherence between multilateralism and regionalism is required in order to ensure that RTAs are building blocks for the multilateral trading system and contribute to the development of developing countries. This is particularly the case with sub-Saharan African countries that are engaged in ACP–EU negotiations for economic partnership agreements (EPAs). Concern has been expressed that the WTO as a negotiating forum might be bypassed by regional trade negotiations, most notably by North–South agreements under which developing countries have less bargaining power. Such prospects highlight the need for a stronger, more viable multilateral trading system, as well as for a successful and development-oriented conclusion of the DWP. The DWP negotiations may also be influenced by WTO disputes, as is the case with agriculture as well as systemic issues, and by the situation on the ground in different countries and international markets. The resurgence of protectionist tendencies in some key markets, as well as other new developments such as a surge in imports of textiles and clothing from China in major markets consequent upon the historic termination of the quota system and increased outsourcing of services, will continue to influence negotiating processes, especially in areas of importance to developing countries.

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<sup>8</sup> Such pre-commitments include, for instance, an agreement to initiate negotiations on trade facilitation a commitment to eliminate export subsidies by a specific date and a commitment to reduce trade-distorting domestic support by 20 per cent in the first year of the implementation period.

### III. SPECIFIC AREAS OF NEGOTIATION

#### A. Agriculture

##### *Background*

13. Agriculture remains the most important sector in most African and other developing countries. On average, 38 per cent of employment in developing countries and 71 per cent in LDCs is in agriculture. Trade in agricultural goods often accounts for more than 50 per cent of developing country exports. Agriculture is particularly important for the world's poor, since a disproportionately large share of the poor live in rural areas in developing countries and engage in subsistence agriculture. This is particularly true for African countries. The agricultural sector is also the most heavily distorted. Support and subsidies given to the agricultural sector in OECD countries, including market price support, income subsidies and protection through import tariffs, total some \$300 billion per annum. It is estimated that developing countries could gain over \$43 billion annually in economic welfare from the complete removal of trade barriers in the agriculture and food sector.<sup>9</sup> Producers and exporters in developing countries would be better off as a result of rising agricultural commodity prices and fairer competition. Hence, the importance of seeking genuine market access and reform of agricultural trade. However, some developing countries, including many African countries, may find their current trade preferences eroded and net food importers and LDCs could face higher food bills.

##### **Box 3. São Paulo Consensus on agriculture**

The SPC stresses the importance of agriculture as a central element of the Doha negotiations. It also highlights the fact that efforts should be intensified to achieve the agreed objectives of the Doha mandate in its three pillars, namely 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. The negotiations should deliver an outcome that is consistent with the ambition set out in the Doha mandate. SDT for developing countries should be an integral part of all elements of the negotiations and should take fully into account special development needs of developing countries, including food security and rural development. Non-trade concerns will be taken into account. The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries (NFIDCs) should be implemented effectively.

##### *Framework for modalities on negotiations on agriculture*

14. The Framework for Establishing Modalities in Agriculture (Annex A of July Package) sets out roadmaps and key benchmarks for the conduct of agricultural negotiations in its three pillars. Details of formulas, targets, criteria and implementation periods are not specified, with wide scope and flexibility thus being left for future negotiations. It reiterates that SDT should be an integral part of all elements of the negotiations, and introduces several new concepts. The peace clause was not renewed.

15. On domestic support, the Framework provides for substantial reductions in all trade-distorting support, namely the bound total AMS (aggregate measurement of support, or amber box support, e.g. market price support), *de minimis* support and the blue box support. The reduction of the total AMS would be based on a tiered approach (the details of which are to be negotiated), targeting *inter alia* greater reductions by countries with higher support.

<sup>9</sup> Anderson, K, "Agriculture, trade reform and poverty reduction: Implications for sub-Saharan Africa", UNCTAD Policy Issues in International Trade and Commodities Study Series, No. 22, Geneva, 2003.

Product-specific AMS would be capped at an agreed level. Reductions in *de minimis* support will be negotiated taking into account the SDT principle. The blue box payments definition may be broadened to encompass direct payments unrelated to current production if no production is required in addition to direct payments that are tied to programmes that limit production. Such new blue box payments, used essentially by a group of developed countries, would be capped at 5 per cent of the total value of agricultural production in a period to be determined. The criteria will be reviewed to ensure that new blue box payments are less trade-distorting than AMS measures

16. There is concern as to whether the provisions regarding trade-distorting support will effectively lead to a substantial progressive reduction of these measures, since reductions would be from bound levels, which are often higher than the current support, and a broader range of support measures could be shifted into the new blue box (or to the green box). Furthermore, some flexibility would be given regarding the blue box cap. Many developing countries originally called for the elimination of the blue box. Green box support would not be capped as initially demanded by developing countries. The criteria would be reviewed and clarified. The extent to which domestic support would be reduced and criteria tightened to minimize trade distortions are key issues for the outcome of the negotiations. There are concerns that the Framework provides considerable flexibility for subsidy-providing developed countries.

17. In terms of SDT, developing countries would make lower reductions for all forms of trade-distorting domestic support over longer implementation periods. Those developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers would be exempted from *de minimis* reductions. Developing countries would also continue to have access to domestic support for development under Article 6.2 of the Agreement on Agriculture, which provides that similar support measures are already exempted from reductions.

18. As regards export competition, the commitment to eliminate export subsidies by a specific date is considered a major achievement of the Framework. The specific date for elimination, as well as specific modalities for doing so, is left for negotiations. The Framework provides for a parallel elimination of all elements of export subsidization, including scheduled export subsidies and distorting elements in export credits, State Trading Enterprises (STEs) and food aid. The elimination of export subsidies, with early elimination for products of specific interest to developing countries, was a major demand by agricultural exporters and developing countries. There is concern that the parallel elimination approach would result in continuation of direct export subsidies beyond the previously expected time frame. Some developing countries are concerned about the parallelism with regards to their STEs, which they consider to be conducive to development. Special export subsidy provisions that gave developing countries more flexibility would also end after a reasonable period. New disciplines for food aid would be agreed in order to prevent surplus disposal. Developing countries benefiting from emergency or non-emergency food aid have expressed concern over the possible negative impact on the availability of food aid.

19. With regard to market access, the Framework provides for a single-tiered approach with deeper cuts in higher tariffs. All Members except LDCs, which are exempt from reduction commitments, would contribute to tariff cuts, taking into account “proportionality”, that is, a lesser level of reduction commitments from developing countries. Whether the approach effectively reduces tariff peaks and tariff escalation in developed country markets will depend on the specific tariff reduction formula to be agreed. The

elaboration of a formula that would take into account the different tariff structures of developed and developing countries will be a major challenge for negotiations. The new concept of sensitive products allows both developed and developing countries to continue protection of the appropriate number of products provided that an improvement in market access for each product is achieved through combinations of tariff rate quota (TRQ) commitments and tariff reductions. It may be the case that many products where developing countries have a comparative advantage would be designated as sensitive by developed countries and hence market access hampered. Developing countries call for a very limited number of sensitive products for developed countries. Given developing countries' limited capacities to use export and domestic support measures, SDT is particularly important in the area of market access. Developing countries would be subject to a lower level of liberalization, in particular for designated "special products" whose selection would be based on criteria of food and livelihood security and rural development. A number of developing countries called for sufficient flexibility in their selection of special products in order to meet their different needs. A special safeguard mechanism (SSM) for exclusive use by developing countries will be established under conditions to be determined, while the continuation of the existing special agricultural safeguard (SSG) for use by developed countries remains under negotiation. Developing countries had demanded the elimination of the latter.

20. As regards LDCs, the Framework encourages developed countries, and developing countries in a position to do so, to provide duty-free and quota-free market access to LDC products. Binding general commitments and including additional elements, such as flexibility in the application of the rules of origin, would improve the effectiveness of this provision. The treatment of non-tariff barriers (NTB) is not addressed in the Framework and remains to be tackled in agriculture negotiations. Developing countries have attached importance to addressing NTBs, including SPS standards, because their incidence has been increasingly felt as tariffs are lowered, thereby affecting their market entry conditions.

#### *Developments since August 2004*

21. Negotiations since August 2004 have focused on technical issues arising from the agricultural framework (see box 4 below). Some countries called for an early harvest on cotton, including by the time of the Hong Kong MC. The objective of the post-July Package negotiations has been to undertake a first approximation for full modalities before the summer break in August, so as to finalize the full modalities by the time of the Hong Kong MC. Negotiations have been organized according to a three stage process, comprising the first stage of first reading on issues under the agricultural framework, the second stage of open technical discussion and the third stage of "expert meeting" where participation is limited by the invitation by the Chairman of the CoA.

#### *Market access*

22. Progress in substantive negotiations has not been dramatic owing to the complexity of the technical questions involved, particularly on the market access pillar, including the "gateway issues" of converting non-ad valorem tariffs into ad valorem equivalents (AVEs). The issue emerged as a crucial one since it determines the level of the base rate to which tiered-formula cut will be applied for those products subject to non-ad valorem duties. Discussion of other key issues such as the formula for tariff cuts was delayed pending the resolution of the methodology for calculating AVEs. An interim agreement was reached among participants in the mini-ministerial meeting held in Paris (3–4 May). The agreement consisted in a methodology described in box 4.

23. A preliminary UNCTAD analysis of AVEs applied by the EU shows that, for the majority of products exported by Africa (cocoa, cotton, coffee, tobacco, sugar, tea and mate, and fruit and nuts), the AVE methodology agreed at the Paris mini-ministerial meeting would not affect significantly the allocation of these products to a particular tariff band, although this may not necessarily be the case for some other products.<sup>10</sup> This is either because the EU applies ad valorem tariffs to a number of products, or because for those products for which non-ad valorem tariffs apply, the AVEs calculated using either IDB or UN Comtrade data are similar. The weighted average of IDB and Comtrade unit values applies only to 30 per cent of those tariff lines for which non-ad valorem duties are applied and for which both IDB and Comtrade data are available.<sup>11</sup> This is because 48 per cent of these lines with non-ad valorem tariffs are caught in the first filter, as IDB unit values are more than 40 per cent higher than Comtrade unit values. From these remaining tariff lines, 47 per cent are caught in the second filter, as the absolute difference in AVEs is greater than 20 percentage points. For the final 23 per cent of the tariff lines to which weighted averages of IDB and Comtrade apply, the average IDB AVE is 33 per cent, the average Comtrade AVE is 121 per cent and the weighted average AVE is 65 per cent. Thus, according to the method agreed in Paris, the final AVEs are closer to the lower IDB AVEs. This means that the formula cuts would not be as high as if Comtrade data were chosen. This is remarkable since the weights are higher on the Comtrade data.

#### **Box 4. Methodology for calculating ad valorem equivalents**

As a general rule, WTO Members would use unit values compiled in the WTO Integrated Database (IDB), and not the UN Comtrade database. However, if the difference in calculated AVEs differs significantly between IDB and Comtrade, then AVEs would be calculated using the weighted average of both IDB and UN Comtrade unit values. This is determined through the “40/20 filter”. The weighted average would be used: (1) if the unit value of IDB data is higher than that of UN Comtrade data by more than 40 per cent; and (2) if the absolute difference of resulting AVEs is greater than 20 percentage points. The weight used for each IDB and UN Comtrade would differ according to product category. Products under HS chapters 1 to 16 (which cover mainly primary products) would be assigned a relatively higher weight on Comtrade data (82.5 (Comtrade)/17.5 (IDB)) while a relatively higher weight is assigned on IDB data for products under HS chapters 17–24 (60/40) (which cover mainly processed products). Since the IDB unit values tend to be higher than Comtrade unit values, AVE for a processed product in HS chapters 17–24 (for which greater weight is assigned on IDB unit value) are likely to result in smaller AVEs than those for raw products in HS chapters 1 to 16. This implies that those processed products with smaller AVEs would be subject to a smaller cut according to a tiered formula. The applicable methodology for sugar is yet to be determined, as a difference in views persisted between countries, including those benefiting from preferences and other sugar exporters.

<sup>10</sup> On cocoa, most tariffs in the EU are ad valorem tariffs, e.g. on beans. On cocoa powder (HS 180610) the EU has a specific tariff and according to the applied method, IDB AVEs are taken since the tariffs are not caught in the filter. However, on these products differences between IDB and Comtrade AVEs are significant (e.g. 24 per cent and 43 per cent, respectively). On cotton tariffs are ad valorem tariffs in the EU. On coffee tariffs are ad valorem tariffs except for some preparations or substitutes of coffee and some technical rates that could not be calculated. On tobacco tariffs are non-ad valorem tariffs that are not caught in the filter (and therefore IDB data are used), but the differences between IDB and Comtrade data are very small. On tea and mate tariffs are ad valorem tariffs, except for few preparations of tea which have technical rates. On fruits most tariffs are ad valorem tariffs but on tropical fruits (HS 0805, e.g. oranges) tariffs are non-ad valorem which are not caught in the filter, but where IDB and Comtrade data are very similar (differences in AVEs are much smaller than 20 percentage points). On some processed fruit such as juice or marmalade a weighted average gives the final AVE.

<sup>11</sup> For 167 out of the 1009 tariff lines that have non-ad valorem tariffs, IDB data were either missing or trade values were below \$2500 or technical rates could not be calculated or the products belong to raw or refined sugar for which no unit value has been specified yet.

24. Since the negotiations on the tariff reduction formula were postponed pending the AVE discussions, no progress has been made on the formula. The use of the Harbinson formula or its variants, which is a form of tiered formula, was reportedly suggested in order to simulate tariff reductions. It is yet to be determined how many bands would be chosen, how these bands would be determined and how tariffs inside each band would be reduced. The United States and other countries suggested a Swiss formula, while others expressed their preference for a Uruguay Round formula with different coefficients for different bands. Some Latin American countries argued that the formula and the number of bands should be related, so that, if the number of bands is small, Swiss type formulas should be used.

25. With regard to *sensitive products*, discussions centred on whether a separate formula should apply to these products and how many products may be designated as sensitive products. A similar discussion has taken place with regard to special products, where the major issues pertained to the number and the selection criteria of the products, as well as the extent to which applicable tariffs would be reduced. Eleven Latin American countries have proposed the full liberalization for tropical products. The proponents of the Special Safeguard Mechanism (SSM) have maintained that the SSM should be easier to use than the current general safeguards or the SSG, and that the SSM should be available for all products to be triggered either on a price or a volume basis. Developed countries and some developing Cairns Group members, including Argentina and Brazil, raised concern over the possible risk of the SSM being used in a manner that might affect South–South trade.

26. *Preference erosion.* The African Group and other country groups (LDCs, ACP, CARICOM) have stressed the importance of adequately addressing preference erosion. While recognizing that preference erosion would be inevitable and that the matter should be addressed through a transitional mechanism, the African Group and other countries called for the issue to be addressed in agricultural negotiations. The issue has been controversial, with some Latin American countries and others proposing that addressing preference erosion should not impede liberalization on an MFN basis. The G-20 has suggested a comprehensive approach, including providing these countries with more time and assistance to cope with adjustments. This approach, in the long term, is important – namely, seeking genuine market liberalization in the highly distorted agricultural market and adjustment-type support to deal with revenue and preference impact.

27. *TRQ administration.* The recent draft text on tariff rate quota (TRQ) by the Chair of the Committee on Agriculture suggests that the discussion be based on the Harbinson text. The proposed disciplines aim at rendering market access opportunities under TRQ commitments effectively available to exporters so as to increase quota fill rates. For example, it has been proposed that quotas should not be limited to particular seasons unless specifically so described in schedules. Questions are raised as to whether imports under preferential trade agreements could be counted as quota imports; whether quotas should be non-discriminatory; and whether future disciplines should only apply to new and expanded TRQ or on existing quotas.

#### *Domestic support*

28. Little progress has been made on domestic support. On the agreed overall reduction of trade distorting support (amber box, blue box and *de minimis*), some countries proposed that discussion be deferred until a clearer picture emerges on the treatment of each support measure. Regarding amber box support, two to four tiers have been proposed for the formula. Different approaches for the classification, based on the absolute size or the relative size of

the agricultural sector, were discussed. Developing countries will probably be provided with SDT or placed in a fourth tier. On product-specific AMS caps, the issue relating to the base period arose because in recent years there have been large fluctuations in product-specific support.

29. On the blue box support, the G-20 and some developed Cairns Group members have sought stricter disciplines for both the current (production-limiting) and the new (without production restrictions) blue boxes. The G-20 has proposed further to ensure that payments be less trade distorting and that they not shield farmers completely from market forces. Products should not receive both amber and blue box payments, and notification requirements should be strengthened. Discussion also took place on linking the overall reduction level to disciplines on the blue box, so that if the overall reduction is less ambitious, disciplines should be stricter. As regards *de minimis*, most developing countries, particularly G-33, have opposed the proposed reduction in the *de minimis* ceiling level, arguing that developing countries do have the infrastructure to provide other forms of domestic support, such as direct income support, owing to the large number of small farmers in their territories. The EU and the United States, on the other hand, held the view that doing otherwise would affect the delicate balance agreed in the agricultural framework regarding the reduction in the *de minimis* ceiling except for those countries that allocate almost all such support for subsistence and resource poor farmers.

30. On the green box criteria, a real reform was proposed. Proposals have been made, including by the G-20 and Japan, to improve obligations for monitoring and surveillance. The ACP Group emphasized the need for enhanced technical assistance if additional obligations are imposed on notifications.

#### *Export competition*

31. In the area of export competition, negotiations on export credits have become detailed. The draft on further disciplines by the Chairman contained a definition of support measures and proposed provisions disciplining export credit, including in respect of maximum repayment periods. The draft refers as SDT to the Marrakesh Decision on NFIDCs and LDCs. On food aid, negotiations remained general. There is a general understanding that food aid should not cause commercial displacement. What constitutes “genuine food aid” remains to be defined. As to STEs, it is generally agreed that no export subsidies should be provided by STEs. On the elimination of export subsidies, the discussion has centred on how to stage the elimination and what the end date should be. G-20 and some developed Cairns Group members have proposed a front-loading approach whereby cuts would be more drastic in early years and elimination should be completed within five years. Others called for a down payment or equal annual reductions (Norway). The ACP Group has called for the interest of NFIDC to be duly taken into account. The Chairman indicated that this issue might not be included in the first approximation of the modalities.



### **Box 5. Concerns and issues raised by developing countries - Agriculture<sup>12</sup>**

#### *General*

- The final balance, equity and sequencing between and within the three pillars of the agriculture negotiations, as well as within the single undertaking. Credible and expeditious commencement and completion of the implementation of the negotiated commitments.

#### *Domestic support*

- The choice of a reduction formula for the AMS that reduces the currently applied support on a product-specific basis so that substantial reduction is achieved for all products of export interest to developing countries;
- Prohibiting the provision of both amber box and blue box support to the same product;
- Setting stringent criteria for the blue box and the green box to prevent box shifting;
- The implication of *de minimis* cuts by developing countries, and identifying the type of *de minimis* support that qualifies for being given to subsistence and resource-poor farmers.

#### *Export competition*

- A credible date for the elimination of all forms of export subsidies, in particular direct export subsidies;
- Due account given to the role of export credits and STEs used by developing countries in their development strategies, and their appropriate reflection in the SDT provisions;
- Due priority given to putting in place mechanisms (trade, aid and financing mechanisms) to alleviate possible negative impacts on LDCs and NFIDCs.

#### *Market access*

- The choice of a tariff reduction formula that effectively eliminates tariff peaks and tariff escalation in developed countries for products of export interest to developing countries;
- The choice of methodology for calculating AVEs to appropriately address tariff peaks and escalation, as well as market access in the areas of export interest to Africa.
- Restraining the flexibility given to sensitive products of developed countries (product selection, flexibility in tariff cuts and TRQ expansion) so as not to undermine market access opportunities for developing countries. The elimination of special safeguard measures (SSG) for developed countries.
- Ways to link market access improvement to market entry enhancement;
- Appropriate degree of "proportionality" in tariff cuts for developing countries, taking into account the fact that tariffs are the only protection given to their agricultural producers to counter subsidized production and exports of developed countries;
- Design of the SP and the SSM that would allow developing countries sufficient policy flexibility with respect to food security, livelihood security and rural development;
- Address adequately preference erosions.

## **B. Cotton**

### **Box 6. São Paulo Consensus on cotton**

The SPC reaffirmed the importance of addressing fully the problem of the cotton sector at the national level and in the relevant forums at the international level.

32. The Agricultural Framework (para. 4) provided that the cotton issue raised by four West African countries would be “addressed ambitiously, expeditiously and specifically” in the agriculture negotiations. This is in contrast to calls to address cotton as a stand-alone issue outside the agriculture negotiations. The word “specifically” was used in order to ensure that negotiations would focus on cotton. A subcommittee on cotton was established, with its terms of reference adopted in November 2004. Negotiations should encompass all trade-distorting policies affecting the sector, including tariffs, domestic support and export subsidization. Compensation for losses suffered by the West African cotton producers will be considered in

<sup>12</sup> Compiled from various sources, including WTO documents, statements and press reports.

the context of development and financial support programmes. The recent WTO dispute on cotton is likely to have implications for the prospects of an early resolution of the cotton issue. The African Group has called for duty-free and quota-free market access for cotton and its by-products, and the elimination by September 2005 of trade distorting domestic support on cotton, prohibition of box shifting of domestic support and ambitious cotton-specific criteria for green and blue boxes, and the elimination by 1 July 2005 of all forms of cotton export subsidies (see box 6).

**Box 7. The African proposal on elements of modalities on cotton<sup>13</sup>**

- Market access for international trade in cotton shall be improved. LDC cotton producers and net exporters shall enjoy bound duty-free and quota-free access for cotton and its by-products.
- Domestic support measures that distort international trade in cotton shall be eliminated by 21 September 2005.
- Specific disciplines shall be developed to prevent the box-shifting of domestic support.
- Ambitious cotton-specific criteria shall be developed for the measures under the green and blue boxes.
- All forms of cotton export subsidies shall be eliminated by 1 July 2005.
- WTO Members shall notify annually the WTO of their cotton production and export activities and programmes, providing any statistics and figures relating to the implementation of these modalities.
- The WTO Secretariat shall periodically report to Members on the effective implementation by Member countries of the agreed measures, and shall monitor such implementation.
- An emergency support fund for cotton production shall be set up to contain the serious socio economic consequences for the farming communities of the resulting losses of revenue. The General Council, in adopting the first approximation in July 2005, shall recommend to all bilateral and multilateral partners the establishment by December 2005 of such a fund. In December 2005, the General Council shall review the commitments by donors for the financing of the fund and report to the Sixth Ministerial Conference.
- The resources allocated to the fund shall be equivalent to 20 per cent of the value of cotton production for the most favourable of the three most recent years in each of the countries concerned.
- The resources shall decrease in proportion to the pace of elimination of the relevant domestic support measures and subsidies.
- The fund should serve as a safety net and be allocated directly to the cotton producers in a transparent and equitable manner.
- The fund shall be managed by a tripartite commission made up of representatives of the donors, the producers, and the governments.

### **C. Non-agricultural market access (NAMA)**

33. The world's exports of manufactures stood at \$4.4 trillion in 2001, accounting for 75 per cent of the world's exports. Thus, manufactures occupy a substantial share of world merchandise trade. For developing countries, the importance of processed and manufactured goods has increased significantly, with exports standing at some \$1.2 trillion, which represents on average nearly 70 per cent of their exports. Their share in world merchandise exports also increased to about 30 per cent. Although tariffs are relatively low in industrial products compared with other sectors, there are some highly protected sectors where tariff peaks and escalation are prevalent. Tariffs are biased against sectors of export interest to developing countries, and NTBs are frequent and concentrated in such sectors. Reducing or removing the protection could lead to significant gains, including for developing countries, although these would vary as between countries and sectors. Liberalization by developing countries has to be carefully calibrated as they could face the risk of higher adjustment costs,

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<sup>13</sup> TN/AG/SCC/GEN/2.

including the risk of de-industrialization and loss of supply capacity, competitiveness and tariff revenue.

**Box 8. São Paulo Consensus on NAMA**

The SPC called for efforts aimed at extending market access liberalization for non-agricultural products under the DWP to be intensified with the aim of reducing or, as appropriate, eliminating tariffs, including tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Negotiations should take fully into account the special needs and interests of developing countries and LDCs, including through less than full reciprocity in reduction commitments. In addition to difficulties in meeting standards, the other challenges of market entry remained a key concern in developing countries' efforts to enjoy effective market access, and, where appropriate, these should be addressed adequately.

34. The NAMA Framework (Annex B of July Package) on “initial elements” of modalities for further negotiation was based on the so-called Derbez text. Given the concerns expressed by developing countries on the Derbez text, the Decision provided that “additional negotiations are required to reach agreement on the specifics of these elements”. These related to the formula, the issues concerning the treatment of unbound tariffs, the flexibilities for developing country participants, the issue of participation in the sectoral component, and preferences. As regards the approach to tariff reduction, the Framework provided for the continuation of work on a non-linear formula applied from bound rates on a line-by-line basis. The non-linear formula, which requires deeper cuts for higher tariffs, would result in greater tariff cuts for many African and other developing countries because they generally maintain higher bound tariff structures. Such a result would be contrary to the principle of less-than-full reciprocity. For unbound tariff lines, the Framework provided, *inter alia* that the basis for tariff reduction could be a multiple of MFN applied rates.<sup>14</sup> This may have the effect of locking in low rates in developing countries.

35. The Framework provided for a sectoral tariff component, aiming at elimination or harmonization of tariffs, as a key element in NAMA negotiations. It stipulated that participation by all Members in the sectoral initiative would be important. This implied that participation in the sectoral component could be voluntary. However, concern has emerged that participation in the sectoral initiative may be made mandatory. African and other developing countries with relatively low binding coverage were concerned over the proposal to increase the binding coverage up to 100 per cent of tariff lines. Many developing countries and LDCs have already liberalized unilaterally, including under structural adjustment programmes, and their applied rates are often low. Binding those rates close to applied rates may limit their policy space for industrial development purposes.

36. Developing countries would enjoy longer implementation periods and less substantial tariff cuts, while LDCs are exempted from reduction commitments although they are expected to increase tariff bindings substantially. The erosion of preferences and tariff revenue dependency would be addressed. The work of the NAMA Negotiating Group since August 2004 has focused on some key issues relating to the formula for tariff cuts, issues concerning the treatment of unbound tariffs, the flexibilities for developing country participants, the issue of participation in the sectoral component, and trade preferences (see box 9). Five formula proposals submitted since March 2005, including a major initiative by Argentina, Brazil and India, had catalytic effect in the negotiations, but no convergence of views emerged with regard to technical details, including the number of coefficients, the criterion used to establish

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<sup>14</sup> The figure suggested in the Framework is two.

such coefficients and whether the coefficient should be independent of flexibilities, as well as the treatment of unbound tariff lines (100 per cent tariff binding, application of formula cuts to those newly set bound rates, the methodology to be used to establish the base rate or final bound rate). Discussion continues on the sectoral initiative, in which participation is supposed to be on a voluntary basis, as well as on non-tariff barriers (see box 9)

#### **Box 9. Examples of NTBs<sup>15</sup>**

##### Government participation in trade and restrictive practices tolerated by Governments

Government aids, including subsidies and tax benefits; countervailing duties; government procurement; restrictive practices tolerated by Governments; State trading, government monopoly practices.

##### customs and administrative entry procedures

Anti-dumping duties; customs valuation; customs classification; consular formalities and documentation; samples; rules of origin; customs formalities; import licensing; pre-shipment inspection; technical barriers to trade; technical regulations and standards; testing and certification arrangements.

##### Sanitary and phytosanitary measures

SPS measures, including chemical residue limits, disease freedom, specified product treatment; Testing, certification and other conformity assessment.

##### Specific limitations

quantitative restrictions; embargoes and other restrictions of similar effect; screen-time quotas and other mixing regulations; exchange controls; discrimination resulting from bilateral agreements; discriminatory sourcing; export restraints; measures to regulate domestic prices; tariff quotas; export taxes; requirements concerning marking, labelling and packaging.

##### Charges on imports

Prior import deposits; surcharges, port taxes, statistical taxes; discriminatory film taxes, use taxes; discriminatory credit restrictions; border tax adjustments.

##### Other

Intellectual property issues; safeguard measures, emergency actions; distribution constraints; business practices or restrictions in the market.

37. The EU, the United States and Norway respectively proposed a simple Swiss or Swiss-type formula with different but similar coefficients for developed and developing countries. Chile, Colombia and Mexico proposed jointly a non-linear formula for ambitious cuts. The difference of coefficients (i.e. a higher coefficient leading to a lower reduction for the same initial tariff in developing countries) would be linked to other SDT provisions provided for in the NAMA Framework in all three proposals. These are flexibilities on the binding coverage, participation in sectoral initiatives, longer implementation periods and whether or not the formula is applied on each line. Argentina, Brazil and India proposed a Girard-type formula that is a Swiss formula with different coefficients that depend on average initial tariffs.<sup>16</sup> Another parameter in the formula (B-factor) would reflect the ambition in other areas relevant to market access. Coefficients would not be linked to other SDT provisions. The term “less than full reciprocity” has been interpreted as meaning lower percentage reductions, and the three countries state that SDT relates to flexibilities in application of the formula.

<sup>15</sup> TN/MA/S/5/Rev.1, 28 November 2003.

<sup>16</sup> The coefficient, and therefore also the level of ambition, depends on each country's initial average tariff. Countries with a higher initial average tariff such as most developing countries would have to make lower percentage reductions on a given tariff than countries with lower initial averages such as developed countries.

38. A Swiss formula with a coefficient of 8 or 10 would reduce tariffs in developed countries less and in most developing countries more than the Girard formula (see table 1). This is also the case for the eight African countries that would have to apply the formula.<sup>17</sup> A link between the level of the coefficient for the Swiss formula and other SDT provisions, as proposed mainly by the developed countries, would imply a strong commitment by developing countries. The coefficients so far proposed, even with SDT, are between 10 and 15, and thus would imply drastic reductions in both bound and applied rates. Thus, some flexibility in the form of lower than formula reductions for up to 10 per cent of the tariff lines (as agreed with some additional conditions in Para 8) would be necessary for many African countries (see boxes 10 and 11).

**Table 1. Tariff cuts applying a Swiss formula and applying Girard formula**

	<b>Initial</b>	<b>Girard B=1</b>	<b>Swiss formula Developed countries: c=8, Developing countries: c=10</b>
		New average tariff	New average tariff
EU	4.1	1.6	2.6
US	3.7	1.1	2.2
Japan	4.3	1.3	1.9
Egypt	28.3	12.8	6.7
Gabon	15.5	7.5	6.0
Morocco	39.2	15.4	7.9
South Africa*	16.0	6.9	5.3
Tuisia	39.8	19.1	7.8
Argentina	31.8	15.7	7.5
Brazil	34.4	18.3	7.7
India	30.8	15.2	7.5

Source: UNCTAD.

\* Including Botswana, Namibia and Swaziland; South Africa and the other three countries have non-ad valorem tariffs that have not taken into account. For developed countries ad valorem equivalents have been taken when appropriate.

**Box 10. Issues and concerns raised by developing countries – NAMA<sup>18</sup>**

- Elaboration of the tariff formula, the basis for application, including unbound tariff lines, that would ensure substantial improvement in market access for developing country exports, addressing tariff peaks and escalation, while respecting the principle of less than full reciprocity for developing country commitments and taking into account tariff structures of developing countries;
- Detailed modalities for sectoral components, including the issue of mandatory or voluntary participation of developing countries in these components;
- Finding, for those developing countries with low levels of binding, a reasonable level for tariff bindings at appropriate and sustainable tariff levels;
- Specific trade solutions for preference erosion, while ensuring that non-preferential tariffs of preference-granting countries are not kept unduly high;
- Bound duty-free and quota-free market access for all products originating in LDCs, with realistic and flexible rules of origin.
- Advancing negotiations on NTBs in the NAMA Negotiating Group so as to effectively improve market entry conditions for developing country exports;

<sup>17</sup> LDCs and countries with a binding coverage below 35 per cent are excluded from applying the formula.

<sup>18</sup> Compiled from various sources, including WTO documents, statements and press reports.

- Adequately addressing concerns about the possible adverse impact of tariff reduction on revenue loss and de-industrialization;
- Degree of “substantial” increase in tariff binding expected from LDCs should be commensurate with their level of development.

**Box 11. Issues for LDCs in considering NAMA formulas<sup>19</sup>**

1. LDCs are not required to reduce their bound tariffs nor participate in the sectoral liberalization. However, they are expected to substantially increase their level of binding commitments which would imply a loss of flexibility for development purposes.
2. Although LDCs are exempted from sectoral liberalization, any such liberalization will lead to an erosion of preferences in key sectors of interest to LDCs like textiles, leather, fish and fish products. At the same time, sectoral liberalization at the MFN level may open up new market opportunities for LDCs but also for other WTO members.
3. As regards preferential access to developed countries and other developing countries, the level of ambition in tariff cuts will affect the extent of preference erosion. In the light of the inevitable erosion of preferences, it is critical to (a) secure predictability and security of access through a binding commitment on duty-free, quota-free treatment for all products of LDCs; and (b) reform the preference schemes towards a more relaxed and realistic rules of origin, removal of conditionalities attached, and simplification of administrative rules and procedures. This could generate significant welfare gains, representing an annual growth of around 2-4% for LDCs.
4. Since the bulk of exports of LDCs to developed country enter on an MFN basis, LDCs would be affected by the MFN regime that emerges from the NAMA negotiations so they need pay attention to securing better access in all WTO Members.
5. Since LDCs' exports to other developing countries are now more than one third of their total exports, the reduction in tariffs of other developing countries will improve MFN access for LDCs. However, LDCs would be competing with other developing countries and developed countries in these markets. Herein rests the value of seeking preferential treatment under South-South arrangements, especially the GSTP. The GSTP third round of negotiations will address tariff peaks and escalation and provide LDCs with special and differential treatment. LDCs should participate in the GSTP negotiations and seek preferential treatment in this contractual context and endeavour to benefit from the margins of preference in Southern markets. This would imply that in order to preserve their margins of preferences in Southern markets, lesser MFN tariff cuts by developing countries would provide better scope for preferential market access.
6. The fact that non-tariff barriers and market entry barriers are affecting more than 40% of exports of LDCs, they would need, as part of the NAMA and agriculture negotiations, to focus on addressing these barriers such as disciplining the unnecessarily trade-restricting TBT and SPS measures and seeking concrete financial and technical commitment for setting up the necessary hardware and software standards-related and certification infrastructure.
7. Whatever the outcome of the NAMA negotiations, LDCs will face important adjustment costs, especially on account of preference erosion and loss of export markets. Thus, this should be provided for in the resulting agreements and specific technical and financial commitments from the international community sought to meet these adjustment costs.

39. Regarding the treatment of non-reciprocal preferences, the African Group proposed a correction coefficient in the formula, and the ACP Group of States proposed the use of a “vulnerability index” (see box 12). Erosion of preferences has been a major concern for those countries dependent on long-standing preferential schemes for their exports, and the Framework provides that the issue should be taken into consideration. It is important that this be done through trade measures and, in particular, development instruments. Development support needs to be provided for adjustment and help build sustainable, competitive supply

<sup>19</sup> The box is drawn from an informal note by UNCTAD “WTO negotiations on market access for non-agricultural products - Implication of tariff reduction formulas on LDCs” 17 June 2005.

capacities, which are important in the medium term as preferences become less important with the erosion of margin of preferences.

40. Regarding the participation of developing countries in tariff cuts, there is a need to adequately address concerns about de-industrialization and revenue implication as African and other developing countries rely on tariffs for industrial development and government revenue. It is also important to ensure that adequate “aid for trade” adjustment support is provided to African and other developing countries to meet the costs of adjustment arising from liberalization and implementation of agreements (see box 12).

#### **Box 12. African and ACP proposals on preference erosion in NAMA**

The African Group’s submission on preference erosion proposes the application of “a correction co-efficient” to the tariff reduction approach so as to improve the preference margins for these products.<sup>20</sup> Longer staging periods would be required for this option. For products which are not zero-rated, preference-giving countries would use the same rates of reduction points to ensure that the non-reciprocal margin of preference is maintained. In view of Africa’s low levels of industrialization, sectoral initiatives will hinder development of industrial sectors in Africa. The Group also called for the preference-giving Members to improve the conditions attached to the preferential schemes, including non-trade concerns and non-tariff barriers.

The ACP Group of States submitted a proposal to use a “vulnerability index” in identifying those products that may be subject to special treatment in NAMA.<sup>21</sup> Such products must already enjoy significant preferences, and a country is considered vulnerable when it depends on only a few export products and export markets, and is a small exporter relative to the rest of the world. An assumption is that the country is more vulnerable the less diversified its export markets and export products are and the smaller its world share is. Thus, the proposed “index of vulnerability” is based on the following elements:

- The share of the particular product of the importing country in the total exports of the exporting country (1);
- The share of the particular product of the exporting country in the importing country (2);
- The world market share of the exporting country for the particular product (3).

### **D. Services**

#### *Trends in global services economy and trade in services*

41. Over the last two decades, the service economy in all countries has gained importance and contributed a growing share to gross domestic product (GDP) and employment. Services are a fundamental economic activity, with a key role in infrastructure building, competitiveness and trade facilitation. They also have important implications for poverty reduction and gender equality. Most services firms are traditional employers of women, including government, which retains its essential function in providing services in developing countries. There are, however, differences in the development of the services economy and infrastructural services across countries and regions. On average, the share of services to GDP rose to more than 60 per cent in 2003. While the average share for most developing countries is 49 per cent and that of developed countries 72 per cent, African countries’ share is 47 per cent. As a group, the share of workers employed in services activities in developing countries is about 30 per cent, and as high as 53 per cent in some countries, not counting the

<sup>20</sup> TN/MA/W/49, 21 February 2005.

<sup>21</sup> TN/MA/W/53, 11 March 2005.

informal services sector, which plays an important role in developing countries. The share for developed countries is 70 per cent.<sup>22</sup>

42. As to share in total world exports of services, developing countries accounted for 22 per cent in 2003, with African countries accounting for 2 per cent. Their share in world imports of services is also at 2 per cent, compared with other developing countries' average of 24 per cent. In 2003, service exports experienced significant growth. Developed countries expanded their exports by 7 per cent in 2003, as compared with the annual average growth rate of 4 per cent during 1995–2000. African countries also increased their services exports in 2003 by 7 per cent, as compared to a modest annual growth rate of 3 per cent during 1995–2000. However, such growth benefited mostly a few major exporters of services among African countries. A significant number of countries are not able to compete and participate globally owing to supply-side constraints.

43. Developing countries generally remained net importers of commercial services in 2003,<sup>23</sup> and their services trade has been below global averages. Trends in services imports broadly mirror those in exports, but there are some differences. Compared with past years, in 2000–2003 service imports accelerated in developed countries, matching the trend in services exports. This was due to strong services import growth in Europe, Australia and New Zealand. For the period 1995–2002, service imports in developing countries remained mostly flat, with 3 per cent annual growth, followed by 8 per cent growth from 2002 to 2003. Excluding China, there was a general slowdown in growth, with those countries' share in global imports of services dropping from 26 per cent in 2000 to 24 per cent in 2003.

44. Trends in the services trade balance varied. Europe almost doubled its surplus in 2000–2003. North America's surplus more than tripled in the 1990s, peaking at nearly \$70 billion in 2000, but decreased fast thereafter to less than \$40 billion by 2003. Sub-Saharan Africa's deficit continues at roughly \$10 billion annually. In Latin America and the Caribbean and Asia, services trade deficits have shown positive signs of decreasing over the past decade, whereas in the Middle East and the transition economies deficits have grown. LDCs continued to build up export capacities in both goods and services, with both growing at an average annual rate of 7 per cent and 3 per cent respectively from 2000 to 2003. Nevertheless, they still face substantial difficulties in participating in services trade and their exports are particularly vulnerable to external shocks. In 2003, LDCs accounted for 0.4 per cent of world trade in services, mostly transport and travel services. LDCs' comparative advantage is in exports of labour-intensive services. WTO Members have high stakes in the GATS negotiations. As estimates suggest, for developing countries alone, liberalization could provide up to \$6 trillion in additional income. However, such figures have to be viewed with caution, as supply constraints and other limiting factors may ultimately prevent benefits from materializing for developing countries. GATS Article XIX provides some specific guiding principles for the negotiations (e.g. progressive, step-by-step liberalization; specific flexibility for individual developing countries; and giving priority to the sectors and modes of interest to developing countries). The GATS, the Negotiating Guidelines and the Modalities for Special Treatment for LDCs constitute the benchmarks against which the success of the negotiations will need to be measured. An adequate balance within the services negotiations, as well as

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<sup>22</sup> In 2003, 12 leading exporters of services among developing countries – including China, India, the Republic of Korea, Malaysia, Thailand, Mexico, Egypt and Brazil – accounted for 71 per cent of service exports of all developing countries, compared with 66 per cent in 1998.

<sup>23</sup> Participation of the Developing Economies in the Global Trading System, WTO Document WT/COMTD/W/136.



transparent and inclusive processes, is also crucial for achieving the development objectives of this Round.

45. Among African countries, only a handful participate substantially in services trade, where the top three countries capture between 60 and 70 per cent of total African trade (see tables in Annex). Most African countries are crippled by supply-side constraints, which include the following: limited domestic market to serve as a base for building competitive industries; limited access to technology and financial resources; deficiency in skills and training; and underdeveloped infrastructure services (e.g. telecommunications, financial and transport services), which not only affect the local provision of services, but also serve as a disincentive for the entry of foreign investors. In some countries, inefficient bureaucracies, inadequate or underdeveloped regulatory systems and legal institutions, political instability and security considerations are added burdens and serve as disincentives to attracting more foreign investments, especially in key sectors of the economy.

46. The above limitations, coupled with the absence of a track record and a lack of information, make it difficult for African countries to penetrate foreign markets. These limitations are compounded by stringent measures taken by host countries, further limiting the opportunities for trade. Barriers such as burdensome entry requirements (e.g. visas, licensing, registration, authorization), commercial presence requirements, quotas, administrative hurdles and non-recognition of qualifications make it overly difficult for service providers to venture into foreign markets. The ongoing services negotiations provide an opportunity for African countries to expand their market for services trade and share the benefits of trade liberalization.

**Box 13. São Paulo Consensus on services**

The SPC called for negotiations in trade in services to fully observe the objectives stipulated in the GATS as well as the development provisions of the WTO Guidelines and Procedures for the Negotiations on Trade in Services (Guidelines), including in relation to effective multilateral commitments on services sectors and modes of supply of export interest to developing countries. It highlighted the fact that, in the context of negotiations on services, developing countries have underscored the importance that effective liberalization of temporary movement of natural persons under Mode 4 of GATS has for them. Multilateral rule making in services should be given attention, taking into account the interests and concerns of developing countries. The SPC noted also that negotiations on infrastructure services should give due attention to the concerns of all countries, especially developing countries, including in connection with the universal provision of essential services.

*The July Package*

47. The July Package provided in its Annex C a set of Recommendations for services negotiations, basically reiterating previous objectives and commitments set out in the GATS Guidelines and the DWP, while emphasizing the need for a high quality of offers in sectors and modes of export interest to developing countries and no *a priori* exclusion of any service sectors or mode. It provided that revised offers would be submitted by May 2005. Negotiations on services are based on a request and offer approach and have progressed slowly. To date, a total of 54 offers have been submitted, including from four African countries, namely Mauritius, Gabon, Kenya and Egypt. No LDC has submitted an offer. Developing countries have experienced difficulties in identifying sectors and modes of priority interest based on their national policy objectives, identifying the barriers to their services exports, assessing the impact of requests by developed countries on their services sectors, and identifying ways of overcoming supply constraints and infrastructure weakness through active implementation of GATS Articles IV and XIX:2 by developed trading

partners. Thus, progress needs to be made on assessment of trade in services to facilitate developing countries' participation in the request/offer exercise, and – where needed – negotiations should be adjusted in the light of the results of this assessment. The Recommendations provide for a review and full reporting on progress in negotiations for the Sixth Ministerial Conference. This exercise will need to consider *inter alia* the extent to which GATS Article IV is being implemented, while taking into consideration the needs of small service suppliers in developing countries, in line with paragraph 15 of the Guidelines.

48. The Recommendations noted the importance for developing as well as developed countries of temporary movement of natural persons (Mode 4). Particularly important in this respect is commercially meaningful liberalization in that Mode. The initial offers submitted by developed countries made limited improvements to their existing commitments. A group of 18 developing countries, including Egypt, have expressed concerns that current specific commitments, as well as the initial offers, do not provide commercially meaningful benefits to them, as they often render the movements of natural persons conditional upon the establishment of commercial presence and do not cover different levels of skills.<sup>24</sup> The ambiguity and the lack of predictability of offers with regard to the definition of natural persons, as well as over the substantial restrictions and requirements attached to the offers, including economic needs tests, are also highlighted. In particular, many offers lack clarity as regards work permits, visas and other administrative regulations, and procedures relating to the entry of service providers. Furthermore, there is a need for new categories of semi- or less-skilled movements to be included in developed countries' offers. While some developing countries have increased their capacity to export IT-enabled services through outsourcing and have sought commitments under Mode 1 to facilitate exports, there are signs of a potential protectionist backlash, possibly constraining such export potential, which needs to be countered and prevented.

#### *Market access negotiations*

49. While the Doha Ministerial Declaration provides indicative time lines for the submission of initial requests and offers, many developing countries were not able to submit their requests and/or offers within these time lines given their lack of technical capacity compounded by the absence of data on the services sector. Nevertheless, they have identified Mode 4 as a priority area of market access interest. Some Members consider that initial offers are still insufficient<sup>25</sup> and call on their trading partners to make high-quality offers. The question from the developing countries' perspective is not simply to seek comprehensive offers but rather offers which give special attention to sectors and modes of supply of export interest to them (see box 14).

50. In the perception of African and developing countries a preliminary analysis of initial offers of the major trading partners identifies the following. Several offers seem to go back on previous commitments or lack real change in the level of commitment, despite modifications. This is done either by redefining the sector/sub-sector to which a commitment applies or by going from one partial commitment to another one. Initial offers often use new classifications (even with respect to sectors that are not officially part of the WTO

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<sup>24</sup> WTO document TN/S/W/19, 31 March 2004, submitted by Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nicaragua, Pakistan, Peru, Philippines and Thailand.

<sup>25</sup> Communication from Australia, Canada, Chile, EC, Hong Kong (China), Iceland, India, Japan, Mexico, New Zealand, Norway, Republic of Korea, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, Joint Statement on Market Access in Services, JOB(04)/176.

classification list) which have received no multilateral approval and are still under discussion. This leads to uncertainty as to what the country is exactly offering. Also, offers indicate that some countries are not abandoning any MFN exemptions, but rather are introducing new ones. This can be cause for concern, as even the impact of the existing exemptions has not yet been assessed. Offers also appear to be concentrated in certain industries, mostly bypassing certain sensitive sectors, for example health, audiovisual or labour-intensive services, particularly through Mode 4 and at lower skill levels, where developing countries have their comparative advantage. Finally, certain offers refer to the notion of reciprocity. While the GATS request-offer process naturally builds on bargaining and exchange processes, flexibility should be maintained for developing countries.

**Box 14. Modalities for the Special Treatment for LDCs**

LDCs, in the negotiations, need to use the Modalities for the Special Treatment for LDCs adopted in September 2003 as a tool to protect their interests and extract meaningful commitments from WTO Members. The Modalities reiterate the serious difficulty of LDCs in undertaking specific commitments and for that reason, countries are requested to exercise restraint in seeking commitments from LDCs and to afford the utmost flexibility for them in providing market access consistent with their development situation and their institutional, regulatory and administrative capacities. It further reiterates the need for countries to undertake Mode 4 commitments taking into account all categories of natural persons identified by LDCs in their requests, which include semi- and low-skilled persons. LDCs shall be granted credit for their autonomous liberalization, but WTO Members shall refrain from seeking credit from them. The modalities also urge Members to work on the development of appropriate mechanisms to help achieve the full implementation of Article IV:3<sup>26</sup> and contribute to facilitating effective access of LDCs' services and service suppliers to foreign markets. The provision of targeted and coordinated technical assistance and capacity-building programmes to LDCs shall continue, so as to strengthen LDCs domestic services capacity, build institutional and human capacity and enable them to undertake appropriate regulatory reforms.

51. The review and evaluation of progress in negotiations pursuant to paragraph 15 of the Negotiating Guidelines allows for a regular reporting by Members to the Council for Trade in Services on the progress in the negotiations, including the bilateral negotiations. In line with the Negotiating Guidelines, some developing countries have reiterated that the main benchmarks for evaluating progress should be the extent to which the negotiations are achieving the objectives of the GATS, as stipulated in Article IV (Increasing Participation of Developing Countries) and Article XIX (Progressive Liberalization). They also made specific submissions relating to the lack of commercially meaningful offers submitted by developed countries in relation to Mode 4 and the tourism industry. The review of negotiations is crucial, as it should feed into the Sixth WTO Conference by means of a report of the Council for Trade in Services to the Trade Negotiations Committee, including on possible recommendations to refocus negotiations on areas of interest to developing countries, particularly Mode 4.

*GATS rules*

52. Negotiations on possible emergency safeguard measures (ESM) have been identified as an area of prime developmental importance, albeit characterized by a lack of consensus on the key issues of desirability and feasibility of such measures. The ASEAN Members' draft ESM agreement provided the main impetus for discussions. The main areas of difficulty were included in an annex to this document, which raised such issues as the possibility of applying

<sup>26</sup> Article IV:3 of the GATS reads: "Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

the safeguard measure to established foreign suppliers (Mode 3), the definition of domestic industry, the impact of a safeguard measure on national treatment and most-favoured-nation treatment, and acquired rights. More recently, and in reaction to the feedback and questions from other Members, this group of countries has submitted some new elements for discussion. Discussions have focused on the description and analysis of specific situations potentially justifying the use of ESM. The proponents of ESM have suggested several scenarios where they feel an ESM would be needed. Members are currently discussing the merits of each case.

53. Negotiations on disciplines to address trade-distortive effects of subsidies currently focus on examples of services-related State support measures. While some Members have offered information on their subsidies, discussions have to rely on information mainly contained in Trade Policy Reviews. Discussions also focus on definitions and principles, where Members seek to draw from the SCM Agreement and the Agreement on Agriculture, while keeping in mind the specificities of services. Many Governments subsidize services sectors, such as air, maritime and public railway transport, telecommunications, utilities (water and electricity), and public-good-type services (education and health). Developing and developed countries differ in their use of export subsidies, the former tending to rely on a more selective approach, and the latter tending to use, *inter alia*, export promotion regimes, export financings and export guarantees. Negotiations are being conducted under GATS Article XIII, but a major stumbling block to progress in this area is the lack of clarity on the mandate and particularly on whether Article XIII covers market access issues.

#### *Domestic regulations*

54. Article VI.4 mandates the development of necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services. When pursuing this mandate, there is a need to establish a balance between preserving the right to regulate and ensuring that legitimate measures are not applied in an arbitrary manner or as a disguised barrier to trade. The right to regulate is of particular importance for developing countries, as many of them do not yet have an optimal regulatory and institutional framework in place. Recent contributions address measures relating to administrative procedures for obtaining visas or entry permits, experiences with disciplines on technical standards and regulations, issues related to transparency and the relationship between future Article VI.4 disciplines and market access and national treatment. Recognition issues have also figured prominently.<sup>27</sup>

#### *Issues of interest to African countries*

55. African countries recognize the importance of services to their trade, development and poverty reduction objectives. At a recent technical workshop, they discussed some of the pressing issues in the GATS negotiations facing Africa and recommended a set of options, primarily for African countries to take on a positive agenda stance in the GATS negotiations (see box 15).

**Box 15. Summary of recommendations of the High-Level Workshop on Key Issues of Interest for African Countries in the Run-up to the Sixth WTO Ministerial Conference (Geneva, 25--26 April 2005)**

<sup>27</sup> Communications from Colombia (July 2004), Mexico (September 2004), the United States (September 2004), Hong Kong, China (March 2004) and Australia (June 2004). Previous communications were from India, for example, September 2003.

African countries realize that they have an inherent difficulty in competing because of their limited supply capacity, which is further compounded by the inadequacy of infrastructure and their lack of institutional and regulatory preparedness. The multilateral setting could be one avenue to broaden their participation in services trade, in addition to African economic integration processes and future ACP–EU EPAs. The request-offer process provides an opportunity to seek binding commitments from developed country partners, especially for enhanced market access for Mode 4. Gains could only be realized, however, if technical assistance for assessment of trade in services, formulation of proposals, requests and offers could be ensured. A sustainable African services capacity-building programme aimed at enhancing competitiveness, including providing support for SMEs and industries that allow for forward-backward linkages, is also necessary. Furthermore, some mechanisms need to be devised to allow developing countries to maintain some flexibility on bound commitments and preserve policy space. Development flexibilities and SDT provisions need to be built into any disciplines and rules that would be developed in the future.

## E. Development issues

### *Review of special and differential treatment provisions*

#### **Box 16. São Paulo Consensus on SDT**

The SPC reaffirmed that SDT provisions should be conceived as a developmental tool addressing developing countries' particular needs and should be reviewed with a view to making them more precise, effective and operational in order, *inter alia*, to facilitate the beneficial and fuller integration of developing countries into the rules-based multilateral trading system. Work should be further pursued to yield a meaningful and development-oriented outcome consistent with the objectives set out in the Doha Declaration.

56. The July Package provides that work continue on all outstanding Agreement-specific proposals, as well as the other outstanding issues, including cross-cutting issues, the monitoring mechanism and the incorporation of SDT into the architecture of WTO rules. As there was no agreement to harvest the 28 Agreement-specific proposals that had been agreed to in principle as contained in the Derbez text, there is no reference to them in the Decision. The major players continued to argue that all Agreement-specific proposals be treated as a package. The new deadline for reporting to the General Council with clear recommendations for a decision was set at July 2005 for those proposals being considered within the Committee on Trade and Development and those proposals referred to other negotiating bodies (“category II issues”). Many developing countries insisted that operational SDT should be placed on a firm contractual basis and targeted to the specific needs of developing countries. It should be emphasized that since the launch of the DWP, only mainly procedural improvements to the SDT have been addressed, the bulk of provisions with substantive development or commercial content being left for future negotiations.

57. With regard to the review of SDT, the July Package set a new deadline of July 2005 for completion of the work on all outstanding Agreement-specific proposals. A total of 88 Agreement-specific proposals have been under negotiation, with no decision taken to date. The July Package also provided that, within the parameters of the Doha mandate, all other outstanding work, including on cross-cutting issues, the monitoring mechanism and the incorporation of SDT into the architecture of WTO rules, would be addressed as appropriate. In December 2004, a new approach was suggested by the Chair of the Special Session of the WTO Committee on Trade and Development, based on “situational” needs of developing countries, whereby Members consider underlying causes behind the Agreement-specific proposal to understand the purpose of the respective proposals and seek to address each proposal according to specific developmental needs, including through enhancing flexibility under WTO rules specifically for those countries that are in need. No decision has been taken

on this approach, as developing countries expressed concern that such an approach might lead to de facto differentiation of developing countries according to situational needs for the purpose of SDT. The Chair's suggestion included discussing cross-cutting issues such as the monitoring mechanism in parallel with agreement-specific proposals. There is still a difference of views on the situational needs approach, as well as the nature of a possible monitoring mechanism, with some developed countries proposing that the basis for use of individual SDT provisions by developing countries be monitored, while developing countries seek to ensure monitoring of developed countries' implementation of SDT provisions. It has been agreed that those agreement-specific proposals pertaining to LDCs will be taken up as a priority (see box 17).

**Box 17. Agreement-specific SDT proposals by LDCs<sup>28</sup>**

*23) The Understanding in Respect of Waiver of Obligations under the GATT 1994*

"The Understanding in Respect of Waiver of Obligations under the GATT 1994 should be clarified to provide that request for waivers from least-developed countries of their obligation under the GATT 1994 and other multilateral agreements shall be considered sympathetically and waivers granted expeditiously."

*36) Enabling Clause – paragraph 3(b): erosion of preference margin*

"The LDCs affected (by preference erosion) would require compensatory or adjustment support measures in the trade, financial and technological fields to mitigate adverse effects on their export earnings as well as enable them cope with increased global competition, through, *inter alia*;

- (i) Elimination of all internal and border constraints inhibiting the full utilization of existing preferential access.
- (ii) Support diversification efforts including elimination of all tariff peaks and tariff escalation affecting semi-processed and processed products.
- (iii) Provide debt relief through cancellation to release resources for building productive capacities.
- (iv) Provide target incentives to their enterprises to facilitate technology transfer in the spirit of Article 66.2 of the TRIPS Agreement.
- (v) Remove all non-tariff barriers to all LDCs exports.
- (vi) Provide temporary financial compensation for fall in export earnings resulting from a reduction of MFN tariff rates in the case of products whose share in the total export earnings of an LDC exceeds 50 percent."

*38) Enabling Clause*

"...

(c) The provisions in the Decision on More Favourable Treatment, which provide that the least developed countries "shall not be required to make concessions that are inconsistent" with their "development, trade and financial needs" shall be clarified to provide that these countries shall be permitted in trade negotiations, if they considered that this was warranted by economic and trade situations and the stage of development:

- (i) to make no reductions in tariffs in the agricultural and/or industrial sectors;
- (ii) exclude from tariff reductions certain sub sectors in both of the above sectors;
- (iii) bind the rates reduced in the negotiations and the prevailing applied rates at levels consistent with the development, trade and financial needs of developing countries and LDCs."

*84) Agreement on TRIMs – Whole Agreement*

"LDCs should be exempted from the disciplines of the Agreement on TRIMs."

*88) Decision on Measures in Favour of Least-Developed Countries – Paragraph 1*

"It understood that least-developed country Members, notwithstanding any provision of any WTO Agreement, shall not be required implement or comply with obligations or commitments that are prejudicial to their industrial development, financial or trade needs, or their administrative and institutional capacity."

<sup>28</sup> TN/CTD/W/4/Add.1, 1 July 2002.

## *Implementation-related issues and concerns*

### **Box 18. São Paulo Consensus on implementation-related issues and concerns**

The SPC emphasizes that the outstanding implementation issues and concerns are a matter of the utmost importance to developing countries and should be addressed in a manner consistent with the DWP. In addition, further consideration should be given to assisting developing countries in implementing multilateral trade agreements and meeting adjustment and social costs.

58. The value of implementation issues for the purpose of the overall Doha negotiations continue to depreciate as time goes by and substantive negotiations progress. This is because the original purpose of implementation issues was to find a concrete solution to their implementation difficulties, on a priority basis and in a time-bound manner, prior to developing countries' assuming new and additional obligations that can be quite costly (see box 19), so as to ensure effective implementation by developed countries of existing commitments (e.g. ATC quota elimination), as well as to address existing imbalances in WTO Agreements. Such sequentiality and time-boundness were a part of the overall balance achieved in the Doha package. Indeed, with the advance of the implementation of the Uruguay Round Agreements, some implementation issues seem to have lost their relevance and become obsolete (e.g. ATC). Thus, implementation issues need to be addressed as a matter of priority.

### **Box 19. Implementation costs for selected African countries: Customs valuation, SPS/TBT and TRIPS<sup>29</sup>**

#### *Customs valuation*

A comprehensive reform of Tanzanian customs procedures was estimated to cost \$8--10 million, covering computerization, adaptation of valuation procedures, cargo controls, building refurbishment, administrative reforms and legislative reforms.

A World Bank loan to Tunisia that included a customs modernization component budgeted a total cost of \$ 16.21 million, which includes a new information system, customs container scanners, a customs training centre, equipment for the documentation centre, a pilot version for electronic manifests, equipment and systems integration for electronic document interchange.

#### *SPS*

World Bank operated a SPS-related project. This included the "Algeria Locust Control Programme" (1988--1990, \$112 million) (\$79.6 million) and "Madagascar Village Livestock and Rural Development Credit" (1980--1988, \$11.8 million).

#### *TRIPS*

The costs for reform of intellectual property laws in Egypt was estimated at \$1 million for staff training, \$192,000 for the strengthening judicial system, and \$598,000 for recruiting new patent personnel and purchasing new equipment. In the United Republic of Tanzania, the cost of drafting new laws, expanding enforcement capabilities, strengthening administrative offices and providing training is estimated to be between \$1 and 1.5 million.

59. The July Package reiterated the need to redouble efforts to find an appropriate solution as a priority not later than July 2005 (see box 20). Reference to individual outstanding implementation issues of importance to developing countries is not included, while explicit reference is made to the extension of additional protection as regards geographical indications (GI) on products other than wines and spirits. Implementation-

<sup>29</sup> J. Michael Finger and Philip Schuler, "Implementation of Uruguay Round commitments: The development challenge", Policy Research Working Paper Series, the World Bank, 1999.

related issues and concerns were not given priority after the Cancún Conference. Some developing countries have proposed the establishment of a single negotiating body on implementation issues.

**Box 20. Examples of outstanding implementation-related issues and concerns<sup>30</sup>**

*SPS Agreement*

Where the introduction of SPS measures may have significant effect on trade opportunities for products of interest to developing countries, Members shall notify the WTO and inform the concerned Member prior to the application of such measures and, in addition, to the relevant provisions of paragraph 5 of Annex B and Article 7, shall notify final rules or subsequent decisions derived from a previously notified measure.

*TBT Agreement*

Article 11 shall be made obligatory so that technical assistance and cooperation is provided to developing countries.

Acceptance by developed-country importers of self-declaration regarding adherence to standards by developing-country exporters. This provision should be introduced in Article 12.

*TRIMs Agreement*

Developing countries shall be exempted from the disciplines on the application of domestic content requirement by providing for an enabling provision in Articles 2 and 4 to this effect.

Specific provisions shall be included in the Agreement to provide developing countries the necessary flexibility to implement development policies that may help reduce the disparities they face vis-à-vis developed countries.

*TRIPS Agreement*

The transitional period for developing countries provided for in Article 65.2 shall be extended.

A clear understanding in the interim that patents inconsistent with Article 15 of the CBD shall not be granted.

Articles 7 and 8 of the TRIPS Agreement to be operationalized by providing for transfer of technology on fair and mutually advantageous terms.

*Preference erosion*

60. Africa and other preference-dependent countries face challenges arising from preference erosion consequent upon multilateral reduction of tariffs in agriculture and NAMA. An UNCTAD estimate finds that an export revenue loss for Africa and developing countries resulting from a 36 per cent cut in MFN duties in the EU would lead to an aggregate loss of \$460 million annually. The Commonwealth Secretariat estimates that \$ 1.7 billion will be lost annually in agriculture, textiles and clothing for preference-dependent countries, including those in sub-Saharan Africa.<sup>31</sup> Yet another estimate by the IMF shows that Malawi, Mauritania, the United Republic of Tanzania, Mauritius and Côte d'Ivoire would incur a loss in export values ranging between 7 and 2 per cent as a result of a 40 per cent cut in preference margins.<sup>32</sup>

61. The July Package reaffirmed the importance of long-standing trade preferences and provided that this issue should be addressed in the agriculture and NAMA negotiations. Those negotiations need to address as a matter of priority vital developmental interests of Africa and other countries in elaborating full modalities on tariff reductions so as to attenuate possible adverse effects on Africa with a view to facilitating a smoother adjustment to

<sup>30</sup> JOB(01)/152/Rev.1, 27 October 2001.

<sup>31</sup> Commonwealth Secretariat. *Preference Dependent Economies and Multilateral Liberalisation: Impacts and Options*, Economic Affairs Division, 2004.

<sup>32</sup> International Monetary Fund. *Fund Support for Trade-Related Balance of Payments Adjustment*, Washington DC; IMF.



increased international competition in export markets. As noted above, discussion under agriculture and NAMA negotiations has proved controversial owing to differing interests between preference-dependent countries and other competitive exporting countries. In the context of the SDT review, there have been calls for LDCs to be provided with adequate and operational compensatory, trade-promoting measures, including in the form of elimination of internal and border constraints inhibiting the full utilization of existing preferential access, elimination of tariff peaks and escalation affecting semi-processed and processed products, and removal of all non-tariff barriers to LDCs, as well as a financial compensatory fund.

### *Commodity initiative*

#### **Box 21. São Paulo Consensus on commodities**

The SPC stressed the importance of focusing on the difficulties faced by commodity-dependent developing countries; support should be provided for their efforts to restructure, diversify and strengthen the competitiveness of their commodity sectors, including through the provision of enhanced market access on a secure and predictable basis, adequate technical and financial assistance, and strengthening of capacity and institutions, in both the public and the private sectors.

62. The July Package provided that particular concerns of developing countries, including commodities issues, will be taken into account in the context of agriculture and NAMA negotiations. Commodity issues put forward in 2003 by three East African countries remain to be tackled. The countries in question called for the crisis in the trade and development of commodity-dependent developing countries caused by the long-term price decline and fluctuation of commodities prices to be addressed urgently. The Eminent Persons Group convened by UNCTAD on behalf of the United Nations General Assembly has in its report analysed the causes of, and remedies for, the commodity crisis. Some market access aspects, tariff peaks and tariff escalation, and subsidies could be addressed by the WTO. Many other important aspects go beyond the mandate of WTO and thus require the involvement of other international organizations, specifically UNCTAD, and support from international financial institutions and the donor community. For example, UNCTAD is providing support for the operationalization of the International Task Force on Commodities (ITFC) to set up a platform for a comprehensive approach to address commodity issues.

### *Small, vulnerable economies*

63. Pursuant to paragraph 35 of the Doha Ministerial Declaration, work is ongoing on issues relating to the trade of small economies, with a view to framing trade-related responses for the fuller and beneficial integration of small, vulnerable economies into the multilateral trading system. This mandate was reiterated in the July Package (para. 1(d)). Although a number of conceptual issues have been extensively examined, work on concrete and specific responses has been limited. Recently, the group of small, vulnerable economies submitted a proposal<sup>33</sup> setting out a novel approach that seeks to link certain characteristics of small economies to particular problems faced, and to possible responses to these characteristics and problems in market access negotiations, rules negotiations and other areas of WTO work. It is expected that this approach may help in facilitating movement towards the consideration of negotiation proposals specific to the needs of small, vulnerable economies by the time of the July "approximation" so that the Hong Kong Ministerial Conference can take a decision on these proposals.

<sup>33</sup> "An approach to framing responses to the trade-related problems of small economies" (WT/COMTD/SE/W/13, 23 May 2005).

## *Textiles and clothing*

64. The expiry of the Agreement on Textiles and Clothing (ATC) on 1 January 2005 brought to an end the discriminatory trade regime that for over 40 years governed and restricted textiles and clothing exports from developing countries. The textile and clothing sectors in African and other developing countries play an important role in the diversification of the economy, employment, the empowerment of women, rural development, the development of SMEs, equitable distribution of income, foreign exchange earnings and poverty reduction. The sudden increase in exports of textiles and clothing from China following the expiry of the ATC has led to recent tensions, and there have been calls by some developed countries for safeguard measures. Free trade in textiles could generate income gains in developing countries of \$24 billion a year, export revenue gains of \$40 billion and 27 million jobs.

65. The system, while restraining exports of competitive developing countries, provided guaranteed market access for smaller developing country suppliers, including those in Africa, to major export markets. Thus, they would face adjustment issues consequent to quota elimination, and require assistance to improve their market access and supply capacity. Such concern led some African and other small preference-receiving textile exporting countries (including Madagascar, Mauritius and Uganda) to raise their concerns in September 2004 within WTO regarding possible adverse effects of the quota elimination and to propose that a study be undertaken to identify the adjustment-related issues and costs as a result of ATC phase-out, as well as to establish a work programme within WTO on finding solutions to adjustment related-issues on textiles and clothing.<sup>34</sup> China and other members of the Textiles and Clothing Bureau have opposed proposals for any specific action by WTO. Recently a proposal was made by Tunisia to unblock the situation so as to explore solutions, on the basis of Part IV of GATT 1994, aimed at stabilization of textiles prices and establishment of a funding mechanism specific to textiles and clothing sectors (see box 22).

### **Box 22. Post-ATC adjustment issues**

Noting the need to revitalize the textiles and clothing sector to deal with the deterioration of external competitiveness and profitability in the face of increased international competition that caused export volume surge and price decrease in clothing products, Tunisia proposed in March 2005 that the issues relating to post-ATC adjustment be based on Part IV of GATT 1994. Article XXXVI recognizes the need for positive efforts designed to ensure that developing countries and LDCs, most of which depend on a limited number of primary products for exports, “secure a share in the growth in world trade commensurate with the needs of their economic development” and to “devise measures designed to stabilize and improve world markets, including in particular measures to attain stable, equitable and remunerative prices, thus permitting the expansion of their trade and a dynamic and steady growth of their real export earnings”. The proposal called upon Members to give urgent and sympathetic consideration to the problems faced by the textiles and clothing sectors and explore constructive solutions, including appropriate joint action to be taken, to further the objectives of GATT Article XXXVI. The objective of the exercise is to redress situations of textiles and clothing, in particular to stabilize market prices in cooperation with IFIs, and to introduce a funding mechanism specific to the development policies of the sector.

## *Aid for trade*

66. Africa and other developing countries face considerable adjustment problems arising from liberalization commitments and from the implementation of agreements. In the past, the issue of adjustment was largely overlooked by the trading system and left to Governments

<sup>34</sup> G/C/W/496, 30 September 2004.

and IFIs. However, it is increasingly and widely recognized that adjustment support to trade and trade-related shocks and liberalization, as well as trade capacity building, should be integrated *ex ante* into trade agreements so as to facilitate the implementation of liberalization commitments and promote the beneficial participation of Africa and other developing countries in world trade (see box 23).<sup>35</sup> The modalities for trade facilitation adopted in the July Package have explicitly adopted this approach, setting a precedent in WTO. This precedent demonstrates that it is not only desirable but also feasible to recast the driving force of trade negotiations from pure mercantilist commercial interest towards the imperative of development. This is particularly justifiable given the expected aggregate global gains arising from the successful conclusion of the Doha negotiations. The Africa Commission stressed that shifting one seventh of the resources allocated to OECD agricultural protection (\$350 billion) into the development budget would double global ODA flows to developing countries. The initiative would be in conformity with international commitments made at the UN International Conference on Financing for Development held in Monterrey, Mexico, in 2002.

#### **Box 23. Aid for Trade Fund**

An “Aid for Trade Fund” should constitute an indispensable element of a “fair deal for Africa” so as to support African countries in addressing adjustment costs associated with the Doha negotiations and liberalization commitments therein.<sup>36</sup> Such a fund would be used in, *inter alia*, dealing with preference erosion, government revenue loss, textiles quota elimination, and commodity dependence, building supply capacity, competitiveness, infrastructure and human and regulatory capacities, and promoting transfer of technology. The practical implementation of such a mechanism will be especially important, as many African countries lack adjustment resources and instruments to fully meet challenges arising from liberalization and reform commitments. The new challenge for the multilateral trade negotiations would be to properly design such adjustment mechanisms, ensure their sustainable funding and find ways to effectively integrate them into the negotiating outcomes, and the appropriate institutional setting to implement the mechanism. The purpose of such a fund could go beyond adjustment costs and should have under its auspices separate windows for seeding supply capacity building projects in Africa and LDCs, financing trade-related infrastructure, including transport and telecommunication, and standards-related infrastructures that can help them to upgrade their supply capacity. This could address adjustment challenges arising from, *inter alia*, preference erosion, textile quota elimination, commodities and government revenue losses under agriculture and NAMA negotiations. The fund should enable countries to invest in new and dynamic products, regulatory systems, trade facilitation infrastructures and social safety nets. A guiding principle should be that such new funding must be non-debt creating, additional to existing development aid flows, and channelled directly to recipient countries.

### **F. Trade facilitation**

67. The Modalities for negotiations on trade facilitation provide for negotiations aimed at clarifying and improving relevant aspects of GATT Articles V, VIII and X to further expedite the movement, release and clearance of goods, including goods in transit. Significantly, a footnote notes that this is without prejudice to the possible format of the final result of the negotiations, which implies that the binding or non-binding character of the resulting instrument is yet to be decided upon. The applicability or otherwise of the dispute settlement mechanism, and the exact form thereof, is a major concern of developing countries and remains to be negotiated. Negotiations would also be aimed at enhancing technical assistance and support for capacity building. The results of negotiations would take fully into account the principle of SDT, it being understood that “SDT should extend beyond the granting of traditional transition periods for implementing commitments”. An assurance was given to

<sup>35</sup> The report of the African Commission, '*Our Common Interest*', notes that one seventh of the costs of OECD protection, if allocated to aid budgets, would immediately double global aid flows.

<sup>36</sup> Proposals include the report of the UN Millennium Project on “incremental and temporary aid for trade fund”.

developing countries that they would not be required to undertake commitments that they could not implement, including for financial reasons, and that the extent and timing of entry into commitments would be related to the implementation capacities of developing countries and LDCs. Both these aspects represent a welcome recognition of the approach stressed by UNCTAD, namely that SDT should have a broader scope and that the cost implications of agreements need to be catered for to ensure proper synergy and sequencing between the level of obligations, the cost of implementation, and the financial and technical resources available to developing countries and provided to them by development partners.

68. Developing countries would not be obliged to undertake investments in infrastructure projects beyond their means. Where they lack the necessary capacity, the Modalities state that implementation would not be required of them. This responded in part to developing countries' concern over the cost and infrastructure implications of the instrument. Developing countries also called for implementation costs to be covered by the proposed instrument itself. In this respect, the Modalities provide for enhanced technical assistance and capacity-building support, with the understanding that the commitment by developed countries to provide such support is not open-ended. Collaborative efforts by international agencies, including UNCTAD, are called for in order to ensure effective, operational and coherent technical assistance and capacity building.

69. Negotiations have been initiated by a newly established Negotiating Group on Trade Facilitation. Negotiations would aim at the clarification and improvement of relevant aspects of Articles V (freedom of transit), VIII (fees and formalities) and X (publication and administration of trade regulation) of the GATT 1994 but also the enhancement of technical assistance and support for capacity building. Some 31 initial proposals have been made for improvements of each article. The initial discussions suggested that while a number of WTO Members recognized the benefits of trade facilitation, there remain concerns over the possible financial, legislative and administrative cost implications of proposed measures, including infrastructure investment that may be required for implementing effective trade facilitation measures, as well as the impact of trade facilitation on security, regulation of illegal trade and collection of customs revenue. Some proposals appear to go beyond the negotiating mandate, including those relating to corruption, integrity of customs officials, fraud, mandatory use of HS nomenclature or binding advance ruling on customs matters. Others, by calling for strong disciplines and modern customs techniques, may entail substantial implementation costs and investments. This may be the case in respect of proposals to enhance procedures for release of goods, including pre-arrival clearance, post-clearance audit risk management, and clearance of express consignments. The African Group has expressed concern that a number of the proposals go beyond the mandate of these negotiations, that they do not provide for adequate SDT for developing countries and LDCs, that the technical assistance components of these proposals are of a "best endeavour" nature, and that they provide for no new resources (see box 24).

**Box 24. African submission on trade facilitation<sup>37</sup>**

*The scope of the negotiations* should be focused solely on clarifying and improving GATT Articles V, VIII, and X. For the African Group, enhanced SDT, technical assistance, support for capacity building and implementation assistance are critical components of these negotiations.

<sup>37</sup> TN/TF/W/33, 28 April 2005.

The process of identifying the *specific trade facilitation needs and priorities* of Africa should, as a minimum, aim at (i) finding a solution to high transport and communication costs that impact adversely on the competitiveness of African enterprises; (ii) improving the capacities of customs administration, including through their automation, in order to dramatically reduce delays at points of entry and exit while maximizing public revenue receipts; and (iii) improving the integration of African enterprises/economies into the international payments and insurance systems.

The *cost implications* for developing countries and LDCs of proposals for new commitments on trade facilitation need to be fully assessed and examined. Any findings on the cost implications (public works infrastructure, information and communications technology infrastructure, administrative re-engineering, and human resources) should then be directly linked to the provision of adequate technical and financial assistance and support for capacity building as provided for in modalities for negotiations on trade facilitation.

An appropriate mechanism should be established, not later than the end of July 2005, for the provision by developed countries of technical assistance and support for capacity building during the negotiations. This should support *inter alia* trade facilitation negotiations-oriented research and capacity-building projects, as well as participatory and transparent trade facilitation needs assessment and prioritization.

*SDT* should also be reflected in legally binding provisions that are precise, effective and operational, and provide policy space and flexibility for developing countries and LDCs in determining when, how, and to what extent new commitments are to be implemented by them. *SDT* should also condition the implementation by developing countries and LDCs of new commitments to the provision by developed countries of effective, adequate, long-term, and sustainable technical and financial assistance and support for capacity-building with respect to national structural or sector-specific trade facilitation-related projects or programmes.

## G. WTO Rules

### Box 25. São Paulo Consensus on WTO rules

The SPC recognized that the abuse of anti-dumping (AD) measures is a major market entry barrier for African and other developing countries' exports.

70. The July Package makes no specific reference to negotiations on WTO rules except for a commitment to achieve progress, and only limited progress has been made. The Doha negotiations on WTO rules on RTAs would have substantive implications for the evolving RTAs. To date, progress has been limited in the negotiations on transparency requirements for notification, reporting and examination by the relevant WTO body, and substantive “systemic issues” are yet to be fully addressed. It is increasingly considered necessary that appropriate *SDT* be incorporated into the provisions of RTAs so as to ensure equitable treatment of RTA partners with different levels of economic development, and that such RTA-specific *SDT* be legally sustained by WTO rules on RTAs. In this respect, the ACP Group of States has called for formal incorporation of *SDT* into the application of conditions set out in GATT Article XXIV to RTAs established between developed and developing countries (see box 26). This was supported by the African Commission Report. Recently, a submission was made by Australia and another by the EC touching upon some of the systemic issues, including the key issue of “substantially all the trade” requirement.<sup>38</sup> The EC proposal referred to differentiation between RTAs formed among large developing countries and those formed by small developing countries.

<sup>38</sup> TN/RL/W/173/Rev.1, 3 March 2005, and TN/RL/W/179, 12 May 2005 respectively.

**Box 26. Proposals by the ACP Group on SDT in WTO rules on regional trade agreements<sup>39</sup>**

In WTO rules negotiations on regional trade agreements, the ACP Group of States submitted a proposal calling for SDT and explicit flexibilities to be integrated into GATT Article XXIV. This call was supported by the African Commission Report. Specifically, the ACP Group proposed that SDT for developing countries be formally and explicitly made available to developing countries in meeting criteria set out in paragraphs 5 to 8 of GATT Article XXIV in the context of regional agreements entered into between developing and developed countries. Such requirements relate to “substantially all the trade”, “reasonable period of time”, notification, reporting and review in the Committee on Regional Trade Agreements, and the applicability of dispute settlement proceedings.

## H. TRIPS

**Box 27. São Paulo Consensus on TRIPS**

The SPC emphasizes that full attention should be given to the protection, preservation and promotion of traditional knowledge, innovation and practices and biological resources of developing countries. Work needs to be done on evolving appropriate national and international systems in this regard.

### *TRIPS and public health*

71. The July Package reaffirmed the commitment to progress in TRIPS without specificity. Developing countries would be keen to operationalize the objectives and principles of the TRIPS Agreement in respect of transfer of technology and the prevention of abuse of intellectual property rights. The Decision on Implementation of Paragraph 6 of the Doha Ministerial Declaration on the TRIPS and Public Health adopted in August 2003 temporarily waived the obligations under Article 31(f) for those exporting Members supplying medicines to countries with insufficient or no manufacturing capacities. The deadline set for amending Article 31 (f) was extended until March 2005 and subsequently to May 2005.

72. Discussions have centered on (a) the legal form of the amendment (footnote or additional paragraphs) and (b) whether and how to translate the Chairman’s statement attached to the August 2003 Decision. Developing countries argue that any amendment to the TRIPS Agreement should not include the Chairman’s statement, and should be selectively based on the August 2003 Decision. Developed countries were of the view that the amendment exercise should be of a merely technical nature and that it should refer to the “August 30 solution” in its entirety (e.g. including all of the August 30 Decision as well as the Chairman’s statement). The African Group submitted in December 2004 draft texts for the amendment of the TRIPS Agreement and called for the early solution of the issue (see box 28). A difference in positions continues to exist as regards the content and nature of the required legal changes.

73. An expeditious solution to this issue should be given high priority to ensure access to essential medicines to address pandemics, and contribute to MDGs. To date, no country has used the waiver to enhance its access to generic drugs, owing mainly to difficulties in meeting the conditions stipulated and cumbersome and costly procedures for both producers and users of drugs.

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<sup>39</sup> TN/RL/W/155, 28 April 2004.

**Box 28. African submission on text of amendment to Article 31 of TRIPS<sup>40</sup>**

**[Article 31]**

[2] The obligations under subparagraph 1(f) of this Article shall not apply to such use that is necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) who notifies<sup>41</sup> the Council for TRIPS of its intention to use the system established under this paragraph in accordance with the terms set out below.

(a) For the purposes of this paragraph:

(i) "pharmaceutical product" means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address the public health problems as recognized in paragraph 1 of the Doha Declaration. It is understood that, among others, active ingredients necessary for its manufacture and diagnostic kits needed for its use would be included;

(ii) "eligible importing Member" means any least developed country Member, and any other Member with no or insufficient manufacturing capacity in the pharmaceutical sector that has made a notification to the Council for TRIPS of its intention to use the system as an importer, it being understood that a Member may notify at any time that it will use the system in whole or in a limited way, for example, only in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use;

(iii) "exporting Member" means a Member using the system set out in this paragraph to produce pharmaceutical products for, and export them to, an eligible importing Member.

(b) Where use is made by an eligible importing Member of the subject matter of a patent under this paragraph, adequate remuneration for purposes of subparagraph 1(h) of this Article shall be paid by the exporting Member taking into account the economic value to the importing Member of the use that has been authorized in the exporting Member. Where a compulsory licence is granted for the same products in the importing Member, the obligation of that Member under subparagraph 1(h) of this Article shall be waived in respect of those products for which remuneration in accordance with the first sentence of this subparagraph has been paid in the exporting Member.

(c) Products produced under the licence shall be clearly identified as being produced under the system set out in this paragraph through specific labelling or marking. Suppliers should distinguish such products through special packaging and/or special colouring/shaping of the products themselves, provided that such distinction is feasible and does not have a significant impact on price.

(d) Members shall ensure the availability of effective legal means to prevent the re-exportation or unlawful importation into, and sale in, their territories of products produced under the system set out under this paragraph, using the means available under Part III of this Agreement. If any Member considers that such measures are proving insufficient for this purpose, the matter may be reviewed in the Council for TRIPS at the request of that Member.

(e) With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products; where a developing or least developed country Member is party to a regional trade agreement within the meaning of Article XXIV of the GATT 1994 or the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), at least half of the membership of which is made up of countries on the United Nations list of least developed countries, the obligation of that Member under subparagraph 1(f) of this Article shall be waived to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that Member to be exported to the markets of those other developing or least developed country parties to the regional trade agreement.

<sup>40</sup> IP/C/W/437/Rev.1, 23 March 2005.

<sup>41</sup> It is understood that this notification does not need to be approved by a WTO body in order to use the system set out under this paragraph. The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated for this purpose.

(f) Members recognize the desirability of promoting the transfer of technology and capacity building in the pharmaceutical sector in order to help importing Members establish their own manufacturing capacities in this sector. To this end, eligible importing Members and exporting Members are encouraged to use the system set out in this paragraph in a way which would promote this objective. Members undertake to cooperate in paying special attention to the transfer of technology and capacity building in the pharmaceutical sector in the work to be undertaken pursuant to Article 66.2 of this Agreement, paragraph 7 of the Declaration and any other relevant work of the Council for TRIPS.

(g) Members shall not challenge any measures taken in conformity with the provisions of this paragraph under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994.

### *Biodiversity-related issues*

74. Given Africa's abundance of biodiversity and traditional knowledge, the mandated review of TRIPS on three issues is of key importance to Africa, namely: (i) the review of the provisions of Article 27.3 (b); (ii) the relationship between the TRIPS Agreement and the Convention on Biological Diversity; (iii) and the protection of traditional knowledge and folklore.

75. The African Group has called for an amendment to the TRIPS Agreement to prohibit patents on life forms on the ground of ethics and for effective and enforceable international mechanisms under the TRIPS to prohibit and prevent the misappropriation of genetic resources, as well as for regulating disclosure of the sources for genetic resources and traditional knowledge involved in an invention and evidence of prior informed consent and benefit sharing. Given the difficulty in reaching an agreement on the suggested approaches, discussions have moved now to focus on reaffirming the option granted by TRIPS Article 27.3 (b) of excluding plants and animals as well as parts of plants and animals from patentability, and retraining the flexibility (option for a *sui generis* system) recognized by Article 27.3 (b) regarding the protection of plant varieties.

76. As regards the disclosure of the source of biological resources, prior informed consent and equitable benefit sharing, in February 2004 a group of developing countries submitted a checklist of issues for discussion covering three issues: (i) disclosure of source and country of origin of the biological resource and of the traditional knowledge used in the invention; (ii) disclosure of evidence of prior informed consent under the relevant national regime; and (iii) disclosure of evidence of benefit sharing under the relevant national regime.<sup>42</sup> Recent discussions related to evidence of a fair and equitable sharing of benefits arising from the use of genetic resources, or suggesting ways forward on bio-piracy-related issues. Developed country response has been mixed. Concern was expressed about over burdening the patent system, generally opposing international obligations to this effect. As regards the relationship between the CBD and the TRIPS, developing countries have called for TRIPS to be brought into line with the CBD while developed countries suggest that the two agreements could be interpreted as complementary and mutually supportive under existing forms.

### *Geographical indications (GIs)*

77. Protecting geographical indications can generate benefits for producers and exporters as it allows for product differentiation based on the geographical origin of the product. While some developing countries may have the potential to provide such protection, the overall

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<sup>42</sup> IP/C/W/420, 2 March 2004 submitted by Brazil, Cuba, Ecuador, India, Peru, Thailand and Venezuela.



economic impacts are difficult to foresee. Recently, an increasing number of developing countries have been concerned about the development and cost implications of extended protection. Some WTO Members (EC, as well as the so-called Friends of GIs, including Egypt, Kenya, Mauritius and Nigeria, as well as several other developed and developing countries) have called for the additional protection of geographical indications under TRIPS Article 23 to be extended to products other than wines and spirits. The issue is also discussed under agriculture negotiations.

### *Technology transfer*

78. Effective transfer of technology is crucial for allowing developing and least developed countries to build a sound and viable technological base. Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives to enterprises and institutions in their territories to promote and encourage technology transfer to LDCs. The Doha Decision on Implementation-related Issues and Concerns reaffirmed the mandatory nature of Article 66.2. Subsequently, on 19 February 2003 Members adopted a Decision of the TRIPS Council and required developed countries to report on measures taken to implement the provision, including an overview of the incentive regimes in place; the type of incentives and the entity making them available; the enterprises or institutions eligible for such incentives; and the practical functioning of these incentives (e.g. statistical data on the use of incentives, type of technology transferred to those LDCs that had benefited). This is expected to encourage specific legislative, policy and regulatory measures ultimately giving effect to Article 66.2, including through fiscal or other financial incentives to enterprises to transfer technology to key areas of African interest so as to build supply capacities.

79. In addition, the Doha Ministerial Declaration established a Working Group on Trade and Technology Transfer under the General Council to examine and recommend possible steps to increase the flow of technology to developing countries.

### *Non-violation and situation complaints*

80. Allowing for non-violation disputes under the TRIPS Agreement could pose significant challenges for developing countries, ultimately having a possible chilling effect on countries' domestic legislative activities. While, according to most Members, non-violation disputes currently do not apply under the TRIPS, some Members would like to discuss the scope and modalities of these disputes. However, given that the overwhelming majority of Members are of a different view, discussions have not advanced. The United States stresses that the moratorium on non-violation should expire in Hong Kong (China). The view of the overwhelming majority of WTO Members, however, is to the contrary.

## **I. Trade, environment and development**

### **Box 29. São Paulo Consensus on trade, environment and development**

The SPC recalls that attention must be given to ensure that trade and environmental policies are mutually supportive and guided by a development-oriented approach. In the context of the Doha negotiations, it further calls for efforts to identify and promote environmental goods and services of actual and potential export interest to developing countries, as well as monitor environmental measures affecting exports of developing countries.

81. As an integral part of the DWP, negotiations are underway on “the relationship between existing WTO rules and specific trade obligations set out in multilateral

environmental agreements” (MEAs). The July Package reiterated WTO Members’ commitment to progress in this area. Considerable differences remain mainly between developed and developing countries on what constitutes a specific trade obligation (STO) under MEAs. Most developing countries interpret a STO to be limited to a mandatory trade-related provision of an MEA, while a number of developed countries maintain that even non-mandatory actions undertaken in support of an MEA’s objective may also constitute a STO. To date, some 20 MEAs have been identified as comprising trade provisions. A difference in views persists as to which MEAs negotiations should focus on.

82. Negotiations on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services” are conducted in the NAMA Negotiating Group with Special Sessions of the Committee on Trade and Environment (CTESS) playing a role in clarifying concepts and identifying a set of environmental goods. Environmental goods would be likely to emerge as a possible candidate for tangible progress at the Hong Kong MC once the NAMA negotiations arrive at an agreement on modalities. To date, products included in lists of environmental goods have been limited to goods used to provide environmental services (pollution prevention, reduction and control). Most such goods comprise capital equipment of considerable export interest to developed countries and for which developing countries are net importers. Along with the EU and Switzerland, many developing countries are seeking to include environmentally preferable products – whose end-use and consumption provide relative and absolute environmental benefits – in negotiations. Such goods include a number of raw and processed natural-resource-based commodities of considerable export interest to developing countries. Discussions to define and classify environmental services have been largely absent in CTESS discussions. However, the issues are largely dealt with through the bilateral request and offer process of the services negotiations.

#### **IV. DISPUTE SETTLEMENT**

83. Two recent panel and Appellate Body rulings may have a bearing on agriculture negotiations, particularly in respect of reduction and elimination of agricultural subsidies. These ground-breaking cases include the WTO’s panel rulings in favour of Brazil on the US subsidies to upland cotton producers and on the EU’s export subsidies on sugar.<sup>43</sup> The two rulings found, *inter alia*, that the level of subsidies provided to relevant sectors by the United States and the EU were not in conformity with the Uruguay Round commitments. Accordingly, both countries were called upon to bring their measures into conformity with their obligations under WTO rules. The African Union paper on cotton drew on the cotton panel ruling and argued for total elimination of trade-distorting domestic support by September 2005, in line with the panel ruling. As regards sugar, the EU reportedly indicated deep cuts of up to 39 per cent of the EU support price for sugar and a rather short implementation period of two years. The EU sugar reform proposal is expected in June 2005.

84. Two recent cases in the area of services pertained to cross-border supply of services in gambling and telecommunications, and they have implications for the interpretation of GATS provisions and Members’ schedules for specific commitments. Both cases involved classification issues, along with the scope and coverage of schedules of commitment. The case US – gambling services is of relevance to IT-enabled, cross-border supply of services,

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<sup>43</sup> *United States – subsidies on upland cotton* (WT/DS267/AB/R), 3 March 2005; *European Communities – Export subsidies on sugar* (WT/DS265/AB/R; WT/DS266/AB/R; WT/DS283/AB/R), 28 April 2005.

including outsourcing. Similarly, the case Mexico – telecommunication services is the first dispute relating to the 1997 Basic Telecom Agreement and the Reference Paper establishing disciplines on telecom competition safeguards, interconnection and transparent licensing. Both, the Telmex and the gambling case highlight the difficulty of foreseeing the potential implications of scheduled commitments and the need to carefully schedule the intended commitments. They point to the risk that panels and the Appellate Body may interpret schedules of specific commitments in a manner different from what the scheduling country had intended.

85. The case on *European Communities – Conditions for the Granting of Tariff Preferences* is of relevance to the discussion on SDT. The case pertains to the EU GSP scheme. The Appellate Body (AB) concluded *inter alia*, that the Enabling Clause authorizes preference-granting countries to respond “positively” to “development, financial and trade needs” of developing countries that are not necessarily common or shared by all developing countries, and that the existence of such needs must be assessed according to an objective standard.<sup>44</sup>

## V. WTO ACCESSION

86. Five African countries, four of which are LDCs, are currently in the process of accession to the WTO, namely Algeria, Cape Verde, Ethiopia, São Tome and Principe, and Sudan. The process of WTO accession represents challenges for acceding countries, and requires international support, including capacity building, aimed at overcoming difficulties faced, especially by acceding African LDCs. While the “Guidelines on the Accession of LDCs to the WTO” adopted on 10 December 2002 was aimed at responding to the commitment made at the Doha Ministerial Declaration to addressing special needs of LDCs, the full adherence, in letter and spirit, to the Guidelines by WTO membership has been lacking.

87. Experience has shown that acceding LDCs continue to be subject to requests to accept excessive liberalization and other reform commitments, including WTO-plus commitments, during the negotiating process that go beyond the level of concessions and commitments undertaken by existing WTO LDC Members. Such commitments cannot reasonably be considered commensurate with the LDCs’ level of development and their special trade, development and financial needs and capacities.<sup>45</sup> Furthermore, the right of recourse to SDT provisions is subject to negotiations, on a case-by-case basis, and acceding LDCs are often obliged to forgo their rights to utilize some of the SDT and other developmental provisions which are automatically available to existing WTO Members. Even when granted, they have been diluted and do not meet their intended objectives. This implies that the rights of newly acceded WTO Members are diminished, with the consequence that WTO Members with similar levels of development assume different levels of rights and obligations under WTO, thereby leading to multi-tiered system of rights and obligations among Members. There is thus a risk that newly acceded LDCs could find themselves further marginalized in the MTS.

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<sup>44</sup> *European Communities – Conditions for the granting of tariff preferences to developing countries* (WT/DS246/AB/R), paras 162–166.

<sup>45</sup> The Guidelines provides that “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 LDC Members”.

## VI. REGIONAL TRADE AGREEMENTS AND SOUTH – SOUTH COOPERATION

88. RTAs have come to play a prominent role in the evolution of the international trading system and the emerging new trade geography, with a significant bearing on the development prospects of developing countries.<sup>46</sup> Today some 40 per cent of world trade takes place within RTAs, and the share will exceed 50 per cent by 2005. Africa and other developing countries have been negotiating and concluding agreements with both developed and developing countries. The expansion of North–South agreements has been significant in recent years. Negotiations have been launched for large-scale, plurilateral RTAs that would transform economic relationships based on pre-existing unilateral preferences into relationships based on reciprocity such as ACP–EU negotiations for economic partnership agreements (see box 30 below). These negotiations will have implications for Africa, as North–South negotiations tend to result in deeper market access and higher regulatory standards than negotiations at the multilateral level. Concern has been expressed about the possible dilution and limitation of SDT and policy space allowed under the multilateral trading system due to deeper liberalization negotiated in regional contexts.

### Box 30: AU’s Ministerial Declaration on EPA negotiations (9 June 2005)

AU Ministers of Trade met in Cairo, Egypt, on 5-9 June 2005 to take stock of progress made in EPA negotiations and examine negotiating issues of interest to them. These can be summarized as follows:

- EPAs should serve as instruments for development and poverty reduction. They must also support the deepening on intra-African trade. In this regard, emphasis should be placed on the need for urgent and easily accessible substantial additional resources for building support capacity, infrastructure development, diversification, competitiveness of African economies and to deal with anticipated adjustment costs;
- Recognizing the limitations that overlapping membership to multiple RECs might pose to the implementation and maximization of possible gains from the EPAs, we request the regional economic communities to urgently harmonise their trade integration policies before they conclude and sign the EPAs;
- Different EPA groupings should harmonise their positions on issues of common interest before final decisions are taken;
- Call on the Commission of the African Union to continue the implementation of the mandate given to it by the AU Summit in Maputo in 2003 to monitor, coordinate and harmonise the EPA negotiations;
- Commit to taking measures that will lead to expeditious elimination of inter-REC and intra-REC trade barriers;
- Reiterate that Article XXIV of GATT needs to be appropriately amended to allow for necessary special and differential treatment, less than full reciprocity principle and explicit flexibilities that are consistent with the asymmetry required to make EPAs pro-development. Conclusions of the market access aspects of the EPAs should take place upon completion of the amendment;
- Recommend that non-health related rules and regulations under SPS be reviewed before agreements. Adequate resources should be provided to build capacity to meet SPS and TBT requirements, which constitute non-tariff barriers to Africa’s export trade;
- Except for trade facilitation, the other three Singapore issues of investment, competition policy and transparency in government procurement should remain outside the ambit of the WTP Doha work programme negotiations;
- Call on the EU not to introduce in the EPA negotiations any TRIPS plus proposals which would compromise these flexibilities.

89. Africa's involvement in wider South–South trade cooperation will be important as growing South–South trade provides an opportunity for African countries to catch on to this

<sup>46</sup> UNCTAD. “Multilateralism and regionalism: The new interface”, background note prepared for a pre-UNCTAD XI Forum (8 June 2004, Rio de Janeiro).

rising locomotive of the South. Africa's trade with other developing countries is growing strongly, compared with its trade with its traditional trading partners. Other developing countries are providing expanding markets for African countries, increasing the scope for further expansion. Africa's trade in goods with other developing countries accounts for about 28 per cent of its total trade in goods with the world.<sup>47</sup> African–Asian developing countries' trade has been particularly dynamic, rising to more than \$58 billion in 2003, as compared with \$12 billion in 2000. Similarly, trade between African and Latin America countries is also growing. There is potential to expand such trade further. The GSTP (Global System of Trade Preferences among Developing Countries) provides an ideal instrument for African countries, especially LDCs, to secure preferential market access to the growing markets in the South, without competing with developed countries.<sup>48</sup> The third round of GSTP negotiations (see box 31) affords an important and unique opportunity for African countries members of the GSTP Agreement to engage actively in the negotiations to obtain commercially meaningful benefits, including through deeper preferential market access. It also provides to many African countries that are not yet members of the GSTP Agreement with the opportunity to participate in the negotiations and to accede to the GSTP Agreement.

### **Box 31. GSTP Third Round of Negotiations**

On the occasion of UNCTAD XI, Ministers of the GSTP Committee of Participants launched the Third Round of GSTP negotiations aimed at achieving a package of substantial trade liberalization commitments to promote economic complementarities among them, especially at the interregional level. They invited other members of the Group of 77 and China to participate in the negotiations to pave the way for their accession to the Agreement. The third round of GSTP negotiations is envisaged to entail a package of substantial trade liberalization commitments based on mutual advantage and equitable distribution of benefits to all participants and promote economic complementarities, and would include concrete preferential measures for LDCs. A Negotiating Committee has been set up with two Negotiating Groups (one on rule-making and the other on market access) that meet every week. Technical preparations for the negotiations covering market access and rule-making have advanced substantially. A timetable has been drawn up for completing the round by November 2006. Consideration of proposals for improving trade among them has begun and is expected to accelerate in the course of 2005. In early 2006, GSTP participants expect to begin negotiations on tariff preferences and other forms of cooperation. Other members of the Group of 77 and China have been invited to join the negotiations, and have attended the formal and informal sessions of the two working groups. The accession of the new members to the GSTP will be dovetailed with the ongoing negotiations. African countries should take advantage of this opportunity to become members of the GSTP. There is an expectation among participants that they will make the round a successful, meaningful and mutually beneficial one. Parallel to the negotiations, GSTP participants have agreed on a programme of work to disseminate information on the

<sup>47</sup> 2002 data from UNCTAD Handbook of International Trade Statistics, 2004.

<sup>48</sup> The GSTP came into being after a long process of negotiations during the Ministerial Meetings of the Group of 77, notably at Mexico City in 1976, Arusha in 1979 and Caracas in 1981. The First Round of GSTP Negotiations was launched by the Brasilia Ministerial Meeting in 1986. At the conclusion of the First Round in 1988 at Belgrade, the GSTP Agreement was signed on 13 April 1988, which came into force on 19 April 1989. To date, 44 countries have ratified the Agreement and become participants, among which 13 are African countries. These countries are: Algeria (13/09/1990)<sup>48</sup>; Argentina (02/03/1990); Bangladesh (19/04/1989); Benin (13/10/1991); Bolivia (16/08/1989); Brazil (25/05/1991); Cameroon (16/05/1992); Chile (28/10/1989); Colombia (02/08/1997); Cuba (19/04/1989); Democratic Republic of Korea (19/04/1989); Ecuador (17/05/1990); Egypt (16/07/1989); Ghana (19/04/1989); Guinea (19/01/1990); Guyana (04/05/1989); India (19/04/1989); Indonesia (22/10/1989); Iran (Islamic Republic of) (17/05/1992); Iraq (19/04/1989); Libyan Arab Jamahiriya (02/07/1989); Malaysia (31/08/1989); Mexico (13/05/1989); Morocco (16/03/1997); Mozambique (05/07/1990); Myanmar (21/07/1997); Nicaragua (03/05/1989); Nigeria (19/04/1989); Pakistan (08/07/1989); Peru (19/04/1989); Philippines (25/03/1992); People's Republic of Korea (11/06/1989); Romania (19/04/1989); Singapore (19/04/1989); Sri Lanka (19/04/1989); Sudan (27/04/1991); Thailand (07/03/1990); Trinidad and Tobago (08/12/1989); Tunisia (25/08/1989); United Republic of Tanzania (19/04/1989); Venezuela (20/01/1999); Viet Nam (19/04/1989); Yugoslavia (19/04/1989); Zimbabwe (19/04/1989).

Agreement as widely as possible to the general public, particularly commerce and industry, through a series of dialogues, seminars and conferences in Africa, Asia and Latin America. They have requested the UNCTAD secretariat to assist them in carrying out this programme. Through a technical cooperation programme with the GSTP Committee of Participants, UNCTAD extends technical and administrative support to the day-to-day operations of the Committee, including the ongoing negotiations.

90. At the regional and subregional levels, South--South cooperation constitutes an important avenue for achieving economies of scale, developing competitiveness, productivity and testing new products and services, and facilitating investments. In Africa, economic integration efforts under the auspices of AU towards the promotion of a continental common market, supported by dynamic regional economic communities (ECOWAS, UEMOA, SADC, UMA, COMESA, EAC), need to be expeditiously completed in attaining the stated objectives of liberalizing mutual trade. These can contribute to strengthening the regional integration of Africa, and serve as building block for beneficial integration into the global economy.

## ANNEX

**Table 1. Main African exporters of services, by sector (2002)**

Sector	Total African exports in the sector (\$ million)*	Top African Exporters	Country's percentage share in total African exports
<b>Travel/tourism</b>	14000.42	Egypt	26.8
		South Africa	20.8
		Morocco	18.9
		Tunisia	10.8
		Mauritius	4.3
		United Republic of Tanzania	3.1
		Ghana	2.5
		Kenya	1.9
		<b>Transport</b>	6978.79
South Africa	14.6		
Morocco	11.1		
Tunisia	8.7		
Kenya	6.1		
Mauritius	3.9		
Ethiopia	3.5		
Ghana	1.6		
<b>Other business services</b>	4145.68		
		Morocco	9.6
		South Africa	7.5
		Tunisia	6.4
		Côte d'Ivoire	5.2
		Mauritius	4.3
		Angola	3.6
		Mozambique	2.9
		<b>Communications</b>	772.25
Egypt	28.5		
Senegal	7.3		
Côte d'Ivoire	7.2		
South Africa	5.5		
Mauritius	3.9		
Ethiopia	3.1		
Kenya	2.0		
<b>Insurance</b>	390.92		
		Morocco	7.2
		Côte d'Ivoire	6.3
		Egypt	5.6
		Tunisia	5.2
		United Republic of Tanzania	4.9
		Kenya	1.8
		Ghana	1.5
		<b>Financial services</b>	210.27
Tunisia	20.0		
Côte d'Ivoire	18.4		
Mauritius	8.0		
Mozambique	4.0		
Senegal	2.1		
United Republic of Tanzania	2.0		
Ethiopia	1.9		

Source: UNCTAD Handbook of Statistics 2004

\*Note: This represents the sum of countries which have reported/submitted data. Note that in some sectors a significant number of countries have not submitted data

**Table 2. Top ten African exporters of commercial services 2002 (\$ million)**

Country	Exports of commercial services	In percentage of Africa's export of commercial services
Egypt	9127.00	33.6
South Africa	4577.22	16.8
Morocco	4098.34	15.1
Tunisia	2603.16	9.5
Mauritius	1132.12	4.1
Kenya	737.00	2.7
United Republic of Tanzania	608.80	2.2
Ghana	538.80	1.9
Côte d'Ivoire	512.88	1.8
Ethiopia	450.43	1.6

Source: UNCTAD Handbook of Statistics 2004

**Table 3. Top ten African importers of commercial services, 2002 (\$ million)**

Country	Imports of commercial services	In percentage of Africa's imports of commercial services
Egypt	6013.17	21.8
South Africa	5240.13	19.0
Angola	3196.98	11.6
Morocco	1902.67	6.9
Côte d'Ivoire	1447.11	5.2
Tunisia	1352.57	4.9
Congo	916.98	3.3
Sudan	784.30	2.8
Mauritius	779.37	2.
United Republic of Tanzania	646.80	2.3

Source: UNCTAD Handbook of Statistics 2004.