

CURRENT DEVELOPMENTS ON ISSUES OF INTEREST TO AFRICAN COUNTRIES IN THE CONTEXT OF POST SEATTLE WTO TRADE NEGOTIATIONS

Report prepared by the UNCTAD Secretariat

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This report reviews the current state of discussions and negotiations among WTO Members as of July 2000 in key areas of the multilateral trading system of interest and concern to African countries. It also provides some suggestions on strategic options available to African countries in each area of concern to guide those countries in their preparations for effective engagement in the trade negotiations. The report was prepared at the request of the OAU/AEC secretariat and delivered to the Third Ordinary Session of the OAU/AEC Ministers of Trade Committee on Trade, Customs and Immigration, held in Cairo from 16 to 20 September 2000.

INTRODUCTION

1. This report reviews the current state of discussions and negotiations among members of the World Trade Organization (WTO) since the setback at the Third Ministerial Conference held in Seattle in December 1999, in launching new multilateral trade negotiations and improving implementation of existing agreements. Drawing on the current situation as of July 2000 and taking into consideration the priorities in multilateral trade negotiation issues raised by African countries in the preparatory process leading up to Seattle, the report also suggests some priorities and strategies for African countries in the negotiations.

2. The report stems from the mandate given to UNCTAD at its tenth conference held in Bangkok in February 2000 on providing "analytical and technical support to developing countries on the built-in agenda and in other possible areas of negotiations".¹ It is a continuation of the support provided by UNCTAD, often in cooperation with the United Nations Development Programme (UNDP) and other agencies, to African countries in developing positive and coherent recommendations for strategic preparedness in multilateral trade negotiations. Coherence in trade negotiations is particularly important for African countries, since, in addition to WTO negotiations, they must grapple with their subregional and regional trade negotiations with the European Union (EU) in the context of trade relations between the African, Caribbean and Pacific (ACP) States and the EU, and with other trading partners. The report also responds to the Memorandum of Understanding between UNCTAD and the Organization of African Unity (OAU)/African Economic Community (AEC), signed in May 1999, wherein the two organizations agreed to collaborate on multilateral trade issues for the benefit of African States.

3. The report addresses four categories of multilateral trade issues relevant to African countries: actions in favour of least developed countries (LDCs), implementation issues, and the two built-in agenda sectors for new negotiations, namely agriculture and services. In chapter I, issues of interest to LDCs are examined, with particular emphasis on market access issues, taking into account the importance of this group of countries for Africa and to the multilateral trade system. Full and effective participation by LDCs in the multilateral trading system can contribute to creating an atmosphere of trust and confidence in the system among its weakest members, and strengthening their implementation of the Uruguay Round results, thereby enhancing the credibility of the WTO rule-based trading system.

4. In chapter II, the concerns of African and developing countries in respect of the implementation of WTO agreements are highlighted. These pertain in particular to the difficulties experienced in meeting the procedural (including notification) and enforcement obligations of those agreements, including limited transitional periods, the financial burdens faced by Governments, the economic implications of adjustment of trade legislation to new obligations, and the negotiation requirements for seeking to redress perceived imbalances in multilateral trade liberalization. A detailed review of the implementation issues of interest to developing countries is provided in the addendum to this report.

5. Chapters III and IV deal with the launching in early 2000 of the mandated negotiations among Members within the WTO on agriculture and services. Some of the key issues and the strategies available to African countries as they seek to defend and promote their trade and development interests in these two key sectors are discussed and highlighted.

¹ *Plan of Action*, UNCTAD tenth session, Bangkok, 12-19 February 2000, paragraph 136, TD/386.

Chapter I

ACTIONS IN FAVOUR OF LEAST DEVELOPED COUNTRIES

6. The effective integration of LDCs into the multilateral trading system is a key development issue given its potential as a means of enhancing prospects for trade, development and poverty reduction. Addressing this development conundrum via multilateral trade disciplines and liberalization initiatives within the WTO is a priority for African countries in view of the following (see tables I.1 and I.2):

- 33 African countries are among the total of 48 LDCs, a proportion of about 69 per cent, so that the largest concentration of LDCs is in Africa;
- 24 African countries are among the 29 LDCs that are WTO Members, a proportion of about 83 percent, so that the bulk of LDC WTO Members come from Africa;
- 24 African LDC WTO Members represent about 58 per cent of the total African WTO membership of 41, so that over half of the African WTO membership is composed of LDCs; and
- 41 African WTO members represent about 30 per cent (or just under one third) of the total WTO membership of 137 as of 14 June 2000.

A. SINGAPORE TO SEATTLE

7. Since the creation of the WTO, there has been a strengthening of the participation of LDCs in the multilateral trading system as members of a rule-based system, as equal partners discharging their obligations and as effective competitors in attracting trade and other benefits. Concern about LDCs' participation became particularly manifest during the first year of the WTO's existence when many LDCs were unable to meet their basic WTO notification requirements owing to deficient technical, institutional and financial resources. Consequently, at the First WTO Ministerial Conference, held in Singapore from 9 to 13 December 1996, Ministers committed themselves to addressing the marginalization of LDCs.² In that connection, they agreed to a Plan of Action for improving LDCs' capacity to integrate into the multilateral trading system, including through the provision of autonomous duty-free market access.

8. As a follow-up to the Singapore Ministerial Declaration, a High-Level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development was held on 27 and 28 October 1997 in Geneva. Two key results of this meeting were; (a) several announcements by WTO Members regarding improved market access conditions for LDCs, including for the first time unilateral commitments by some developing countries; and (b) endorsement of the Integrated Framework for Trade-Related Technical Assistance (IF) to support capacity building on multilateral trade issues in LDCs. In respect of (a), a number of developing countries announced their decision or intention to grant preferential or duty-free access to selected export products from LDCs through existing preferential schemes such as

² See WTO, *Singapore Ministerial Declaration Adopted on 13 December 1996*, paragraphs 5, 13 and 14, WT/MIN(96)/DEC.

the Generalized System of Preferences (GSP), the Global System of Trade Preferences among Developing Countries (GSTP) or regional trade arrangements. Those countries were Egypt, India, Malaysia, Republic of Korea, Singapore, South Africa, Thailand and Turkey. In respect of (b), the meeting encouraged the core six agencies – the International Monetary Fund (IMF), the International Trade Centre (ITC), UNCTAD, UNDP, the World Bank and WTO – to execute the activities contained in the existing integrated country responses and to provide an integrated response to the trade-related needs of other LDCs that had not yet done so.

<u>WTO Members</u>	<u>Others</u>
Angola	Afghanistan
Bangladesh	Bhutan
Benin	Cambodia
Burkina Faso	Cape Verde
Burundi	Comoros
Central African Republic	Equatorial Guinea
Chad	Eritrea
Democratic Republic of the Congo	Ethiopia
Djibouti	Kiribati
Gambia	Lao People's Democratic Republic
Guinea	Liberia
Guinea-Bissau	Nepal
Haiti	Samoa
Lesotho	Sao Tome and Principe
Madagascar	Somalia
Malawi	Sudan
Maldives	Tuvalu
Mali	Vanuatu
Mauritania	Yemen
Mozambique	
Myanmar	
Niger	
Rwanda	
Sierra Leone	
Solomon Islands	
Togo	
Uganda	
United Republic of Tanzania	
Zambia	

9. At the Second WTO Ministerial -Conference in Geneva (18–20 May 1998), celebrating also the 50th anniversary of the multilateral trading system, the Ministers reaffirmed *inter alia* their commitment to effective implementation of special provisions in the WTO agreements in favour of developing countries. They also reiterated their concern about the marginalization of LDCs and certain small economies, welcomed initiatives to implement the Plan of Action for LDCs through the IF and again committed themselves "to continue to improve market access conditions for products exported by the least-developed countries on as broad and liberal a basis as possible".³

³ See WTO, *Ministerial Declaration, Adopted on 20 May 1998*, paragraph 6, WT/MIN(98)/DEC/1.

Table I. 2: Membership of African and least developed countries in the WTO (date of accession)

	<u>African countries (53)</u>		<u>LDCs (48)</u>
	<u>Non-LDC African countries (20)</u>	<u>African LDCs (33)</u>	<u>Non-African LDCs (15)</u>
WTO Members (137 as of June 2000)	Botswana (31 May 1995) Cameroon (13 December 1995) Congo (27 March 1997) Côte d'Ivoire (1 January 1995) Egypt (30 June 1995) Gabon (1 January 1995) Ghana (1 January 1995) Kenya (1 January 1995) Mauritius (1 January 1995) Morocco (1 January 1995) Namibia (1 January 1995) Nigeria (1 January 1995) Senegal (1 January 1995) South Africa (1 January 1995) Swaziland (1 January 1995) Tunisia (29 March 1995) Zimbabwe (5 March 1995)	Angola (23 November 1996) Benin (22 February 1996) Burkina Faso (3 June 1995) Burundi (23 July 1995) Central African Republic (31 May 1995) Chad (19 October 1996) Dem.Rep. of Congo (1 January 1997) Djibouti (31 May 1995) Gambia (23 October 1996) Guinea-Bissau (31 May 1995) Guinea (25 October 1995) Lesotho (31 May 1995) Madagascar (17 November 1995) Malawi (31 May 1995) Mali (31 May 1995) Mauritania (31 May 1995) Mozambique (26 August 1995) Niger (13 December 1996) Rwanda (22 May 1996) Sierra Leone (23 July 1995) United Rep. of Tanzania (1 January 1995) Togo (31 May 1995) Uganda (1 January 1995) Zambia (1 January 1995)	Bangladesh (1 January 1995) Haiti (30 January 1996) Maldives (31 May 1995) Myanmar (1 January 1995) Solomon Islands (26 July 1996)
	17	24	5
Acceding countries & territories (33)	Algeria Seychelles	Cape Verde Ethiopia Sudan	Bhutan Cambodia Lao People's Democratic Rep. Republic Nepal Samoa Vanuatu Yemen
	2	3	7
Non-WTO members (18)	Libyan Arab Jamahiriya	Comoros Equatorial Guinea Eritrea Liberia Sao Tome and Principe Somalia	Afghanistan Kiribati Tuvalu
	1	6	3

Note: The country list is based on UN membership (188 States) as of August 2000.

10. The evolving consensus on a better deal for the LDCs in the multilateral trading system was an important theme underpinning the preparatory process conducted by the WTO's General Council for the Third WTO Ministerial Conference (Seattle, 30 November – 3 December 1999). During this process a number of proposals were submitted which were specifically directed at problems and difficulties encountered by the LDC WTO Members and LDCs in the process of accession to the WTO. Proposals were submitted by the European Communities (WT/GC/W/153, 195 and 232); Egypt, on behalf of the African Group (WT/GC/W/137); Djibouti (WT/GC/W/321), and Bangladesh, on behalf of LDCs presenting

the results of the Co-ordinating Workshop for Senior Advisers to Ministers of Trade in LDCs in Preparation for the Third WTO Ministerial Conference, held in Sun City, South Africa, from 21 to 25 June 1999 (WT/GC/W/251).

11. Additionally, the OAU/AEC Trade Ministers meeting in Algiers (20–24 September 1999) adopted and transmitted a set of proposals to the Third WTO Ministerial Conference (see box I.1 for proposals pertaining to LDCs). To some extent, these proposals drew on negotiating objectives established by African countries in various national, subregional and regional positive agenda meetings organized during the course of 1999, often with the support of UNCTAD and UNDP and other international organizations.

Box I.1

Statement by the OAU/AEC Conference of Ministers of Trade (Algiers, Algeria (20-24 September 1999) on the Third WTO Ministerial Meeting, Seattle, 30 November – December 3 1999:

Recommendations on Decisions pertaining to LDCs

.....

(b) A Decision is required to institute a system of tariff bindings at zero rates by developed countries, for products originating in Least Developed Countries (LDCs), 33 of which are in Africa. In addition, a Decision is required to give new impetus to the WTO Integrated Framework for Trade-Related Technical Assistance for Least Developed Countries.

(c) A Decision is required to the effect that the Marrakesh Ministerial Decision on Measures Concerning Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs) should be revised, before 1 January 2001. This would ensure the effective implementation of the Decision and to incorporate concrete, operational and contractual measures, including provisions of technical and financial assistance, that are both effective and responsive to the special needs of LDCs and NFIDCs, and that may arise from the continuation of the reform process in agriculture. This should be accompanied by action by developed countries in the negotiations on agriculture, including improved market access, abolition of export subsidies and reduction of domestic support.

12. The proposals culminated in the Seattle "Ministerial Text: Revised Draft" of 19 October 1999 (Job(99)/5868/Rev.1(6223), issued by the Chairman of the WTO's General Council. It included paragraphs specifically devoted to measures addressing the concerns of LDCs. These measures were stipulated in paragraph 72 (reproduced in box I.2) as "Action in favour of Least-Developed Countries," and necessary for the "full and effective integration of the least-developed countries into the multilateral trading system". The Seattle Conference (30 November – 3 December 1999), however, failed to reach agreement on the draft Ministerial Text, thus creating a temporary vacuum with respect to the launching, as anticipated, of a new comprehensive round of multilateral trade negotiations, and on other measures, including those affecting LDCs.

Box I.2**Action in favour of Least-Developed Countries**

In the context of proposals for a new and comprehensive plan of action for the full and effective integration of the least-developed countries into the multilateral trading system, we agree to:

- (a) extend [bound,] duty-free, quota-free market access for [all] products originating in least-developed countries;
- (b) [the full and effective][commit ourselves to speed up the] implementation of the Integrated Framework for Trade-Related Technical Assistance [[, through][, including] the provision of adequate financial resources]. We instruct the WTO Secretariat to pursue all efforts to this end in cooperation with the other [core] intergovernmental agencies, bilateral donors and beneficiary governments concerned[. The General Council will review progress and report to the Ministers];
- (c) [the extension of the transitional periods for the LDCs in respect of TRIPS and Customs Valuation Agreement for periods which take into account the availability of resources required to implement those agreements. We also agree to the indefinite extension of the transition periods for the LDCs in respect of the Agreements on TRIMs, Subsidies and Countervailing Measures (Article 27.3), Agriculture (Article 15) and Application of Sanitary and Phytosanitary Measures (Article 10.3). Special and differential treatment provisions including the same transitional period as stipulated in the respective agreements in favour of LDCs should be automatically granted to acceding LDCs from the date of accession;]
- (d) [apply a standstill to all contingency protection measures on market access for the export products of LDCs;]
- (e) consider the extension of transition periods for least-developed countries, on the basis of individual requests within the framework of a specific national programme for the implementation of WTO Agreements;
- (f) convert the Sub-Committee on Least-Developed Countries into a new Committee on Least-Developed Countries. The new Committee shall have as its terms of reference the current terms of reference of the Sub-Committee on Least-Developed Countries, and make recommendations for the expansion of the terms of reference as appropriate to the General Council. The Committee shall report to the General Council and [keep the Committee on Trade and Development informed of its activities];
- (g) [accelerate the accession process for the LDCs and, to this end, the workload of WTO should not divert attention from this process. We also instruct the General Council to reach agreement on clear guidelines for a streamlined and accelerated accession process for the LDCs by 31 December 2000 with a view to its implementation. In the process of accession, LDCs should not be called upon to assume obligations or commitments that go beyond what is applicable to WTO LDC Members;]
- (h) [establish a high-level coordinating mechanism within the WTO to regularly monitor the implementation of the comprehensive new plan of action in cooperation with other agencies]

B. AFTER SEATTLE

13. Following the Seattle setback, a series of intensive consultations to resolve differences and reach a common understanding on key issues, including actions in favour of LDCs was initiated among WTO Members at the beginning of the year 2000. On 8 February, the WTO's General Council meeting launched a programme of consultations aimed at producing agreement on measures in favour of LDCs. The WTO Director-General was mandated to consult with Members and to report back to the Council by the Easter break.

14. The result of the consultations was reported to the meeting of the General Council held on 3 and 8 May.⁴ The main new proposal for confidence-building measures in respect of LDCs related to a "non-paper" entitled "Elements for rapid action in the WTO" submitted in March 2000 by the Quad countries (Canada, EU, Japan and United States). It sought to identify issues requiring urgent attention and rapid action in respect of (a) implementation, (b) market access for LDCs (see box I.3), (c) technical assistance and (d) improving the functioning of WTO and enhancing internal and external transparency. These issues, particularly market access conditions, are examined immediately below, while implementation issues are addressed in chapter II.

C. MARKET ACCESS CONDITIONS FOR LDCs

State of play

15. So far, 13 countries have undertaken to provide, or expressed their intention to do so, favourable treatment for LDC imports. The Quad countries indicated that they would "implement both tariff-free and quota-free treatment, consistent with domestic requirements and international agreements, under their respective preferential schemes, for essentially all products originating in LDCs". Furthermore, Chile, the Czech Republic, Hungary, Iceland, Norway, New Zealand, the Republic of Korea, Slovenia and Switzerland indicated that they had taken, or were intending to take, measures to improve LDCs' access to their markets. These measures would be taken in addition to those that had already been taken by a number of countries since the 1997 High Level Meeting for LDCs. Countries taking measures were invited to inform other WTO Members of their action in appropriate WTO bodies. The evolution of market access provisions for LDCs would be kept under review at appropriate intervals to avoid any unforeseen negative effects.

16. The basic demand of LDCs has been for *bound duty- and quota-free market access for all their products*, with no exceptions. For example, the AEC/OAU Trade Ministers, meeting in Algiers in 1999, recommended that a decision be taken by the Third WTO Ministerial Conference to institute a system of tariff bindings at zero rates by developed countries for products originating in LDCs. Although an agreement is emerging among WTO Members on duty- and quota-free market access for products from LDCs, there has been resistance mainly among developed countries to binding the market access conditions under the WTO and to total product coverage. Thus in the Seattle Draft Ministerial Declaration (see box I.2), the words "bound" and "all" were placed in square brackets. This position continues to be maintained by the major trading countries in their new proposals, for example in the recent Quad countries' proposal that concessions be under their respective preferential schemes (mainly the GSP) and for "essentially all products" (see box I.3).

Strategy

⁴ This meeting of the General Council also resulted in a decision that the General Council, meeting in special sessions, would address outstanding implementation issues and concerns. The General Council also agreed on 8 May on a method for addressing requests by several Members for extending the transition period for implementation of the TRIMs Agreement. At the same meeting, the Director-General proposed financing of WTO technical assistance by the WTO regular budget and increases in this area to be reflected in proposals for the following year's budget. It was proposed that the core budget for technical assistance be increased from the current level of CHF 750,000 to CHF 10 million over the period of three years. The first special session of the General Council for implementation issues was held on 22 June.

17. The concerns of the LDCs has been that any market access concessions they obtain from other WTO Members must be made predictable and not subjected to autonomous changes, and that these must cover the full range of exports exported by LDCs, given that such exports in total represent a very insignificant proportion of total world trade. The WTO Secretariat reported (in document WT/COMTD/W/65, 15 February 2000) that "between 1980 and 1997, their share of world trade declined almost continuously to 0.51 per cent". At least two issues confront LDCs as they seek progress on market access concessions with real value for them, namely the legal framework in WTO within which the market access conditions could be provided and the product coverage of concessions, applicable rules of origin and other related matters. Some suggestions are provided below in respect of these two issues.

Box I.3
Quad proposal on LDCs' market access conditions

(i) Developed Country Members shall provide least-developed Members with enhanced market access by according and implementing tariff-free and quota-free treatment, consistent with domestic requirements and international Agreements, under their respective preferential schemes, for essentially all products originating in least-developed countries so far as they remain in that category; and

(ii) Developing country Members shall, to the maximum extent possible, also provide least-developed Members with enhanced market access including by extending tariff-free and quota-free treatment consistent with domestic requirements and international agreements, or by providing preferential treatment for essentially all products originating in least-developed countries as far as they remain in that category.

(iii) Members will notify, without delay, their actions taken consistent with their domestic requirements to the Committee on Trade and Development.

18. In respect of product coverage, applicable rules of origin and other issues, some of the key ones are the individual or common inclusion and exclusion lists, the time frame for liberalization, notification, transparency, an individual or common formula for duty-free treatment, and individual or common rules of origins. It may be pointed out that the Quad countries' proposal on LDCs' market access is silent on these issues that may well affect the real value of the enhanced market access for LDCs. They will be discussed in detail in another UNCTAD report (in preparation).

19. In respect of the legal coverage, the options include (1) creating a new legal instrument and (2) relying on the existing instrument under the WTO.

(1) New instrument

- A protocol or agreement to be added to the multilateral trade agreements of the WTO in line with the Marrakesh Protocol to the GATT 1994 and the four sectoral protocols attached to the General Agreement on Trade in Services (GATS) with regard respectively to financial services, the movement of natural persons and basic telecommunications. This option has legal validity and would be binding in the WTO as a full-fledged legal instrument whose implementation by WTO members would be obligatory. However, it might not be consistent with the most-favoured-nation principle in that the preferences are accorded only to LDCs, and might necessitate modification of tariff schedules (GATT Article II);
- A decision similar to the Ministerial decisions adopted at the conclusion of the Uruguay Round of multilateral trade negotiations and other decisions. A properly designed and

worded decision by WTO Members could provide sufficient legal coverage for LDC market access initiatives, provided that it is adopted jointly by Members pursuant to its decision making procedures (Article IX of the Marrakesh Agreement Establishing the World Trade Organization). It is recalled that the GATT Contracting Parties Decision of 28 November 1979 on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" (Enabling Clause) was such a decision. However, this option suffers from the tendency of "decisions" to be vague, containing provisions with "best endeavour" clauses. Thus, implementation may be subject to varying interpretations: the Enabling Clause, for instance, was not a binding legal commitment by the GATT Contracting Parties. On the other hand, the merit of a decision is that it is flexible enough to provide a political impetus or commitment to encourage Members to take certain voluntary measures. The proposals by the Quad countries for LDCs' market access proposals were made within the context of a "decision" (establishing a plan of action in favour of least developed countries and a revitalized programme for technical cooperation). The meeting of OAU/AEC Trade Ministers in Algiers in 1999 had also called for a "decision". If the decision is taken in such a way as simply to encourage voluntary measures by Members, the resulting concrete action in favour of LDCs' market access should be underpinned by other legal foundations in order to be WTO compatible, unless it is already covered by a waiver or by the Enabling Clause as discussed below. The existing GSP schemes are covered by the Enabling Clause.

(2) *Existing provisions*

- Invoking the Enabling Clause, which permits WTO Members to provide special treatment to LDCs without providing it to other WTO members (thus derogating from the MFN principle). However, resort to use of the Enabling Clause in respect of South-South preferences, following up on the announcement of autonomous preferences for LDCs, proved difficult and the developing WTO Members had to resort to a GATT waiver as described below.
- A GATT waiver from the MFN principle. In this connection, it may be noted that the WTO General Council adopted on 15 June 1999 decision WT/L/304, which grants a GATT waiver to the preferential tariff treatment by developing countries for LDCs' exports. The waiver authorizes derogation from the MFN principle until 30 July 2009 by developing country WTO Members that grant unilateral preferential tariff treatment to products imported from LDC Members. The decision requires those preference-giving developing countries to notify to the WTO Council for Trade in Goods the list of all products covered under their scheme. Furthermore, the waiver is subject to annual review by the General Council. This is another option to cover LDC market access initiatives that may be provided unilaterally under various preferential trade schemes other than the GSP, but a waiver is subject to a limited duration and annual reviews.

20. In the light of the above, a draft is presented in box I.4 of a possible arrangement on market access conditions for LDCs as a new legal instrument which accommodates under the WTO enhanced and preferential market access conditions in favour of LDCs. This is provided for the consideration of African countries in terms of their contribution to the achievement of tangible results in the WTO negotiations on concretizing the proposals on market access conditions for LDCs, the large majority of which are African countries. The African countries could raise the issue for Ministerial endorsement and approval at the Third United Nations Conference on the LDCs to be held in Brussels in May 2001, and for transmission to the WTO for formalization as an integral part of the WTO agreements. Such a result would send a strong political message to LDCs about the determination of the

international community to respond concretely to their concerns with regard to integration into the multilateral trading system.

Box 1.4

Draft [Protocol] to the General Agreement on Tariffs and Trade 1994 on Enhanced Market Access in Favour of Least Developed Countries⁵

[WTO Members,]

[Having regard to:

- The GATT Contracting Parties' Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, wherein provision is made for according special treatment to LDCs;
- Part IV of GATT 1994 providing more favourable conditions of access to world markets for products exported by developing countries;
- Paragraph 5 of the Marrakesh Declaration of 15 April 1994 wherein Ministers declared their intention to continue to assist and facilitate the expansion of LDCs' trade and investment opportunities;
- The Preamble of the Marrakesh Agreement Establishing the World Trade Organization wherein the Parties recognized the need for positive efforts to ensure that developing countries, in particular LDCs, secure a share in the growth in international trade commensurate with the needs of their economic development;
- The Preamble as well as Paragraph 2 of Decision on Measures in Favour of Least-Developed Countries wherein Ministers declared their intention to adopt positive measures to facilitate the expansion of trading opportunities of LDCs;
- The Ministerial Declaration adopted on 13 December 1996 in Singapore, in particular its paragraph 14 (the Integrated and Comprehensive Plan of Action for LDCs), wherein Ministers announced their commitment to address the problem of marginalization of LDCs, and its follow-up by the High-Level Meeting on Integrated Initiatives for LDCs' Trade Development in 1997;
- The Ministerial Declaration adopted on 20 May 1998, in particular its paragraph 6, wherein Ministers expressed their deep concern over the marginalization of LDCs and committed themselves to continue to improve market access conditions for products exported by LDCs on as broad and liberal basis as possible;

Recognizing specific and urgent needs of least-developed countries for sustainable economic and social development and poverty alleviation through full participation in the multilateral trading system,]

Hereby *agree* as follows:

DEVELOPED MEMBERS

Article 1: Duty-free treatment

1. Products originating in **LDCs [LDC Members]⁶** shall be imported into developed Members free of customs duties and charges having equivalent effect.
2. All existing customs duties or charges having equivalent effect imposed by developed Members on products originating in LDCs shall be eliminated immediately after the entry into force of this Protocol.

Article 2: Quota-free treatment

⁵ Bold text in square brackets indicates alternative to the proposed text.

⁶ The distinction should be made between "LDCs" and "LDC Members of the WTO". If a Protocol is to be agreed within the WTO and attached to GATT 1994, it follows that the Protocol may be applicable only to LDCs that are Members of WTO.

1. Developed Members shall not apply to imports of products originating in **LDCs [LDC Members]** any quantitative restrictions or measures having equivalent effect.
2. All existing quantitative restrictions or measures having equivalent effect being applied by developed Members on products originating in LDCs shall be eliminated immediately after the entry into force of this Protocol.

[Article 3: Temporary exemption

1. Notwithstanding provisions in Articles 1 and 2, developed Members may temporarily exempt certain products from their obligations under Articles 1 and 2, provided that a list of exempted products is annexed to this Protocol (hereinafter referred to as the “gradual liberalization list”).
2. Customs duties and equivalent charges, as well as quantitative restrictions and equivalent measures imposed on those products listed in the gradual liberalization list, shall be removed completely no later than **[three years]** from the entry into force of this Protocol.
3. Developed Members shall notify within **[three months]** following the entry into force of the Protocol the detailed plan for the elimination of customs duties and equivalent charges, as well as of quantitative restrictions imposed on the listed products, to **[the Committee on Trade and Development (the Committee)]**, which shall keep under regular review the situation of implementation of the plan by each developed country Member. Consultations shall be held at the request of a **LDC [LDC Member]** with regard to the selection of listed products as well as the plan for their elimination.
4. The Committee shall take any appropriate action as deemed necessary within its competence with a view to ensuring the effective implementation of the plan by the developed Member.]

DEVELOPING MEMBERS [and Members whose economy is in transition]

Article 4: Duty- and quota-free treatment

1. **[Advanced]** Developing Members **[and Members whose economy is in transition]** shall, to the maximum extent possible, [extend to **[all]** imports from LDCs tariff-free and quota-free treatment consistent with domestic requirements and international agreements] or provide preferential treatment for essentially all products originating in LDCs, consistent with the Decision on Waiver on Preferential Treatment for Least-Developed Countries (WT/L/304, 17 June 1999) on a generalized, non-reciprocal basis without being required to extend the same treatment to like products of other Members.
2. Consultations shall be undertaken when **an LDC [LDC Member]** requests the inclusion of certain products of export interest to it in the list of eligible products for the duty- and quota-free treatment by the developing Members. The developing Members shall accord sympathetic consideration to such a request.

GENERAL PROVISIONS

Article 5: Nullification or impairment

1. Developed members shall not **[Members shall endeavour not to]** introduce new, or expand existing, trade-related measures such as production and export subsidies, and incentives which have the effect of affecting the interests of one or more LDCs **[LDC Members]** under this Protocol by restricting the exports of LDCs or nullifying benefits reasonably expected to accrue to the **LDCs [LDC Members]** consequent to the implementation by developed Members of Articles 1 and 2.
- [2. Where developed Members intend to take any trade measures affecting the interests of one or more LDCs [LDC Members] under this Protocol, they shall inform the [Committee on Trade and Development].**
3. **Consultations shall take place, where the Members concerned so request, in order to take account of their respective interests.]**

Article 6: Third party

1. Members shall not take **[refrain from]** any action and measures, nor shall they request other Members to take action and measures, that may hamper the effective and timely achievement of objectives of the Protocol as stipulated in Articles 1 and 2. **[In particular it is understood that Members shall refrain from requesting a developed Member for any compensation consequent to the developed Member's elimination of existing custom duties and equivalent charges or quantitative restrictions and equivalent measures on products originating in LDCs.]**

2. Consultation shall be undertaken at the request of a Member when the latter finds that its export interest in the other developed Member's market has been affected to such an extent as to cause, or threaten to cause, serious injury to its export industries as a consequence of the developed Member's elimination of customs duties or equivalent charges or quantitative restriction or equivalent measures imposed on products originating in LDCs. Members concerned shall endeavour to reach a satisfactory solution to the problem while taking maximum account of export interests of LDCs.

[Article 7: Safeguards

1. Where any product from an LDC is being imported into the developed or developing Members in such increased quantities and under such conditions as to cause or threaten to cause serious injury to their domestic producers of like or directly competitive products or serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region, the Members concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article XIX of GATT 1994 and the Agreement on Safeguards.

2. Prior consultations shall take place concerning the application of the safeguard clause, both when such measures are first adopted and when they are extended. The developed and developing Members shall provide the LDCs with all the information required for such consultations and shall provide the data from which to determine to what extent imports from a LDC of a specific product have caused the effects referred to in paragraph 1.

3. When applied, safeguard measures shall take into account the existing level of the LDC exports and developed and developing Members shall accord special consideration to their potential for development.

4. Members undertake to hold regular consultations with a view to finding satisfactory solutions to problems which might result from the application of the safeguard clause.

5. **[The Committee on Trade and Development]** shall, at the request of any Members concerned, consider the economic and social effects of the application of the safeguard clause.]

Article 8: Other trade remedies

1. Developed Members shall not apply **[Members shall endeavour not to apply]** any contingency measures, including anti-dumping and countervailing measures to the products originating in LDCs **[until such time as all other reasonable courses of action have been exhausted].**

[2. Prior consultations shall take place concerning the application of contingency measures. The developed and developing Members shall provide the LDCs with all the information required for such consultations.

3. The application of those contingency measures must fully comply with the provisions of the Agreement on Implementation of Article IV of GATT 1994 as well as with the Agreement on Subsidies and Countervailing Measures.

4. When applied, those contingency measures shall take into account the existing level of the LDCs' exports. Developed and developing Members shall accord special consideration to their potential for development.]

Article 9: Rules of origin

1. The concept of "originating products" for the purposes of implementing this Protocol, and the methods of administrative cooperation relating thereto, are defined **[in the protocol annexed hereto].**

2. Where the concept of "originating products" has not yet been defined for a given product pursuant to

paragraph 1, Members shall apply those definitions as contained in Article 1 of the Agreement on Rules of Origin.

3. Any rules of origin applied for the purpose of this Protocol shall be tailored to promote the LDCs' participation in global production chains and the marketing of the products. Those rules shall be simplified and harmonized.

Article 10: Consultation

1. In order to ensure the effective implementation of this Protocol, and in addition to the cases for which consultations are specifically provided for in **Articles 2 to 8**, Members shall inform and consult each other in the **[Committee on Trade and Development]**.

2. Such consultations must be completed within **[three months]**.

Article 11: Dispute settlement

The Protocol shall form an integral part of GATT 1994. **[It is hereby understood that Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization ("Understanding on Rules and Procedures Governing the Settlement of Disputes") is applicable to the provisions of this Protocol.]**

Article 12: Annual review

The implementation and operation of the Protocol shall be kept under periodic review in the **Committee on Trade and Development**. In this regard, an annual report shall be presented by the WTO Secretariat, in collaboration with the UNCTAD Secretariat, at the last session in the year of the **Committee on Trade and Development**.

Article 13: Definition

For the purpose of this Protocol:

- (a) "Developed Members" are those Members **[that are members of the Development Assistance Committee of the Organisation for Economic Co-operation and Development]; [that have been offering unilateral trade preferences under GSP to developing countries]; [that are recognized as such in the WTO Agreements]**.
- (b) "LDCs" are those countries and territories that have been so designated by the United Nations. LDC Members currently are: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Democratic Republic of the Congo, Djibouti, Gambia, Guinea-Bissau, Guinea, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Niger, Rwanda, Sierra Leone, Solomon Islands, Togo, Uganda, the United Republic of Tanzania and Zambia.
- (c) "Developing Members" are those Members **[other than developed Members and LDCs (LDC Members)] [Developing Members other than LDCs (LDC Members) and Members whose economy is in transition from a centrally planned to a market economy]**

[Article 14: Entry into force

1. **This Protocol shall be open for acceptance, by signature or otherwise, by Members until [31 December 2001].**

2. This Protocol shall enter into force on the thirtieth day after **[31 July 2001]** for those Members which have accepted it by that date, and for those accepting it after that date, it shall enter into force on the thirtieth day following the date of each acceptance.

Done at **[PLACE]** this **[---th day of MONTH]**, **[YEAR]**, in a single copy, in the English, French and Spanish languages, each text being equally authentic.

D. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

State of play

21. The Integrated Framework for Trade-Related Technical Assistance to the LDCs (IF) was under inter-agency review during the first half of this year, as mandated by the IF document (WT/LDC/HL/1/Rev.1). An independent evaluation team was selected and task-managed by the World Bank. The outcome of the review (WT/LDC/SWG/IF/1) was discussed by the Inter-Agency Working Group at its 20th session on 21 and 22 June 2000 and by the meeting of Heads of Agencies on 6 July 2000. The latter meeting agreed on a set of major changes to the organization, strategy and operation of the IF, which were to be further elaborated and on which consultations among stakeholders were to be held towards the end of this year. The outcomes of consultations and meetings were reported by the WTO Director-General to the WTO General Council on 17 July 2000.

22. The first and most important change pertains to the “mainstreaming” of trade-related technical assistance into a broader context of the overall national development strategy. The IF process would hereafter be integrated into the broader framework of the national Poverty Reduction Strategy Papers (PRSP) process that has been pursued by World Bank and the IMF, as well as into that of the United Nations Development Assistance Framework (UNDAF). Two stages are envisaged for this mainstreaming exercise:

- The first stage would be the strategy-formulating stage where trade policy and trade-related technical assistance needs would be spelled out as an integral part of national development and poverty reduction strategies. The process would be led and coordinated by the World Bank on the basis of the principles of the Comprehensive Development Framework.
- The second phase would be the integration of the stand-alone trade-related round tables into the World Bank Consultative Group or UNDP Round Table Meetings. Countries’ medium-term policy framework, including trade-related projects and programmes arising from the strategy formulation during the first stage, would be fed into these meetings as well as financing needs for support by the donor community.

23. The second main change in the IF relates to the latter’s governance structure, and its purpose would be to strengthen transparency, accountability and ownership as regards IF stakeholders. A new oversight body - a Steering Committee - would replace the current Heads of Agencies and include donors and LDCs as well. The new structure is intended to ensure that the new IF does not become another bureaucratic exercise. The agencies are to develop the details of the structure and operating procedures of the Steering Committee by 31 October 2000. At the administrative level, the WTO will continue to chair the Inter-Agency Working Group that reports periodically to the Steering Committee. The Administrative Unit of the IF, currently located in the ITC, will be integrated into the WTO secretariat.

24. The third element of change is the decision by the six core agencies to create a trust fund specifically devoted to the IF, which is to be called the Integrated Framework Trust Fund (IFTF), for the purpose of mainstreaming trade and trade-related technical assistance into the development architecture. Donors have been requested to contribute on a voluntary basis to the fund. It is proposed that the fund will cover not only mainstreaming exercise (i.e. the formulation of trade integration strategies as part of PRSPs) but also capacity-building initiatives, projects in areas that are identified as priorities in the PRSPs, regional activities that are not covered by the World Bank Consultative Group or UNDP Round Table processes,

and limited and urgent capacity-building activities for LDCs. A total of US\$ 20 million over the next three years (2001–2003) has been set as a target amount. The trust fund will be administered by the UNDP, which has the expertise for the administration of funds.

Strategy

25. Technical assistance and capacity-building requirements for African countries are essential. Such requirements are needed in order to build up the trade policy regime, institutions and operators so as to develop best practices in policies and strategies, enhance competitiveness including with technological innovation, and strengthen and expand production units and capacities to take advantage of participation by those countries in regional and multilateral trade negotiations. The WTO should increase support for technical assistance under its regular budgetary provisions, and initiate a system of periodic evaluation to assess the impact of the assistance provided. Clearly, the objectives are manifold. However, the technical assistance and capacity building should be directed at least towards the following elements which have emerged as among the most important requirements for African countries to engage effectively in the multilateral trading system:

- Creating an effective trade policy regime and related institutional structure with sufficient authority within national government structures to implement the regime;
- Developing well-prepared local institutions and a cadre of experts capable of responding rapidly to changes in multilateral trade negotiations;
- Developing new institutional mechanisms with new administrative culture to co-ordinate participation in multilateral trade negotiations and monitor and ensure compliance with international trade obligations; and
- Addressing supply-side issues at the policy level, at the level of domestic cost structures for example high costs of utilities and erratic supplies which undermine competitiveness of industries, appropriate technology policies and rules and institutions, and overall stable macro-economic environment.

E. COMMITTEE ON LDCs

State of play

26. No concrete action has been taken so far on the upgrading of the WTO Committee on Trade and Development's Sub-Committee on LDCs into a full Committee. The proposal has been that the new Committee should have as its terms of reference the current terms of reference of the Sub-Committee and make recommendations for the expansion of the terms of reference to the WTO General Council. This received only lukewarm support among WTO Members, and even among LDCs. In his report to the WTO General Council meeting on 2 May 2000, the Director-General reported on his consultations on the matter, noting the difference in position among Members as to the desirability of creating a new Committee on LDCs, and stated that the issue "may deserve further consideration".

Strategy

27. The status of the Sub-Committee on LDCs is an issue that is still open for discussion. The assumption is that a full-fledged committee may result in particular prominence being given to LDC issues in the WTO and the provision of additional resources for technical

assistance. However, in view of the other pressing needs of LDCs in respect of market access, new negotiations, capacity building and implementation, the question of the Sub-Committee's status can only have a lower priority. African countries need to mobilize and focus their limited negotiation capacities on the most urgent issues affecting their economy, rather than on the institutional structure of the WTO.

F. FAST-TRACK ACCESSION FOR LDCs

State of play

28. Developing countries and LDCs, as well as the EU, have proposed that the WTO General Council reach agreement on clear guidelines for a streamlined and accelerated accession process for the LDCs by 31 December 2000, with a view to its implementation in respect of LDCs seeking accession to the WTO. It was also proposed that, in the process of accession, LDCs should not be called upon to assume obligations or commitments that go beyond what is applicable to WTO LDC Members, as is being requested in the accession process of some LDCs. LDCs currently in the process of accession include Cambodia, the Lao People's Democratic Republic, Nepal, Samoa, Sudan, Tonga and Vanuatu, while Cape Verde and Ethiopia have indicated their desire to join the WTO.

29. The WTO Director-General reported to the WTO General Council regarding his consultations with WTO Members on the issue on 3 May 2000. He indicated that many Members considered that a fast-track system for accessions by LDCs would involve only a few countries, i.e. a generalized long-term effort would not be required. It has been recognized that action in the field of accession would entail enhanced technical assistance. It has suggested that WTO Members could complete current LDC accessions by the time of the Fourth WTO Ministerial Conference, scheduled for 2001.

Strategy

30. Accession is costly particularly when it takes a long time, in view of the limited human and financial resources of LDCs devoted to trade policy. In addition, the acceding countries are often expected to attend WTO meetings as observers and to undertake already the adjustment of trade regulations so that they become WTO-compatible. One African LDC – Sudan – is currently in the process of accession and another two – Cape Verde and Ethiopia – have requested accession. Other African LDCs that may consider acceding are Comoros, Equatorial Guinea, Eritrea, Liberia, Sao Tome and Principe, and Somalia. There are thus three African LDCs that have been in the process of accession or expressed interest in joining the WTO, and six others that may be candidates in the future. In this light, the WTO accession procedures for LDCs is important for African countries.

31. The key issues that need to be emphasized relate in particular to flexibility, which must be provided especially in respect of adjustment of trade legislation concerning for example TRIPS, in view of capacity constraints. With regard to the accelerated accession procedures, one of the aims is to minimize the costs borne by the applicant. Equally important, however, are the conditions of accession, which should not be unduly onerous, compared with the obligations of current WTO Members and particularly LDC Members. For example, the setting of benchmark tariff-binding rates for industrial and agricultural products, as well as the agreed number of sectors to be included in the schedule of commitments, should be consistent with the current obligations of WTO LDC Members. Also, the transition periods for LDCs agreed upon in the Uruguay Round should be automatically applied to the acceding LDCs. This concern was highlighted at the Algiers

meeting of the OAU/AEC Trade Ministers in September 1999, which stated that "WTO members should refrain from placing excessive or onerous demands on applications from developing countries and maintain a transparent, streamlined and accelerated accession process in keeping with WTO rules and disciplines".

Chapter II

IMPLEMENTATION

32. The main concerns of many African and other developing countries with regard to the implementation of the WTO multilateral trade agreements (MTAs) are that progress towards liberalization in sectors of particular interest to them is lagging behind, and that there are significant imbalances between their rights and obligations under some of the MTAs, as well as in the conditions of market access. In respect of liberalization, major concern has been expressed regarding the weak liberalization taking place under the Agreement on Textiles and Clothing (ATC). At the same time, African and other developing countries' expectations about benefiting from the special and differential (S&D) treatment provisions have not yet been met. These include provisions as provided for in Article IV of the General Agreement on Trade in Services (GATS), the transfer-of-technology provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). In addition, many African and other developing countries have faced difficulties in meeting the various procedural (including notification) and enforcement obligations of the MTAs. A detailed review of the implementation issues and proposals made in this regard by African countries is provided in the addendum to this report.

33. At the Second Session of the WTO Ministerial Conference in Geneva in May 1998, Ministers agreed that:

“Full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative for the credibility of the multilateral trading system and indispensable for maintaining the momentum for expanding global trade, fostering job creation and raising standards of living in all parts of the world. When we meet at the Third Session we shall further pursue our evaluation of the implementation of individual agreements and the realization of their objectives. Such evaluation would cover, *inter alia*, the problems encountered in implementation and the consequent impact on the trade and development prospects of Members. We reaffirm our commitment to respect the existing schedules for reviews, negotiations and other work to which we have already agreed.”

34. During the preparatory process in 1999 leading up the Third Session of the WTO Ministerial Conference, African and other developing countries devoted considerable time and effort, pursuant to the above-mentioned mandate, to presenting their problems and elements of concern with respect to the implementation of the MTAs, which were incorporated and/or reflected in the draft ministerial text. Also, there was widespread recognition of the concerns of the developing countries regarding the implementation of some of the WTO MTAs and the need to address those concerns. Following the setback at the WTO Ministerial Conference in Seattle, it became apparent that concerted efforts would have to be made to find the means of addressing the specific needs and concerns which the developing countries, and particularly the least developed among them, had so clearly raised.

State of play

35. Two decisions have been taken with regard to implementation issues in general. First, the WTO General Council adopted a decision on 3 May 2000 to begin as of June a series of special sessions to tackle the implementation issues as stipulated in paragraph 21 and 22 of

the 19 October 1999 draft text of the Seattle Ministerial Declaration, as well as pursuant to paragraphs 8 and 9 (a) (i) of the Geneva Ministerial Declaration of May 1998. This special mechanism will focus on finding mutually acceptable solutions to address the issue of implementation, and will assess the existing difficulties, identify ways to resolve them and take decisions for appropriate action. It was pledged that Members would complete the process by the time of the Fourth Ministerial Conference towards the end of 2001. In this process, the General Council may direct other WTO bodies to provide any appropriate input and take any appropriate action.

36. Second, the meeting of the WTO General Council on 8 May 2000 agreed on a method for addressing requests by several Member Governments for extending the transition period for implementation of the Agreement on Trade-Related Investment Measures (the TRIMs Agreement). The General Council directed the WTO Council for Trade in Goods (CTG) “to give positive consideration to individual requests” to extend the transition period, which expired on 1 January 2000. It agreed that in cases where Members have not notified the CTG of any measures which may not be in conformity with the TRIMs Agreement, priority should be given to consultations, under the General Council’s aegis, aimed at resolving differences between Governments. The Chairman of the CTG was invited to pursue informal consultations.

37. The first special session in the series was held on 22 June and 3 July 2000. It adopted a programme and calendar for work until the end of the year and discussed implementation-related issues. The Chairman and the Director-General were invited to hold consultations with a view to identifying ways to resolve those issues. The second special session, to be held on 18 and 19 October, would begin by acting on the results of consultations on the issues identified. The General Council, in addressing the issue, may refer matters to other WTO bodies with specific mandates and timeframe as necessary. It may also invite chairpersons of other WTO bodies to provide factual status reports on the implementation-related issues in their respective bodies. The third special session, to be held on 18 and 19 December, will take decisions for appropriate actions and also decide on the organization of further work, if necessary, so that the programme will be completed no later than the time of the Fourth Session of the WTO Ministerial Conference.

Strategy

38. Some issues and areas among the major concerns of the African countries, especially the LDCs, with regard to the implementation of the WTO MTAs are summarized below. More details on these are provided in the addendum to this report.

Agriculture

39. Many African countries, including African LDCs, are net food importing developing countries (NFIDCs). For them, the impact of agricultural reform needs to be seriously addressed and the relevant Marrakesh Decision needs to generate concrete action. To that end, an operational mechanism should be established. Some proposals in that direction are provided in chapter III.

40. The dynamic nature of the agricultural sector in African economies should be recognized. Given the importance of this sector for their employment, growth and economic development objectives, the new negotiations on agriculture should take the situation of many African countries, especially the LDCs, into account and the S&D treatment provisions should be devised so as to include a development box.

Services

41. So far, African countries, particularly the LDCs, have enjoyed very limited benefits from trade liberalization in services. The commitment to provide market access opportunities in sectors and modes of supply of export interest to African countries and the LDCs has not been respected. In this regard, the commitments on the movement of natural persons need to be improved and barriers to their services should be eliminated. The new negotiations on services should aim at increasing African countries' participation in world trade in services and enable them to develop services sectors of interest to them, such as the tourism industry.

Textiles

42. During the remaining transitional period under the Agreement on Textiles and Clothing, meaningful market access improvements should be provided to African countries, small suppliers and LDCs. They should enable them to prepare themselves to meet the increased competition which they will be facing in restricted markets when restrictions that are at present applied to imports are removed by the restraining countries.

Subsidies

43. The subsidies that are used by African countries (or that may be used in future) for development, diversification and upgrading of their industries should be made non-actionable. Thus actions should not be taken against them through dispute settlement or countervailing measures. The right of developing countries to grant subsidies for the use of domestic products in preference to imported products should not be jeopardized by the provisions under the TRIMs Agreement. Thus, African countries, especially the LDCs, should not be subject to the provisions of paragraph 1(a) of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) under the terms of paragraph 2(a) of Article 27 of that agreement. They should be allowed to grant subsidies for the use of domestic products in preference to imported products (defined in Article 3:1 (b) of the ASCM). A clarification should be made in Article 27:3 to the effect that it is applicable notwithstanding the provisions of any other agreement, such as the TRIMs Agreement.

Trade-related investment measures

44. The main problems faced by many African countries in implementing the TRIMs Agreement are related both to the limited transition period allowed for removing TRIMs and to the period envisaged in Article 5.1 for submission of the required notification for availing themselves of transitional arrangements.

45. With the five-year implementation experience, in particular with the WTO's Dispute Settlement Body, many developing countries feel that the TRIMs Agreement has denied their freedom to channel investments in such a manner as to fulfil their development needs, despite the provision of Article 5.3 which recognizes the importance of taking account of the development, financial and trade needs of developing countries while dealing with TRIMs. It

is therefore suggested that investment-friendly measures by developing countries should be incorporated. African countries should benefit more from a longer transition period within the TRIMs Agreement.

Anti-dumping

46. From the perspective of African countries, S&D treatment as provided for in Article 15 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping), should be modified in order to be more comprehensive, operational and mandatory. The existing *de minimis* provisions should be improved and the threshold should be increased.

Sanitary and phytosanitary regulations

47. The major concerns of most African countries, including the LDCs, are that certain sanitary and phytosanitary measures may be inconsistent with the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures and unfairly impede the flow of trade. They are not well positioned to address this issue as they have serious problems in scientific research, testing, conformity assessment and equivalence. They are unable to participate effectively in the international standard-setting process, and therefore face difficulties when requested to comply with SPS measures in foreign markets based on international standards. Effective means such as the funding of developing countries' participation have to be found to in order to ensure their effective participation in the setting of standards by international standard-setting organizations. Transparency-related requirements also represent a burden for them, and they are often unable to benefit from them owing to lack of appropriate infrastructure. The provision for adaptation to regional conditions, which would be of great benefit to them, has been little used because of the difficulties related with its scientific requirements. The provisions relating to S&D treatment remain rather theoretical and apparently have not resulted in any concrete step being taken in their favour.

Technical barriers to trade

48. Although the Agreement on Technical Barriers to Trade (the TBT Agreement) calls for technical standards and regulations to be based on international standards, the participation of African countries in the standardization activities and the mutual recognition agreements (MRAs) has been marginal despite the efforts made by international organizations, such as the International Organization for Standardization (ISO). This is mainly due to the lack of adequate human and technical resources in many African countries. Furthermore, the special development, financial and trade needs of African countries have not been taken into account.

49. In order to facilitate the effective participation of African WTO Members, including the LDCs, in the implementation of the TBT Agreement, means have to be found to ensure the effective participation of developing countries in the setting of standards by international standard-setting organizations. Also, technical cooperation is required in order to upgrade conformity assessment procedures in African countries with a view to their acceptance in developed markets.

Customs valuation

50. So far very few African countries and no LDCs have been able to apply the provisions of the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation). These include those relating to the imputed value method, reservation on concerning minimum values, reservation concerning reversal of sequential order of Articles 5 and 6, and reservation concerning application of Article 5.2 whether or not the importer so requests. One of the reasons for the reluctance of these Members' customs administrations to change over to the Agreement's valuation system is that the Agreement does not prescribe changes particularly suited to the administrative environments that exist in these countries. For example, the Agreement requires a change from the traditional customs valuation under the Brussels Definition of Value to the transaction value.

51. Given that the existing administrative environment in the valuation system in many African WTO Members is based on the Brussels Definition of Value, many of them believe that such a major change to the new system could lead to loss of fiscal revenue. Loss of revenue could also occur as a result of the provisions in the Agreement which require the customs administrations of these Members to deviate from the existing practices to add to the "price paid or payable", "buying commissions" and "special discounts obtained by importers who operate as sole agents".

52. The experience of some African Members which have applied the provisions of the Agreement has also brought out practical difficulties which arise in applying provisions of the Agreement. For instance, even though the Marrakesh Decision permits customs administrations to reject the value declared by the importer where they consider that it has been deliberately under- or overvalued, in practice it is not possible for them to make use of the authority given by the Marrakesh Decision, because of the non-availability of reliable and up-to-date data on prices required for price comparison purposes.⁷

53. The rules of the Agreement also pose problems in determining the dutiable value of goods traded on the basis of "transfer pricing" between parent companies and their subsidiaries and affiliates. In a number of African WTO Members, with the gradual removal of restrictions that were previously applied to foreign direct investment, industry-to-industry trade among the member units of transnational corporations is on the increase.

54. In order to facilitate African Members' effective participation some proposals have been put forward with a view to improving the Agreement. The transitional period provided for developing WTO Members to apply the provisions of the Agreement expired on 1 January 2000. Despite the limited technical assistance provided by the WTO secretariat and some developed country Members, it appears difficult for many African country members to implement the Agreement by the scheduled date (the year 2000) owing to their lack of institutional and human resources.

55. However, it should be noted that so far the developed countries have not met the commitment set out in Article 20.3 of the Agreement concerning S&D treatment. This requires developed country Members to draw up for developing country Members programmes of technical assistance relating to the training of personnel, the preparation of implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of the Agreement.

⁷ See WTO documents WT/GC/W/227 and 301 – a position paper and a proposal submitted by India and Kenya on behalf of the African Group.

56. Given the non-implementation of Article 20.3, most African WTO Members consider that the transition period granted them is insufficient. They are thus obliged to request an appropriate extension in accordance with the relevant provisions of the Agreement, particularly Annex III, in order to enable them to acquire the necessary technical assistance and expertise to implement the Agreement without thereby affecting their comparative advantages.⁸ At present, individual requests for extensions are being discussed in the Committee on Customs Valuation and some have been granted. For instance, extension has been granted to several African countries to permit them to delay the application of the provisions of the Agreement. Some African countries were also allowed to continue its reservation concerning minimum values for a longer period.

Trade-related aspects of intellectual property rights

57. Some African countries were very active during the preparatory process for the Third WTO Ministerial Conference and put forward a number of proposals related to the items included in the built-in agenda, as well as to other topics of interest to them (such as the protection of traditional knowledge). The major concerns of African countries are related to Article 71 (review of implementation after the expiration of the transitional period on 1 January 2000), and to the implementation of Article 66.2 (incentives for transfer of technology to LDCs). They also attach great importance to various built-in negotiations or reviews, which concern: (a) establishment of a simple, flexible and non-cost burden multilateral system of notification and registration of geographical indications for wines and spirits (as mandated by Article 23.4); (b) implementation of the provisions related to geographical indications (as mandated by Article 24.2); (c) extension of the provisions on additional protection to products of interest to developing countries, other than wines and spirits; (d) review of Article 27.3 (b) dealing with the protection of plant varieties, taking into account the flexibility given under such provisions, including developmental aspects; and (e) application of the “non-violation complaints” under the TRIPS Agreement, it being urgent to extend the moratorium.

58. The mandated review of implementation under Article 71.1 should assess the extent to which the objectives of the Agreement have been fulfilled to the satisfaction of developing countries, before Members engage in discussions on whether to amend the texts of the Agreement and, if so, how. The review could serve as an opportunity to discuss those issues of interest to developing countries that may not be properly treated *per se*, including technology transfer issues (66.2) and protection of plant varieties (27.3). Three options are conceivable for African countries in conducting the mandated review. The first option consists in Members aiming at a comprehensive revision of the Agreement so as to implement its objectives effectively. The second option would be to renegotiate as few provisions as possible, since the Agreement as it currently stands leaves developing countries some room for flexibility. The third option would aim at a systematic review of the Agreement together with other WTO Agreements in terms of particular objectives such as technology transfer.

59. African countries could argue for the effective and full implementation of Article 66.2 concerning provision of incentives by developed countries for transfer of technology to LDCs, bearing in mind that the incentive for transfer of technology differs from the provision of technical assistance. Establishing a system of periodic notification and guidelines on categories of incentives would serve this purpose. Extension of the coverage of the provision to include all developing countries may merit consideration.

⁸ See WTO document WT/GC/W/301- a proposal submitted by Kenya on behalf of the African Group.

60. Mandated negotiations on geographical indications under Articles 23.4 and 24.2 should deal with all of the three issues of interest to developing countries. First, a multilateral system of notification and registration of geographical indications for wines and spirits foreseen by Article 23.4 should not create additional burdens or obligations for Members. Secondly, the review of implementation of the provisions related to geographical indications should be undertaken as mandated by Article 24.2. Thirdly, the protection of geographical indications should be extended to products of interest to African countries other than wines and spirits.

61. The mandated review of Article 27.3 (b) on plant varieties should aim at a review of the substance of the subparagraph itself as opposed to a review of the implementation aspect only. In dealing with the protection of plant varieties, policy flexibility to accommodate developmental aspects should be taken into account by maintaining the *sui generis* system of protection as well as by extending the non-patentability of “essentially biological processes” to cover “microbiological processes”. The review should also seek to harmonize Article 27.3 (b) with the provisions of the Convention on Biological Diversity (CBD) and the International Undertaking. The right of holders of traditional knowledge to share in benefits arising out of any related innovation should be accepted.

62. Discussion should continue in the Council for TRIPS as to the suitability of provisions on the so-called non-violation complaints in the context of the dispute pertaining to intellectual property rights. The moratorium period provided under Article 64.3 for the application of the non-violation complaints could be extended indefinitely until Members agree by consensus that sufficient experience has been gained with the application of the Agreement and that a remedy, if adopted, will not increase their level of obligations.

Dispute settlement

63. Although so far not many African WTO Members have been involved in dispute settlement cases, they are concerned about the lack of application of S&D treatment, the lack of clarity regarding the manner in which various Dispute Settlement Understanding (DSU) provisions are implemented,⁹ and an emerging trend whereby dispute settlement proceedings are being competitively used by certain developed Members to prove their aggressive trade defence to domestic constituencies. In addition, the dispute settlement proceedings are extremely expensive and most African countries, especially the LDCs, do not have the necessary legal expertise for them.¹⁰ Therefore, it is necessary that procedures be developed to ensure that the interests of developing and African countries are protected and that developed countries do not use dispute settlement proceedings as instruments for coercion of the less privileged WTO Members.¹¹

⁹ The main S & D provisions of the DSU, as identified by India (WT/GC/W108) and Egypt (WT/GC/W/109 and 135), would include Articles 3.12, 4.10, 8.10, 12.10, 12.11, 21.2, 21.3, 21.6, 22, 24 and 27.2.

¹⁰ See WTO documents WT/GC/W/108, 109 and 135.

¹¹ See WTO document WT/GC/W/108.

Chapter III

AGRICULTURE

A. STATE OF PLAY OF THE WTO NEGOTIATION ON AGRICULTURE

64. The first meeting of the Special Session of the WTO Committee on Agriculture launched the first phase (March 2000 – December 2000/March 2001) of WTO negotiations on continuing the reform in agriculture trade as mandated by the Agreement on Agriculture (Article 20). During this phase, the Special Session meetings will be held back to back with the regular meetings of the Committee on Agriculture in June, September and November 2000, and an additional meeting may be held prior to the March 2001 stocktaking meeting (provisionally to be held in the last week of January 2001). Whether the outcome of the first phase of the negotiations will result in an agreed negotiating agenda is not yet clear. There has been a strong objection by certain WTO Members (including Japan and the EU) to the idea of commencing the actual negotiations on agriculture outside a more comprehensive round of trade talks.

65. The first phase of the negotiations pursuant to Article 20 of the WTO Agreement on Agriculture (AoA) consists of the following programme and arrangements: (i) work within the framework of paragraphs (a), (b), (c) and (d) of Article 20;¹² (ii) submission of negotiating proposals by participants, in principle by the end of December 2000 or thereafter (provided that such submissions are tabled sufficiently in advance of a stocktaking exercise); and (iii) a stocktaking exercise, covering all proposals submitted, to be undertaken at a March 2001 meeting of the Special Session of the Committee on Agriculture. Thus, WTO Members, including African countries, need to take immediate action by the end of 2000 to table their own negotiating proposals and to evaluate possible implications for their negotiating positions of proposals submitted by other Members.

66. Discussions on the negotiation proposals started at the second meeting of the Special Session of the Committee on Agriculture, held at the end of June 2000. The nine proposals that were discussed covered a range of issues, including (i) elimination and prohibition of export subsidies; (ii) effective disciplines on export credits; (iii) possible approaches to reclassify the rules governing domestic support measures and the reduction commitments; (iv) market access commitments, including tariff reduction formula and improving tariff rate quota administration; and (v) non-trade concerns such as animal welfare and food safety. These proposals are summarized in box III.1. Two of the proposals on S&D treatment were submitted by a group of developing countries,¹³ which included three African countries, namely Kenya, Uganda and Zimbabwe.

¹² Article 20 stipulates that "... negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account: (a) the experience to that date from implementing the reduction commitments; (b) the effects of the reduction commitments on world trade in agriculture; (c) non-trade concerns, special and differential treatment to developing country members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and (d) what further commitments are necessary to achieve the above-mentioned long-term objectives". During the first phase of negotiations, work within the framework of Article 20 will be based on technical papers submitted by interested participants and on information and data prepared by the WTO secretariat at the request of the Committee.

¹³ These developing countries are Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Kenya, Nicaragua, Pakistan, Sri Lanka, Uganda and Zimbabwe.

Box III.1

**Negotiating proposals discussed at the Second Special Session of
the WTO Committee on Agriculture (29–30 June 2000)**

- (a) The Cairns Group – “Export competition” (G/AG/NG/W/11). The Cairns Group proposed a total elimination of export subsidies using a reduction formula. The proposal was supported by the delegations of non-Cairns developing countries, although Zimbabwe suggested that developing countries might require a certain leverage to introduce export subsidies in the future. The delegation of the European Communities indicated the need to consider the reduction of all forms of export subsidies, including export credits. The delegate of Mauritius expressed his concerns about the fact that this proposal did not refer to Article 16 (“*Least-developed and net food-importing developing countries*”) of the Agreement on Agriculture.
- (b) Canada – “Market access” (G/AG/NG/W/12). Canada proposed an ambitious tariff reduction modality, accompanied by the introduction of two-stage tariffs, i.e. those above a "threshold" tariff rates to which duty-free tariff rate quotas (TRQs) should be applied. Various developing country Members (e.g. Kenya, Mauritius and Thailand) pointed out that the proposal did not refer to S&D treatment. Thus, it appears that the Cairns Group as a whole has not reached a coordinated approach with regard to market access commitments.
- (c) Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka and El Salvador – “Special and differential (S&D) treatment and a Development Box” (NG/W/13) and “Green Box/Annex 2 subsidies” (NG/W/14). The core of the first proposal was the introduction of possible elements of S&D treatment, including the creation of a Development Box. The second proposal was that all domestic support measures be collapsed into one box, a "General Subsidy Box" (and Development Box for developing countries), instead of three, such that Green Box measures utilized by developed countries would be made subject to reduction commitments. The idea derived from various analyses which showed that the level of producer support estimate (PSE) support in the developed countries had actually increased. The Development Box, as defined in those proposals, should provide developing countries with flexibility not only of domestic support but also of import controls and tariff barriers on products that are key staples or of importance to domestic food security and agricultural development. Those proposals also suggest that developing countries may apply a "positive list" approach, i.e. the right to exclude key staples from agricultural liberalization. While various developed and developing countries preliminarily agreed on the importance of S&D, the Cairns Group of developing countries warned of the possible risks of S&D being utilized for protectionist purposes. The EC indicated that the idea of a positive list approach was "going backwards instead of forward" in the continuation of the reform process.
- (d) United States – “Comprehensive long-term agricultural trade reform” (NG/W/15) and “Note on domestic reform” (NG/W/16). The first set of proposals laid out the United States view on the objectives and modalities of the reform process in all areas relevant to the Agreement on Agriculture, plus on new issues such as treatment of state trading enterprises and measures concerning new technology in agriculture. These proposals received mixed reactions. Thailand pointed out that the proposals are "tough on tariffs and export subsidies, but weak on domestic support and export credits" (the first proposal suggests that export credit should be discussed in the OECD, not in the WTO). Japan and the EC criticized the suggested time frame (i.e. overall agreement by 2002), as they considered the agricultural negotiations should be a part of a comprehensive round. Developing countries stressed that they were against the idea of setting the current applied rates as the starting point of the next tariff reductions. It should be noted, however, that the second proposal suggests an idea slightly similar to those in documents NG/W/13 and 14, i.e. collapsing domestic support measures into two categories (the major difference between those proposals and the United States proposals is that the former suggests Green Box measures by developed countries be included in the reduction commitments). The United States stated its interest in holding bilateral or plurilateral consultations with interested developing countries on this issue.
- (e) the European Communities – “The blue box and other support measures to agriculture” (NG/W/17), “Food quality” (NG/W/18), and “Animal welfare” (NG/W/19). The first proposal suggested a continuation of the Blue Box provision, which is a key component of the EU's Common Agricultural Policy. The aim of the second proposal is to introduce tighter control over product specification, including geographical origin. It states that the EU is interested in obtaining effective protection against usurpation of names in the food and beverage sector, ensuring the right to use a certain denomination of products to help consumer choice, and enhancing consumer protection through effective labeling. In the third proposal, the EU suggests that WTO Members should negotiate for a common "standard" to deal with the protection of animal welfare, including the possibility of providing compensation to producers (which should have no or at most a minimal trade-distorting effect) to meet a production cost increase stemming from meeting a higher standard on animal welfare.

67. One of the two proposals submitted by a group of developing countries (G/AG/NG/W/13), entitled "Agreement on Agriculture: Special and differential treatment and a Development Box", introduces a pragmatic approach to linking to the negotiations food security issues and multilateral trade liberalization, as well as the rural viability interests of developing countries. It thus contains many elements that are highly pertinent to African countries and accordingly deserves their support. The key feature of the proposal is a Development Box that would contain a set of policy instruments that aim to:

- (a) protect and enhance domestic food production capacity, particularly in key staples;
- (b) increase food security and food accessibility; and provide/sustain employment for the rural poor;
- (c) protect farmers from the onslaught of cheap imports; and
- (d) provide supports to small farmers in terms of increasing their production capacity and competitiveness; and stop the dumping of cheap, subsidized imports.

68. The proposed policy instruments to be included in the Development Box should be made available to developing countries under the provision of the S&D treatment to developing countries. The instruments include:

- (a) the right to select agricultural subsectors that would be subject to the AoA commitments;
- (b) the right to raise tariff bindings against the onslaught of cheap (dumped or subsidized) imports and a rise in the *de minimis* level of domestic support to 20 per cent from the current 10 per cent of the value of agricultural production; and
- (c) the right to invoke the Special Safeguard (SSG) Clause, while prohibiting its use by developed countries.¹⁴

B. AREAS OF INTEREST AND CONCERN TO DEVELOPING COUNTRIES IN AFRICA IN THE NEGOTIATIONS ON AGRICULTURE

69. Despite a wide diversity of geographical and climatic conditions, there are a certain number of common factors relating to the agricultural production and trade patterns and agricultural development policies of African countries. These include:

- (a) a high proportion of the rural agricultural population in extreme poverty among the total population, food security being a major socio-economic policy objective;
- (b) low and variable agricultural productivity due largely to traditional production technology and lack of infrastructure;
- (c) a fairly liberal agricultural trade regime due to unilateral liberalization, so that most of

¹⁴ Of the 38 countries that reserve the right to invoke SSG measures, eight countries (EU, Hungary, Japan, Republic of Korea, Poland, Slovakia, Switzerland-Liechtenstein and United States) actually took SSG actions between 1995 and 1999. Six African countries reserve the right to use the SSG Clause (Botswana, Morocco, Namibia, South Africa, Swaziland and Tunisia), although none reported to the WTO their use of it.

them are net importers of foodstuffs;

- (d) concentration of agricultural exports on cash crops; and high interest in agricultural export promotion and diversification.

70. These factors give rise to a set of interests that could be shared by African and other developing countries in the ongoing WTO negotiations on agriculture. Those interests would include, but be by no means confined to, the following:

- (a) striking a balance between agricultural trade liberalization and food security concerns of African countries;
- (b) ensuring tangible improvement in market access to their agricultural exports, especially exports of products in dynamic and higher value-added categories;
- (c) leveling the playing field in the international agricultural trading environment; and
- (d) reflecting agricultural concerns specific to African countries in the structure, framework and long-term objective of the Agreement on Agriculture.

1. Food security and trade liberalization

71. Ensuring food security, i.e. ensuring that the population have physical and economic access to basic foodstuffs, is a major policy objective of African countries. Opening the domestic market to imports of foodstuffs would improve the availability of foodstuffs at least in the short run, especially in countries that face domestic food supply instability. However, imports of foodstuffs that are cheaper than those domestically produced could in the long run drive domestic producers out of their market. A similar dilemma is caused by the need for food aid and food imports that are subject to the export subsidy programmes of exporting countries – namely, that access to donated food or imported foodstuffs at low cost could be detrimental to domestic production in the long run.

72. The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs), adopted at the conclusion of the Uruguay Round in Marrakesh, was expected to ensure food aid availability after the Uruguay Round agricultural liberalization, as well as to encourage a flow of technical and financial assistance to improve agricultural productivity in those countries. The implementation of the Decision, however, has not been satisfactory in terms of the provision of food aid. According to recent statistics published by the Food and Agriculture Organization (FAO), the level of food aid in fact fell to the lowest figure since the mid-1950s (4.3 million tonnes per annum in 1998/99).¹⁵ The Decision has no enforcing power over aid donors, and has been a complete disappointment in terms of the provision of technical and financial assistance.

2. Improving market access to agricultural exports from Africa

73. Direct benefits of multilateral trade liberalization to a country include better exporting opportunities created by improved market access to its exports. A WTO study (G/AG/NG/S/6) reveals, however, that the share of developing countries in world agricultural

¹⁵ Global food aid deliveries have been falling steadily since 1993. Coinciding with high world agricultural prices, food aid availability fell by over 27 per cent between 1995 and 1996.

exports increased only by 1 per cent (from 41.5 to 42.5 per cent) between 1994 and 1998. Moreover, the share of exports from Africa in world agricultural exports has been unchanged since 1995, at 4.5 per cent.

74. In examining market access to African countries' exports, one needs to distinguish between traditional exports (such as agricultural commodities and raw materials) and "dynamic" agricultural exports, i.e. those products with great growth opportunities and with higher value-added. The latter segments of products are those towards which African countries have been trying to diversify their agricultural production. The implementation of the AoA did not significantly improve market access of either of the two groups of African exports, for different reasons.

75. With respect to traditional exports (such as coffee, tea, cotton and tobacco), the implementation of the AoA led to little improvement in market access because those exports had already faced low or minimal pre-Uruguay Round (UR) tariffs, or they had been subject to preferential tariffs. As regards dynamic and higher value-added sectors (such as fresh vegetables, cut flowers and processed food), the market access impact of the AoA was insignificant, if not negative, because of the way in which major developed countries effected their Uruguay Round tariff concessions. The so-called dirty tariffication methods and the tariff reduction formula applied in the Uruguay Round resulted in tariffs on "dynamic" products that were higher than the pre-UR level, and tariff escalation causing high effective protection of processed products.¹⁶ Moreover, exports of dynamic and high value-added product categories face increasingly higher non-tariff barriers posed by sanitary and phytosanitary (SPS) regulations and standards in developed countries.

76. The key interests for African countries in setting the negotiating agenda of the current WTO negotiations on agriculture would thus be to ensure that the negotiations result in a tangible improvement in market access for their exports, especially for those products with a high market growth potential, namely products in dynamic and higher value-added sectors.

3. Ensuring the level playing field in the international agricultural trading environment between developed countries and African developing countries

77. The implementation of the Agreement on Agriculture created an imbalance between developed countries and developing countries in the degree of actual liberalization of the agricultural sector. The agricultural sector in African countries, especially African LDCs, underwent unilateral liberalization and deregulation prior to the conclusion of the Uruguay Round, and the level of liberalization attained exceeds the level required by their commitments under the AoA.

78. Conversely, the agricultural sector in developed countries in the post-UR environment is still as highly protected as ever. Agricultural tariff barriers in developed countries remain high, especially in sensitive product categories, and the level of domestic support in the member countries of the Organisation for Economic Co-operation and Development (OECD) is higher than the pre-UR level and has been steadily increasing since 1997.

79. Domestic support payments (including Green Box measures) by OECD countries rose to a record US\$ 361 billion in 1999, resulting in the second consecutive rise in agricultural subsidies. OECD support to agricultural producers has increased steadily over the last three years, rising from 31 per cent of total gross farm receipts in 1997 to 40 per cent in 1999. In

¹⁶ For details see for example, UNCTAD/WTO Joint Study, "The Post-Uruguay Round tariff environment for developing country exports" (TD/B/COM.1/14, 6 October 1997).

percentage terms, it is at the same level as it was in the mid-1980s.¹⁷ The use of export subsidies increased in 1998 (US\$ 6.5 billion) over 1997 (US\$ 5.6 billion), reflecting lower commodity prices. The European Union accounts for almost 90 per cent (at US\$ 5.8 billion) of world total export subsidy use in 1998, which is roughly four times larger than the average agricultural value-added gross domestic product of sub-Saharan African countries in the same year.

4. Reflecting agricultural interests in the structure, framework and long-term objective of the AoA

80. Another area of concern that is not independent of the areas mentioned above is that the structure and the framework of the AoA commitments do not adequately reflect the particular agricultural development needs that African developing countries generally have. The rules and obligations under the AoA focus only on the commercial dimension of agricultural activities. In Africa, however, the production of basic foodstuffs in particular has less commercial value and greater societal significance, given that a large part of the population are predominantly small-scale subsistence farmers. Moreover, agriculture is an economic sector on which the majority of African countries depend in terms of, *inter alia*, export earnings, employment and political stability through rural viability and food security.

C. NEGOTIATING AGENDA AND STRATEGIES FOR AFRICAN COUNTRIES

81. A common negotiating agenda and a set of strategies for African countries could be drawn from the above-mentioned common interests and concerns those countries. Analyses and workshops conducted by international organizations may also provide suggestions to assist African countries in their elaboration of a common negotiating agenda. In this connection, UNCTAD held an Expert Meeting on the Impact of the Reform Process in Agriculture on LDCs and Net Food-Importing Developing Countries and Ways to Address Their Concerns in Multilateral Trade Negotiations in Geneva from 24 to 26 July 2000. The outcome of the meeting (reproduced in box III.2) consists of suggestions by individual experts on issues to be considered by LDCs and NFIDCs in formulating their negotiating proposals. Those suggestions would be particularly pertinent to African countries, given that 33 out of the 48 LDCs are African countries and that 24 of them are WTO Members. Additionally, most African countries are net importers of basic foodstuffs.

82. In addition to those suggestions, the following is a list of issues that are important in the continuing the reform of agricultural trade under the WTO which need to be discussed by African countries with a view to their elaborating possible elements of negotiation proposals:

- (a) Ensure that the tariff reductions by developing countries will be made on their bound rates.¹⁸ The margins between the bound and the applied rates provide essential policy flexibility to developing countries, whose applied rates are substantially lower owing to their unilateral trade liberalization.
- (b) Allow developing countries to maintain the current level of bound rates (i.e. no reductions) on key staples.

¹⁷ OECD, *Agricultural Policies in OECD Countries: Monitoring and Evaluation 2000*.

¹⁸ A United States proposal (G/AG/NG/W/15) suggests that the tariff reductions be made on the applied rates, rather than on the bound rates.

(c) Establish the "Special Countervailing Provisions" for the use by developing countries including against subsidized imports, to target the protection against those imports that receive domestic support/export subsidies in originating countries. The Special Countervailing Provisions could have a mechanism that would allow developing country Members to take a countermeasure (for example an additional duty) against subsidized imports without complying with Articles 5 and Article 7 of the Agreement on Subsidies and Countervailing Measures, i.e. without:

- a need to prove injury to the domestic market;
- a need to hold consultations with the exporting developed country concerned; and
- without a need to report to the Dispute Settlement Board the injury caused by subsidized exports.

The "trigger" level for a Special Countervailing measure could be based on:

- the domestic production cost of the product concerned; and
- the estimated level of the price-cutting effect of domestic support and/or export subsidies in the exporting country.

(d) Set the within-quota rates of tariff rate quotas (TRQs) at zero for imports from developing countries in order to enhance the benefit of TRQs to developing countries.

(e) Establish the nominal maximum ceiling on tariffs in developed countries for products of export interest to developing countries in order to reduce the market access barriers created by tariff peaks and tariff escalation in developed countries. There is a need to establish a list of products of export interest to developing countries.

(f) Ensure that the review of the SPS Agreement will lead to a commitment by developed countries to provide technical assistance for capacity building.

(g) Enable African countries with zero aggregate measure of support (AMS) commitment, owing to their lack of budgetary resources, to provide AMS support if required in their development programme. Whenever introducing new AMS-type support, developing countries would meet the notification obligation.

Box III.2**OUTCOME OF THE EXPERT MEETING ON THE IMPACT OF THE REFORM PROCESS IN AGRICULTURE ON LDCs AND NET FOOD-IMPORTING DEVELOPING COUNTRIES AND WAYS TO ADDRESS THEIR CONCERNS IN MULTILATERAL TRADE NEGOTIATIONS**

- 1. Actions under the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Process on Least-developed Countries and Net Food-Importing Developing Countries (Marrakesh Decision)**
 - a. The Marrakesh Decision should be made more operational and aim at solving the long-term food security problems of LDCs and NFIDCs, rather than at short-term needs in terms of food aid.
 - b. Special consideration should be given to possible effects on LDCs and NFIDCs of reductions or possible elimination of export subsidies, and effects of an internationally agreed discipline on export credits.
 - c. The mechanism for injecting donated food into the domestic market should be targeted so as to avoid disruption of domestic production.
 - d. The areas where technical assistance from multilateral and bilateral donors is desired include increasing agricultural productivity, infrastructure building, market information dissemination and export enhancement. Consideration should be given to the possibility of setting up a revolving fund for technical and financial assistance.
 - e. Separate conventions could be negotiated on financial and technical assistance to strengthen agricultural development of LDCs and NFIDCs.

2. Negotiations on the continuation of the reform process in agriculture*Market access*

- a. Existing tariff peaks, especially on actual or potential export products of LDCs and NFIDCs, should be eliminated.
- b. Tariff escalation should be eliminated with a view to enhancing product diversification to higher value-added products in LDCs and NFIDCs.
- c. With a view to reducing imbalances in the level of actual tariff barriers, reduction of the current bound rates of LDCs, NFIDCs and other developing countries should be conditional upon significant tariff cuts in developed countries.
- d. Measures to assist small-scale developing country exporters to benefit from tariff rate quotas in major markets should be considered.
- e. Tariff-free and quota-free market access for exports of LDCs should be implemented by developed countries at the earliest possible date.
- f. Negotiations should identify ways, as indicated in the preamble to the Agreement on Agriculture, to improve market access for agricultural products of particular interest to developing countries.
- g. Negotiations should address the need for financial and technical assistance to developing countries, especially for meeting the costs of compliance with SPS measures and technical standards (e.g. costs to obtain certification, costs incurred from delays in authorization) in the international market.
- h. Preferential market access schemes for LDCs and NFIDCs, with respect to their product coverage in the agricultural sector and their operation, should be continued and improved.
- i. The Special Safeguard measures should be made available to all developing countries.

Export competition policies

- a. Export subsidies provided by developed countries should be eliminated.
- b. Export credits should be subject to internationally agreed rules to avoid circumvention of disciplines on export subsidies.
- c. LDCs and NFIDCs should enjoy flexibility to provide export subsidies in order to promote the exports of agricultural products with an export potential.

Domestic support

- a. Trade-distorting domestic support (AMS) in developed countries should be substantially reduced at an early stage so as to eliminate the imbalance in the use of such measures between developed countries and developing countries.
- b. Disciplines should be established to limit the extensive use of Green Box measures by developed countries, so as to achieve a level playing field.
- c. The Blue Box provision should be terminated.
- d. The *de minimis* limit for developing countries should be increased from the current 10 %.
- e. Article 13.b(ii) of the Agreement on Agriculture should be reviewed so as to increase flexibility in the use of the *de minimis* measures and to provide that inputs and investment subsidies available to low-income resource-poor farmers will be non-actionable.
- f. Development policy measures of LDCs, NFIDCs and other developing countries which target the viability of small-scale subsistence farmers, rural poverty alleviation, and product diversification are important elements to be included in a possible "Development Box".
- g. The elements to be included in the Development Box should take into account the need to strengthen vulnerable domestic producers and to improve their export competitiveness. Attention is drawn to the proposal made on the Development Box by 11 developing countries to the special sessions of the WTO Committee on Agriculture (G/AG/NG/W/13).

Special and differential (S&D) treatment

- a. LDCs and NFIDCs require flexibility to apply urgent measures to safeguard small farmers against import surges and unfair trade practices, particularly those affecting the production of key staples of domestic diet.
- b. Modalities for S&D treatment going beyond the current elements of the Agreement on Agriculture should be explored.
- c. S&D treatment should take account of specific situations of different groups of developing countries, such as small island developing countries and land-locked developing countries.

Non-trade concerns

- a. Rural development, poverty alleviation and food security of developing countries should be the main focus of negotiations on non-trade concerns.

3. Other issues*Coherence between Bretton Woods conditionality and the WTO commitments (Marrakesh Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking)*

- a. Programmes of Bretton-Woods institutions should conform to WTO rules and obligations. LDCs and NFIDCs should not be required to accept market liberalization or subsidy reduction commitments exceeding the commitment levels accepted at the WTO, nor at a pace exceeding that in the WTO agreements, nor which exceed the capacity of adjustment of those countries.
- b. The WTO commitments should reflect the fact that many LDCs and NFIDCs have unilaterally liberalized their agricultural trade so much that they only have tariffs as effective trade policy measures.
- c. Credit should be accorded to developing countries for their autonomous liberalization.

Negotiations on accession to the WTO

- a. Specific conditions prevailing in the agricultural sectors of those countries acceding to the WTO should be taken into account in their accession negotiations.

Source: UNCTAD secretariat "Report of the Expert Meeting on the Impact of the Reform Process in Agriculture on LDCs and Net Food-Importing Developing Countries and Ways to Address Their Concerns in Multilateral Trade Negotiations" (TD/B/COM.1/EM.11/3).

Chapter IV SERVICES

A. SIGNIFICANCE OF TRADE IN SERVICES

83. The phrase “trade in services” applies to international transactions involving such fields as financial services, transport, communication and distribution, among other services. When considering barriers to trade in services, domestic regulations governing their supply and consumption are more important than border measures (such as tariffs), unlike trade in goods, where border measures play a major role. These domestic regulations are put in place for a number of reasons — for example, to protect domestic industries, to meet public objectives such as the protection of culture and tradition, or to protect consumers’ interests. Therefore, the need for multilateral disciplines in the area of services was not considered great until recently in the Uruguay Round of Multilateral Trade Negotiations.

84. World trade in services has grown rapidly in the last decade. The period from 1985 to 1997 witnessed the growth of the current dollar value of world commercial services exports at an average rate of 10.9 per cent per year, while all other exports grew at an average of 9 per cent a year. In 1998, services accounted for 19.4 per cent of world trade in goods and services, with a 2.2 per cent fall in dollar value, the first since 1983.¹⁹ In Africa, services accounted for 50 per cent and above of gross domestic product (GDP) in Botswana, Côte d’Ivoire, Egypt, Eritrea, Kenya, Madagascar, Mauritius, Namibia, Senegal, South Africa, Tunisia, Zambia and Zimbabwe in 1998 and averaged about 50 per cent for sub-Saharan Africa (see table IV.1). Few African countries export services; however, Egypt and South Africa are among the leading 40 countries that exported commercial services (total service exports minus exports of government services not included elsewhere) in 1998 (see table IV.2). The same two countries, with several other African countries, are also leading importers of commercial services into the region (see table IV.2).

85. With the growing importance of services, the need for efficiency, especially in intermediate services,²⁰ becomes crucial for the productivity and competitiveness of the whole economy. One of the major avenues for increasing efficiency in the provision of services is the opening up of the domestic market to foreign service providers. This allows the import of services that may not be produced domestically or those that are not produced at prices and quality levels demanded by users. Thus, by fostering competition, the efficiency of domestic producers is enhanced. Because of the non-storability of most services, their provision requires face-to-face interaction between producers and consumers. Therefore, the international provision of services requires the movement of the factors of production, namely labour and capital, near consumers or vice versa instead of direct cross-border delivery.

86. Accordingly, as the area of trade in services rapidly becomes important in economic terms to developing countries, so it becomes important to liberalize services at the national, subregional and multilateral levels.

¹⁹ Warren, Tony and Findlay, Christopher., *Impediments to trade in services: measurement and policy implications*, Australia Japan Research Centre, The Australian National University, 2000.

²⁰ These are services that are used to facilitate the production of manufactured goods or other final demand services, such as tourism services. They can be divided into intermediate producer services (including business services, construction and related engineering services and financial services) and intermediate distributive services (including communication services, distribution services and transport services).

Table IV.1: Services value added (as % of GDP) in Africa

Country	1990	1995	1997	1998
Algeria	41	41	37	41
Angola	41	26	30	36
Benin	51	51	48	48
Botswana	39	50	49	50
Burkina Faso	45	40	41	39
Burundi	25	33	30	29
Cameroon	46	36	36	36
Cape Verde	64	67	68	69
Central African Republic	33	32	29	29
Chad	53	49	46	46
Comoros	50	49	49	49
Congo	46	45	33	39
Côte d'Ivoire	44	51	52	51
Dem. Rep. of the Congo	42	27	25	..
Djibouti	77	77	76	..
Egypt	52	51	51	50
Equatorial Guinea	28	21	8	12
Eritrea	..	66	61	..
Ethiopia	38	..	38	44
Gabon	50	40	37	32
Gambia	58	57	59	59
Ghana	38	67	80	83
Guinea	43	45	43	42
Guinea-Bissau	21	33	30	25
Kenya	52	53	57	58
Lesotho	41	50	47	47
Madagascar	53	53	55	56
Malawi	26	50	46	46
Mali	39	32	37	36
Mauritania	42	42	46	46
Mauritius	56	57	58	58
Mozambique	44	43	46	45
Namibia	51	56	56	56
Niger	49	43	44	42
Nigeria	26	22	20	27
Rwanda	42	36	31	31
Sao Tome and Principe	50	54	59	62
Senegal	61	59	58	59
Seychelles	79	73	73	72
Sierra Leone	33	31	29	32
South Africa	55	61	63	64
Sudan	..	..	41	43
Swaziland	43	41	40	45
Tanzania	36	39	38	39
Togo	44	40	38	37
Tunisia	54	60	58	59
United Rep. of Uganda	32	36	40	38
Zambia	37	52	53	56
Zimbabwe	50	56	56	56

Source: World Bank, *World Development Indicators* (CD-ROM 2000).

Table IV.2: Commercial services exports and imports of African countries (millions of US\$)

Country	Commercial services exports				Commercial services imports			
	1990	1995	1997	1998	1990	1995	1997	1998
Algeria	479	..	..	..	1'155	..	..	..
Angola	65	113	..	..	1'288	1'665	..	..
Benin	109	159	102	..	113	235	170	..
Botswana	183	236	187	241	371	440	435	517
Burkina Faso	34	..	..	..	196	..	..	..
Burundi	7	4	3	..	59	62	33	..
Cameroon	369	242	..	..	1018	485	..	..
Cape Verde	30	57	79	74	23	55	66	85
Central African Republic	..	..	..	..	166	..	..	..
Chad	..	..	..	..	223	..	..	..
Comoros	6	27	..	..	27	33	..	..
Congo	65	55	45	..	748	766	553	..
Côte d'Ivoire	425	426	443	461	1518	1234	1235	1341
Dem. Rep. of the Congo	127	..	..	..	689	..	..	..
Djibouti	..	28	..	..	..	77	..	..
Egypt	4813	8262	9096	7832	3327	4511	5813	5886
Equatorial Guinea	5	4	..	..	36	76	..	..
Ethiopia	261	310	318	348	348	342	379	405
Gabon	214	248	..	..	984	930	..	..
Gambia	53	38	97	..	35	47	60	..
Ghana	79	139	152	162	226	332	395	433
Guinea	91	17	70	66	243	252	204	274
Guinea-Bissau	4	2	6	..	17	27	24	..
Kenya	774	851	716	638	598	733	705	603
Lesotho	34	30	79	46	48	58	58	50
Libyan Arab Jamahiriya	83	..	..	..	926	..	..	..
Madagascar	129	219	243	264	172	277	289	326
Malawi	37	..	..	..	268	..	..	..
Mali	71	68	62	..	352	412	324	..
Mauritania	14	19	25	24	126	197	180	130
Mauritius	478	773	911	968	407	630	672	717
Mozambique	103	242	279	286	206	350	329	401
Namibia	106	301	367	315	341	538	522	449
Niger	22	12	..	..	209	120	..	..
Nigeria	965	608	786	884	1901	4398	4694	4054
Rwanda	31	11	34	31	96	58	99	115
Sao Tome and Principe	3	..	..	..	8	..	..	..
Senegal	356	364	329	..	368	405	389	..
Seychelles	162	200	231	..	79	98	115	..
Sierra Leone	45	71	..	..	67	79	..	..
South Africa	3442	4414	5150	5109	4096	5754	5809	5278
Sudan	134	82	30	14	202	150	168	200
Swaziland	102	150	125	112	137	205	236	185
Togo	114	..	..	..	217	..	..	..
Tunisia	1575	2401	2518	2662	682	1'245	1066	1153
Uganda	..	104	165	..	195	563	693	..
United Rep. of Tanzania	131	566	470	534	288	729	709	885
Zambia	94	..	..	..	370	..	..	..
Zimbabwe	253	..	..	..	460	..	..	..

B. STATE OF PLAY AT THE WTO

87. The multilateral arrangement for liberalizing trade in services is the General Agreement on Trade in Services (GATS), which resulted from the Uruguay Round of Multilateral Trade Negotiations. Negotiations under GATS offer Governments a valuable opportunity to make shared commitments to progressive liberalization, thereby creating enhanced opportunities for trade in services that will benefit both producers and consumers.

88. As mandated by GATS Article XIX.1, negotiations in the WTO on trade in services, began with a Special Session of the Council for Trade in Services on 25 February 2000. The objective is to take the process of liberalization achieved in the Uruguay Round further by extending national commitments over a broader range of services sectors and by improving on existing commitments. The Uruguay Round results marked a first step in a longer-term process of services liberalization. The market access commitments that WTO Members undertook in 1995 were important since they provided security and predictability for private sector operators and investors.

89. GATS Article XIX.2 provides flexibility for individual developing WTO Members to liberalize progressively, taking into consideration their development situation. It is in this respect that African Members should be at liberty to choose their own priority service sectors to liberalize without coercion from any quarter. Thus, these countries are expected to prepare their national position, consult with stakeholders and set negotiating strategies and objectives during the process of the ongoing negotiations.

90. Assessment of trade in services, which is an integral part of the WTO negotiations, as mandated under GATS Article XIX.3, is a continuous process in the negotiations and should be utilized by African Members to increase their participation in the WTO. It would demonstrate to what extent developing countries have increased their participation in trade in services under the GATS and how expansion of their service exports, including through the strengthening of their domestic services capacity and its efficiency and competitiveness, has contributed to their development objectives. As a result of this assessment WTO Members would be able to identify their own interests regarding trade in services.

91. At a special meeting held on 14 April 2000, the Council for Trade in Services adopted its work programme for 2000, including the dates for negotiating sessions. Four "services weeks" for negotiations were agreed upon by Members so as to enable delegations and capitals to prepare accordingly for the meetings. For each of the four weeks, meetings of the services subsidiary bodies (Committee on Specific Commitments, Working Party on Domestic Regulation, Working Party on GATS Rules) will be held back to back with a meeting of the Council for Trade in Services (on the review of most-favoured-nation (MFN) exemptions or the review of the Annex on Air Transport Services) and completed by a special session of the Council on negotiations.

92. The first phase of the negotiations on trade in services follows the "road map" (see box IV.1); this approach was adopted because WTO Members could not achieve consensus on the negotiating guidelines. The "road map" is not a substitute for the negotiating guidelines and procedures but is being used as a tool for organizing the work to be carried out during the negotiations. It includes dates for the submission of proposals and the themes to be discussed by the Special Session and to be addressed in the proposals. The results of the negotiations using the "road map" will be reviewed in March 2001. Since WTO Members are at this stage making proposals to shape the future negotiations, it is at this juncture that African countries should seek to indicate their areas of interest.

Box IV.1**“Road map” for the first phase of the GATS negotiations**

1. Pursuant to the objectives of the GATS, as stipulated in the Preamble, in Article IV, and in the mandate contained in Article XIX, negotiations on trade in services shall aim to achieve progressively higher levels of liberalization of trade in services through the reduction or elimination of the adverse effects of measures as a means of providing effective market access. The negotiations shall take place with due respect for national policy objectives and the level of development of individual Members. In this process, the existing structure and principles of the GATS shall be preserved. Members shall aim to complete the current work under Articles VI:4, XIII and XV of the GATS prior to the conclusion of the negotiations. The negotiations on emergency safeguards under Article X of the GATS are due to be completed by 15 December 2000, according to the Decision adopted by the Council for Trade in Services on 24 June 1999 (S/L/73).

2. Without prejudice to the elaboration of negotiating guidelines and procedures as required under Article XIX:3, the following programme and arrangements have been agreed for the first phase of these mandated negotiations on services:

- (a) that the Special Session meeting will be held back-to-back with the regular meetings of the Council for Trade in Services and its subsidiary bodies, in May, July, October and December;
- (b) that proposals would be submitted by Members by the end of December 2000, on the understanding that there would be flexibility for the submission of further or more detailed proposals thereafter;
- (c) that proposals, to be discussed at the Special Sessions, could address matters relating to negotiations under Article XIX including the following themes:
 - Modalities for negotiations
 - Increasing participation of developing countries and in particular special priority for least-developed country Members
 - Modalities for the treatment of autonomous liberalization
 - Issues arising from the work carried out in the Council for Trade in Services and its subsidiary bodies, including technical review of existing provisions of the GATS in order to improve the clarity and legal consistency of the text of the Agreement;²¹
- (d) that the preparation of negotiating guidelines and procedures in accordance with Article XIX:3 of the GATS, drawing upon the ongoing trade assessment process and any conclusions Members may reach during that process, will be on the agenda of the Special Session as from May 2000 and will be completed as soon as possible. The “Assessment of Trade in Services” and “Work of Subsidiary Bodies-Reports by Chairpersons” will be retained as standing items on the agenda of the Special Session;
- (e) that a best endeavour deadline of March 2001 be set for the completion of the work currently underway in the Committee on Specific Commitments on classification and scheduling guidelines;
- (f) the negotiating guidelines and procedures required under Article XIX:3 shall provide guidance on how to proceed with the work mandated in Articles VI:4, XIII and XV, and the stock-taking exercise set out in item “g” below shall assess progress made in these areas;
- (g) that the second phase these negotiations would begin with a stock-taking exercise by the Special Session in March 2001, to consider progress made and how to move forward.

Source: WTO, "Council for Trade in Services — Special Session", 13 July 2000 (WTO/AIR/1353).

93. The initial part of the negotiations is expected to concentrate more on rule making while the negotiations on specific market-access commitments will start at the end of 2000. Most of the rule making is taking place in the existing services subsidiary bodies but market access negotiations will take place in the special sessions of the Council for Trade in Services. The Council, as mandated, also works on the three reviews at regular meetings. The review of the MFN exemptions is of importance to WTO Members that included MFN exemptions in their schedules of commitments, as the reviews will determine whether the reasons for the exemptions are still valid. The mandated review of the Annex on Air Transport Services is

²¹ This is without prejudice to any Member's position on whether the issues submitted in the proposals are relevant to Article XIX.

scheduled for 28 and 29 September 2000. In addition, the review of the Understanding on Accounting Rates in Basic Telecommunications is of interest to all African WTO Members, since most Governments maintain or apply regulatory measures that determine or substantially affect accounting rates.

94. The Working Party on GATS Rules is working on subsidies, government procurement and safeguards. The interest of African and other developing countries is in the establishment of Emergency Safeguard Mechanism, which needs to be considered as a precondition for making liberalization commitments. This is because a safeguard instrument can act as an insurance mechanism that can be invoked if liberalization has unexpected detrimental impacts on society. The Working Party on Domestic Regulations is focusing on developing disciplines relating to technical standards, licensing and qualification requirements for all services sectors.

95. The Committee on Specific Commitments is currently working on classification issues related to the scheduling of commitments. Different approaches have been proposed by delegations and positions may be considered regarding which of these approaches would be most suitable to African countries. A crucial strategic issue is that the approach to services liberalization by African countries must be consistent with the objectives and developmental capacity in the region, as well as with regional integration objectives. An innovative example in this respect is the dual-track approach of the Southern African Development Community (SADC) adopted by the SADC Industry and Trade Committee of Ministers in June 2000 in Maseru, Lesotho (see box IV.2). The Ministers' decision was based on recommendations by a meeting of the SADC Trade Negotiation Forum (TNF) on Trade in Services, held in June 1999 in Maseru, with technical and analytical support from UNCTAD, UNDP and the Coordinated African Programme of Assistance in Services (CAPAS).

Box IV.2

SADC Plan of Action for future negotiations on trade in services

Regional level

At the regional level, SADC member States agreed on a mutually supportive two-track approach to prepare and efficiently carry out negotiations at the subregional level.

The SADC plus approach

The SADC Trade Negotiation Forum (TNF) will aim at negotiating on the basis of the existing progress made in liberalizing trade in services under the relevant Sector Coordination Units. To that end, the next meeting of the TNF should invite the Sector Coordinating Units to present an assessment of the progress made in liberalizing trade in services and to make a regular contribution to the negotiating process in the TNF. On the basis of this background, the TNF will then decide ways and means for accelerating this "SADC-plus" process. In the meantime, these services sectors would not be the subject of offers by any SADC member in the WTO.

The GATS plus approach

For service sectors not falling into the above category, and principally those subject to commitments in the WTO, the TNF will initiate a GATS-plus negotiation, under which each SADC country would submit requests to other SADC partners as to additional liberalization, going beyond the WTO commitments which could be made in favour of the other SADC partners on a preferential basis.

Multilateral level

At the multilateral level, member States should coordinate their negotiating positions in relation to the GATS and adopt as far as possible common negotiating strategies on certain issues. In order to carry out this assignment the TNF agreed on a series of actions for the negotiations, which are contained in the report of the TNF on trade in services.

96. A substantive proposal for negotiations by a developing country is a paper on the tourism sector, which is of great importance to the African continent as a whole since it contributes significantly to the economies of most African countries (see table IV.4). This proposal has also been presented to the Council by the delegation of the Dominican Republic and has been tabled for negotiation; Members are expected to take positions on it. This proposal, like the one presented by other WTO Members for the construction, environment and energy sectors, introduces the concept of the "cluster approach" in the negotiations. This approach takes into account the cluster of activities that revolve around trade logistics and facilitation, and thus in the case of tourism it covers all the services sectors classified under the GATS. The European Communities have also put before the Council for Trade in Services a proposal on the use of the cluster approach in certain sectors as a tool in the traditional sectoral request-offer negotiations.

97. Since all the member States of the Organization of African Unity (OAU) and the African Economic Community (AEC) have undertaken, *inter alia*, to ensure the liberalization of trade to eventually create free-trade areas and customs unions at the subregional level and eventually at the regional level, they are participating in integration schemes that also deal with areas of cooperation in services and trade facilitation. In a wider context, such as the Cotonou Partnership Agreement succeeding the Fourth Lomé Convention, all ACP African member States have also to deal with guidelines concerning trade in services. Therein, it is explicitly mentioned that the future Economic Partnership Agreements will be extended to encompass services in accordance with provisions of the GATS. Thus, the liberalization of trade in services is an item on the current trade agenda of most of the African countries, at the multilateral, regional and subregional levels, as well as in their bilateral relations with the European Union. In view of the lesson from the past — namely that the lack of effective participation by developing countries and especially LDCs has diminished the benefits to be achieved from the GATS negotiations, a more proactive engagement in the various negotiation forums by African countries is necessary in order to advance their trade and development interests in the increasingly important field of trade in services.

Table IV.4: International tourism receipts (% of total exports) for African Countries

Country	1990	1995	1997	1998
Algeria	0	0	0	0
Angola	0	0	0	0
Benin	8	4	6	6
Botswana	6	7	4	8
Burkina Faso	3	7	13	10
Burundi	4	1	1	1
Cameroon	2	2	2	2
Cape Verde	11	12	11	17
Central African Republic	1	2	3	4
Chad	3	3	3	3
Comoros	6	46	86	50
Congo	1	0	0	0
Côte d'Ivoire	1	2	2	2
Djibouti	..	2	2	..
Egypt	12	21	26	19
Equatorial Guinea	2	2	0	0
Eritrea	..	34	45	70
Ethiopia	4	3	4	1
Gabon	0	0	0	0
Gambia	15	13	14	12
Ghana	8	15	16	14
Guinea	4	0	1	0
Kenya	20	15	12	10
Lesotho	17	14	11	10
Madagascar	9	8	9	11
Malawi	4	2	1	1
Mali	11	5	4	8
Mauritania	2	2	5	5
Mauritius	14	18	19	19
Namibia	7	16	19	18
Niger	3	5	6	5
Nigeria	0	0	1	1
Rwanda	7	3	12	17
Sao Tome and Principe	25	23	17	18
Senegal	11	11	12	13
Seychelles	55	36	34	31
Sierra Leone	16	44	63	51
South Africa	4	6	8	8
Sudan	4	1	1	1
Swaziland	5	5	4	4
Togo	9	2	2	2
Tunisia	18	18	17	18
Uganda	4	12	16	22
United Rep. of Tanzania	12	20	32	50
Zambia	3	3	6	7
Zimbabwe	3	6	8	6

Source: World Bank, *World Development Indicators* (CD-ROM 2000)

C. NEGOTIATION STRATEGIES FOR AFRICAN COUNTRIES

98. To derive full benefits from the GATS negotiations, African WTO Members have to seek more effective representation in the organization and more actively participate in the negotiation process. One way to do this is to make use of existing capacity through some form of joint action in terms of information gathering, policy analysis and representation in key WTO bodies.

99. Under the negotiating guidelines, it would be in the interest of African countries to develop modalities for obtaining credit for autonomous liberalization carried out since the Uruguay Round. Also, it is in their interest to seek the full and practical implementation of GATS Article IV on the increasing participation of developing countries and more concrete reflection on the special needs of LDCs. African countries need to analyze these issues and identify recommendations at the level of national mechanisms set up to monitor and respond to WTO Agreements, and also seek technical support to develop negotiation proposals.

100. As a first step towards a possible plan of action, African countries and in particular WTO Members should obtain a clear picture of the commitments already made at the WTO under the GATS. Through this first analysis of the status quo, African countries may wish to take the opportunity to elaborate a complete vision of the scope and nature of the negotiations on trade in services at the regional level before engaging in early negotiations at the multilateral level (and eventually with the EU under the Cotonou Partnership Agreement and with the United States). Experience acquired from some regional trade agreements has shown that in certain areas, and in spite of regional initiatives, incoherent commitments were made at the multilateral level before adequate coordination was carried out at the subregional level. Where possible and desirable this current trend should be reversed so that negotiating strategies at the multilateral level are influenced by regional strategies and not vice versa, as is being attempted by SADC as noted previously.

101. Adequate sequencing and timing of the negotiating objectives and strategies at the regional level together with those at the multilateral level, subregional coordination through existing consultation mechanisms and viable approaches for trade liberalization at the subregional level should be the *leitmotiv* of the internal OAU/AEC preparation for the services negotiations. Accordingly, African countries should identify their national and regional interests and explore possible approaches and sectors for liberalizing trade in services at the subregional level which would then form the building blocks for putting forward a coordinated position on horizontal issues related to the GATS negotiations, such as principles of negotiation according to Article XIX, binding of autonomous liberalization, safeguards and subsidies. Strategic means need to be identified to make effective the provisions contained in GATS Article IV, taking into account regional and national interests and possible development dividends to be obtained from the round of negotiations on trade in services.

102. Within the framework of CAPAS, services experts from African countries should go to Geneva to discuss and brainstorm with the negotiators regarding selected services sectors, and as an outcome, select key issues for Africa. The findings of the studies already carried out under the CAPAS should be transmitted to delegates. CAPAS IV, which is the next phase of the project, concentrates on the issue of regional cooperation in terms of services. African countries could make use of it so as to facilitate their participation in multilateral negotiations on trade in services under the WTO.

103. OAU/AEC members should analyze and identify key sectors where countries' interests and objectives converge, so that these key sectors identified could become

candidates for liberalization at subregional level and the first components of a regional negotiating strategy at the multilateral level. Consideration should be given to sectors such as transport, telecommunications and tourism. These are key sectors for African countries since efficiency in intermediate service sectors is instrumental in reducing production costs that have been identified as fundamental constraints on Africa's productivity. They are also sectors in which there is considerable potential for intraregional trade.

104. An example of a possible candidate for alignment and harmonization of commitments under the GATS could be the hotel and restaurants sub-sector, including catering services, which falls under the "tourism and travel-related services" sector. In this sub-sector, 37 out of 39 OAU/AEC WTO Members have made commitments under the GATS. It can be seen from the table IV.5 that 18 of the countries have no limitations in the first three modes of supply and that three have no limitations at all. Since this is a key sector for most African countries, it will be important for them to participate effectively in the services negotiations so as to negotiate for recognition and credit for autonomous liberalization.

Table IV.5 Regional integration and liberalization of services in Africa – Examples of subsectors for alignment of commitments under the GATS-plus approach

1) Tourism and travel-related services

1a) Hotel and restaurants, including catering

Country	Mode of supply							
	Mode 1		Mode 2		Mode 3		Mode 4	
	MA	NT	MA	NT	MA	NT	MA	NT
Mauritius	L	L	N	N	L	L	U	U
Botswana	N	N	L	U	L	L	U	U
Lesotho	U''	U	N	N	U	U	U	U
United Rep. of Tanzania	N	N	N	N	L	U	U°	U
Côte d'Ivoire	U''	U''	N	N	N	N	L	N
Burkina Faso	U*	U*	N	N	N	N	U°	U°
Niger	U*	U*	N	N	L	L	U°	U°
Senegal	U*	U*	N	N	L	N	U	U
Algeria	U*	U*	N	N	N	N	U°	U°
Cameroon	U	U	U	U	N	N	U°	N
Central African Republic	U	N	U	N	U	N	U	N
Egypt	U*	U*	N	N	L	L	N	N
Gabon	U''	U''	N	N	L	N	U°	U°
Guinea	U	U	N	N	N	N	U°	N
Kenya	U*	U*	N	N	N	N	U	N*
Mauritania	U*	U*	N	N	N	N	U°	U°
Tunisia	U*	U*	N	N	N	N	U	U
Mali	U*	U*	N	N	N	N	N	N
South Africa	U''	N	N	N	N	N	U	U
Congo	N	N	N	N	L	N*	U°	U
Burundi	N	N	N	N	N''	N	U°	U°
Djibouti	N	N	N	N	N	N	U°	U°
Rwanda	N	N	N	N	N	N	U°	U°
Gambia	N	N	N	N	N	N	U	U
Ghana	N	N	N	N	N	N	U	U
Sierra Leone	N	N	N	N	N	N	U	U
Angola	N	N	N	N	N	N	U°	U°
Dem. Rep. of the Congo	N	N	N	N	N	N	U	U
Malawi	N	N	N	N	N	N	U	U
Swaziland	N	N	N	N	N	N	U	U
Zambia	N	N	N	N	N	N	U	U
Zimbabwe	N	N	N	N	N	N	U	U
Benin	N°	N°	N	N	N	N	U°	N
Guinea-Bissau	N	N	N	N	N''	N	U°	U°
Togo	N	N	N	N	N*	N	N*	U
Chad	N	N	N	N	N*	N	N*	N
Namibia	N	N	N	N	N	N	N	N
Nigeria	N	N	N	N	N	N	N	N

Note: This table takes into account 38 Members of the OAU which are also Members of the WTO. Madagascar and Mozambique did not make commitments under this sector.

MA: Limitations on market access

NT: Limitations on national treatment

U* : Unbound due to lack of technical feasibility.

U° : Unbound except for measures affecting senior managers and specialists with knowledge essential for the provision of the service.

U'': Unbound except for catering = none.

N*: No limitations but subject to laws and regulations in force in the country.

N°: No limitations for hotels but restaurants are unbound.

N'': No limitations for restaurants, but hotels are subject to approval by the Council of Ministers.

L: Limitation