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Negotiating Group on Market Access

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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Communication from Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe

The following communication, dated 17 February 2003, has been received from Ghana, Kenya, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe.

I. INTRODUCTION

1. Paragraph 16 of the Doha Ministerial Declaration (DMD) provides the mandate for the negotiations on market access for non-agricultural products which requires members to, inter alia,

- Reduce or eliminate tariff peaks, tariff escalation as well as non-tariff barriers with emphasis on products of export interest to developing countries,
- Take fully into account the special needs and interests of developing and least-developed country participants including through less than full reciprocity in reduction commitments,
- Take fully into account the principle of special and differential treatment for developing and least-developed countries and
- Undertake appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.

2. The objective of the negotiations on market access for non-agricultural products should, in our view, be to facilitate and enable the development and industrialisation processes in developing countries. The modalities and the actual negotiations should have this goal at the centre, and it should thus be central in all aspects of the work programme. The liberalisation of imports should only be seen as a possible means towards this goal, and for many developing particularly least developed country members, further liberalisation especially of products where their industrial base is weak would be counter-productive to this overriding development goal. On the other hand, liberalisation by developed country members of products that can be exported by developing and least developed country members can contribute to the development of this group of countries, although it should be noted that supply side constraints also prevent many of them from being able to take advantage of any improvement of market opportunities.

II. BACKGROUND

3. Most African countries have undertaken, in the past two decades, wide-ranging economic reform measures in the context of the structural adjustment programmes under the tutelage of the World Bank and the International Monetary Fund. The main emphasis of these reforms has been on trade liberalisation. These reforms have lowered trade barriers significantly but the broad-based development that was expected to ensue has generally remained elusive. In addition, Africa's continued dependence on few commodity exports and its persistent dismal performance in international trade is not commensurate with the liberalisation initiatives spearheaded by the Bretton Woods institutions. Indeed, empirical studies show that industrial growth has fallen behind GDP

growth in Sub-Saharan Africa since the 1980's with de-industrialization in a number of African countries being associated with trade liberalisation¹. Hence although it is argued that the potential benefit of trade can be an important engine for economic growth and poverty reduction, it is only when trade is built upon solid institutional foundations are the benefits typically realised.

4. It is also common knowledge that our countries are beneficiaries of various preferential schemes most notably, the ACP-EU Cotonou Partnership Agreement, AGOA, EBA initiative and a number of GSP schemes. We believe that improving and, at the very least, maintaining current benefits associated with these preferential schemes constitutes one of the special needs and interests of developing and least-developed countries referred to in para 16 of the DMD. Moreover, the effect of tariff reforms on government revenues need to be approached with caution especially in the light of continually declining levels of official development assistance (ODA).

5. In this regard, our delegations would like to make the following contribution to the development of the modalities for the negotiations.

III. MODALITIES

6. The modalities to be developed should, in essence, be simple and user-friendly to negotiators, policy-makers as well as those tasked with its implementation in the customs administrations. Suffice it to say that complicated formulae will only burden the weaker customs administrations. Further, the modalities must address the impediments to the fuller integration of our economies into the multilateral trading system.

7. In this regard, the modalities should be based on the following considerations:

- Developed country members should provide improved market access to developing and least developed country products by addressing the problems posed to the trade of these countries as a result of the existence tariff (peaks and escalations) and non-tariff barriers.
- Taking into account the dismal experience of liberalisation measures taken earlier by African countries, any further liberalisation including reduction commitment should be left to be determined by them.

IV. TARIFF PEAKS AND TARIFF ESCALATION

8. Reducing and eliminating tariff peaks and tariff escalation on products of export interest to developing countries need to be given maximum attention in the development of modalities. The continued protection in major markets accorded to products of export interest to developing countries remains a matter of major concern. The practice of tariff escalation continues to impede the diversification efforts of our countries that are disproportionately dependent on commodity exports.

V. SPECIAL AND DIFFERENTIAL TREATMENT

9. In the past, the special and differential treatment accorded to developing and least developed country members has focused on lesser depth of tariff cuts and longer transition periods. This has not worked to the advantage of developing and least developed country members as their economies have suffered greatly from overexposure. While we agree with those arguing that greater openness to trade should be the ultimate aim of all members, it should not be the immediate aim of countries at early stages of industrialisation. Developing and least developed country members at early stage of industrialisation will need to go through the "learning phase" by improving their productivity and competitiveness. This takes time, as the process is unique to each sector and activity. The recent wave

¹ Economic Development in Africa: Performance, Prospects and Policy Issues - UNCTAD publication (TD/B/48/12)

of mergers and acquisitions have made entry of new comer developing country enterprises into the global market even more difficult and learning has therefore, become more complicated. Hence the need for concrete special and differential treatment based on economic benchmarks including the protection of infant industry is more justified today than some years ago. The modalities to be established must allow developing country members to use measures aimed at assisting infant industries to compete with well established enterprises in the international market. Members should therefore, view trade liberalisation as supportive of and not a substitute for trade and industrial policy.

VI. BOUND RATES VS APPLIED RATE

10. The difference between applied rates and bound rates is most noticeable in the case of developing and least developed country members. Applied rates are markedly lower than bound rates in most developing and least developed countries as a result of the autonomous liberalisation initiatives undertaken by them. In addition, the gap between the two rates provides this group of countries with appropriate space for the formulation of their trade and industrial development policies. The bound rates must, therefore, be the starting point for the negotiations. In our view, bound rates are the only legitimate basis for making WTO commitments. In addition the reduction of bound rates even above the applied rates is a valid offer, which also improves security of access and reduces the risk of reverting to other measures such as Anti-Dumping actions. The issue of increasing the scope of coverage of bound products should, however, be handled with care given that a number of developing and least developed country members particularly those from Africa would wish not to bind some products that they consider sensitive. The scope of coverage of bound products should be left to each developing member country to decide.

VII. SPECIAL INTERESTS

11. The erosion of preference margins as a result of reductions in tariffs in our export markets will inevitably lead to trade diversion. This is the crux of our concerns and need to be addressed as mandated by the Ministers to the effect that "... The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants² ..." The modalities should therefore, include a procedure for establishing measures and mechanisms to deal with erosion of preferences, with the aim of avoiding or offsetting this problem or compensating the affected members.

VIII. LESS THAN FULL RECIPROCITY

12. The Ministers specifically included the concept of less than full reciprocity in the reduction commitments in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and this is a clear and unambiguous recognition that all members are not required to undertake similar levels and types of commitments due to their different levels of development. Moreover, adherence to the provisions of Article XXVIII *bis* of GATT 1994, especially as they relate to the trade, fiscal, and development concerns of all members, will raise the comfort levels of the weaker members of the organization.

IX. NON-TARIFF BARRIERS

13. As beneficiaries of the preferential schemes, non-tariff barriers are increasingly becoming one of our main market access concerns. For instance we are not able to utilise preferences to the full because of the restrictive nature of the rules of origin. Hence rules of origin may be harmful in restricting the capacity of African countries to take advantage of market access opportunities that are available. There is also a need to look at the use of other measures that in principle conform to the

² Para 16 of the Doha Ministerial Declaration adopted on 14 November 2001.

WTO rules such as Anti-Dumping and countervailing measures, SPS and TBT among other measures. While there may be legitimate reasons for these, sometimes they are used for purely protective purposes. We recognize that it may not be feasible to quantify the degree to which they act as market access impediments. However, it is crucial that they are addressed in the negotiations as whatever gains are made through tariff concessions may be nullified by the incidences of this form of market access barriers.

X. STUDIES AND CAPACITY-BUILDING MEASURES

14. Although Ministers gave instruction that the modalities to be agreed should include “appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations” we believe similar studies would equally assist low-income African country members to participate effectively in the negotiations. It is our considered view that such studies should include the effects of previous liberalisation, the effects of tariff peaks and escalation maintained in developed country markets on the prospects of this group of countries, and the implication of these for future policies. The studies will help negotiators and policy-makers from least developed and low-income African countries to make informed decisions based on past experience and thus participate more effectively in the current negotiations.

XI. ENVIRONMENTAL GOODS

15. Discussions in the Negotiating Group on Market Access for Non-Agricultural Products and the Committee on Trade and Environment, in Special Session on the question of “environmental goods” so far affirm the non-existence of universally accepted definition of the term and the associated classification problems. It would, therefore, be advisable that the negotiating group seek the expert input of the Committee on Trade and Environment before embarking on the elaboration of modalities for this class of merchandise. In the meantime, it would be futile to introduce issues like production and processing methods into the debate.

16. The legal and practical effect of transferring the locus of the “environmental goods” negotiations from the Committee on Trade and Environment in Special Session to that of the Negotiating Group on Market Access for Non-agricultural Products implies that negotiations on environmental goods must be considered as a subset of negotiations for non-agricultural products and hence the provisions and mandate of paragraph 16 of the DMD must be made applicable to environmental goods. We therefore, expect that negotiations on environmental goods will pay particular attention to “products of export interest to developing countries”; take full account of the special needs and concerns of developing and least developed countries; require “less than full reciprocity in reduction commitment” from developing and least developed countries and establish modalities for studies and capacity building measures among others.

Conclusion

17. A number of proposals submitted so far appear to make little or no distinction between developed country members on the one hand and developing and least developed country members on the other hand. Thus going against the spirit and intent of paragraph 16 Doha Ministerial Declaration. Some of these proposals are very ambitious and do not take into account the possible negative effect that the measures prescribed would have on our economies particularly on the development prospects. We wish to state that if the modalities are not designed right and do not incorporate the elements we have proposed, the consequences could be detrimental and contrary to the stated objective of the Doha Ministerial Declaration that has been touted as focusing on Development.

18. The countries presenting this proposal reserve their right to amend or supplement it in the light of the course and progress of the negotiations.
