



# EU-LDC NETWORK

## EUROPE - DEVELOPING COUNTRIES

August 2003

## *Paving the road to Cancun*

*LDCs view on the way forward during the Fifth Ministerial of the WTO*

So far the Doha agreement has brought little to no return for developing and least-developed countries. Northern governments have failed to act on their commitments, maintaining trade policies that particularly harm the interests of least-developed countries and consequently reinforcing already unacceptable levels of global inequality. The credibility of the multilateral trading system is at stake. If

developed countries are serious about restoring the credibility of the WTO, they need to act accordingly during the forthcoming 5<sup>th</sup> Ministerial Conference of the WTO in Cancun, Mexico, from 10 to 14 September 2003.

At the same time, the next round represents an important opportunity for LDCs (in this Brief the acronym LDCs indicates least-developed countries) to unite their voices for a number of issues of common interest. During the Second LDC Trade Ministers Meeting held in Dhaka from 31 May to 2 June 2003, the LDC Trade Ministers drew up a common stand to pave their way forward. Just a few days before this meeting, a parallel international civil society forum took place. During this forum, which was co-organised by the EU-LDC Network, the official work plan for Cancun was reviewed and concerns were expressed regarding the most important key issues. This EU-LDC Brief gives an overview of the main areas of concern that need to be tackled during the next WTO meeting, such as implementation of TRIPS and Public Health, Special and Differential Treatment, Accession, and Agriculture. Furthermore, the implications for LDCs of topics actively promoted by developed countries such as Market Access for Non-agricultural Products and Environment are discussed.

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## Colophon

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The EU-LDC Network Foundation is established under the law of the Netherlands. Registration number 24323411.



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The EU-LDC Network is a non-profit foundation, registered in the Netherlands. Between 1993 and 2000, the Network operated on a less formal basis as the EU-LDC Trade and Capital Relations Network. The Ministry of Foreign Affairs of the Netherlands has provided funding to assist the activities of the Network.

The EU-LDC Network recognises that to build awareness of the needs and sensitivities of the many parties interested in the economic relations between Europe and developing countries requires broad-based dialogue and sharing of experience. To this end, the Network encourages participation from researchers, policy-makers, civil society organisations and other interested individuals and organisations. Network registration, for which there is no charge, is available on-line via the Network's website.

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Printing:  
Den Haag Offset, Rijswijk

## Special and Differential Treatment: What's in it for LDCs?

Even though the idea of development concerns and special needs of developing countries first figured in the Havana Charter half a century ago, the expression "Special and Differential Treatment" (Part IV of GATT) is of a recent origin, aiming to introduce a development dimension into GATT, 'thus making it more acceptable to developing countries by giving legal recognition to their demands for special treatment for countries at lower levels of development and little or no bargaining power to exercise influence, offer or secure concessions and promote their national goals'. For developing countries, Special and Differential Treatment (S&DT) constitutes an integral part of the balance of rights and obligations of the Uruguay Round Agreements as a whole. 'The preamble to the WTO Agreement recognises the special needs of developing countries for positive efforts designed to ensure that developing countries secure a share in the growth in international trade commensurate with their economic development needs... The references to the LDCs are more generous'.

There are two S&DT provisions that are cross-cutting in nature across several WTO agreements, namely those related to increased market access, and to technical assistance to developing countries. For example, the Agreement on Textile and Clothing (ATC) has more favourable quota growth rates for, inter alia, the LDCs. And there are provisions in Decisions on Measures in Favour of LDCs for improving preferential treatment for products of export interest to LDCs. Many WTO Agreements include provisions for technical and also financial assistance to developing countries including LDCs.

It is possible to describe six different types of S&DT provisions (Youssef, 1999), each of them respectively directed at:

1. Enhancing trading opportunities for developing countries, including LDCs, including through enhanced market access.
2. Requiring developed countries to safeguard interests of developing countries, including LDCs, when adopting certain measures.
3. Giving developing countries, including LDCs, some flexibility and policy discretion in respect of obligations or disciplines that apply to developed country members.
4. Mandating or requesting support measures including financial and technical assistance.
5. Providing some safeguard measures.
6. Granting limited time derogation from the application of rules.

### Relevance of S&DT for LDCs

Development considerations have become an integral part of negotiations in multilateral trading systems, and the developing countries, specially the LDCs, have rightly begun to view these as catalysts for development rather than just as an adjustment tool. There are several reasons for this:

1. *Asymmetrical participation in international trade:* The forty-nine LDCs together exported merchandise worth only USD 34 billion in the year 2000, which was just about 0.5% of world trade. If the LDCs were a single country, they would have been the 34<sup>th</sup> largest merchandise exporter in 2000, ahead only of Venezuela and Poland (WTO, 2001). A more appalling picture emerges once we deduct the share of the four oil-exporting LDCs<sup>1</sup>, which together exported almost 40% of the total LDCs merchandise export in 2000. The rest of the 43 LDCs merchandise exports constituted less than 0.3% of world merchandise trade in 2000! It is also depressing to note the long-term trend in this respect. Taking example of Africa (excluding South Africa) as an indicator of the LDCs as a whole, it is worth noting that Africa's share in global merchandise trade has declined from 7.3% in 1948, to 4.8% in 1973, and finally to 2.3% in 2000. Trade can hardly be an engine of economic growth in such countries.

2. *Commodity-dependent economies, structural weaknesses and economic vulnerability:* Almost all the LDCs

are dependent on exports of a few products, and these are all either primary agricultural products (cotton, fuel, etc.) or few manufactured items such as low-value, labour-intensive products of textile and clothing. These make them vulnerable to the agricultural subsidies and dumping at very low prices in international trade, a phenomenon that is increasingly evident in, for instance, cotton exports from Africa. Besides, the very fact that the developed countries' tariff and non-tariff barriers remain high for labour-intensive 'poor people's products' is both an instrument of protectionism (developed country domestic markets) and an instrument of discrimination (through mechanisms such as the Generalised System of Preferences (GSP) and Art XXIV provisions).

**3. Limited supply capacities:** The rationale behind the entire discussion on market access based on freer and fairer trade is the willingness and ability of the suppliers to respond to market signals such as prices. Ability to respond is reflected in supply elasticity, and it is a common fact that supply elasticity in agriculture the world over is low. This is particularly so in the LDCs who do - more often than not - depend on natural resources as inputs into agriculture, and where the infusion of technology (that could effect significant improvements in control over agricultural processes as well as products) is well nigh absent. Under such circumstances, it would be naïve - if not tyrannical - to expect the LDCs to comply with the same set of multilateral trade rules, and in the same time frame, as do the developed countries. The additional need for effective and meaningful technical and financial assistance is immediately evident.

**4. Market access and competitiveness:** In some sense, this follows from the point about the supply response capability mentioned above. Discussions on market access based on competitiveness - as is the goal as well as the underlying assumption of the WTO agreements - is a non-argument in the context of gross inequalities in development across trading countries. There must be methods and mechanisms designed for the weaker and the less-competitive trading members who lack the wherewithal to compete globally in order to access even food and basic medicines for livelihood security.

**5. Growth and poverty reduction objectives:** Trade, and not autarky, has emerged as the dominant economic ideology and a powerful motor for economic development in the last two decades. However, in order to meaningfully participate in trade, and thereby take the advantage of economic growth, including reduction in absolute poverty levels, that trade brings along - given the right kind of domestic institutional and policy climate -, the LDCs would need to be provided the support for such time as they need to become effective participants in global trade. The rules would need to go beyond the 'level-playing

field' and be positively discriminatory in favour of the weaker nations such as the LDCs. The rules would need to be biased by design in favour of LDCs.

**6. Limited economic and institutional capacity to take advantage of the trade liberalisation:** This is a cause as well as a result of being a LDC. Over a thousand formal and informal meetings take place under the aegis of the WTO in Geneva every year. This means over two meetings a day, and on subjects as diverse and specialised as GMO patentability and multifunctionality to market access and Trade Rules. The LDCs have skeletal staff in their WTO missions in Geneva, and often only one or two people to look into all these areas and to attend all such meetings. These meetings are often held under stressful circumstances - undemocratic, non-transparent and even green-room arm-twisting is not uncommon. Moreover, the LDCs have hardly any resource - financial or human - in their respective countries that can aid and support their mission at Geneva.

The trade strategy must consider the role of import-substitution policies in promoting industrialisation, the need to diversify export baskets and destinations, and the availability of trade control instruments to avert BoP difficulties. The need of LDCs on all these three counts is more intense and immediate than that of developed countries.

However, the S&DT provisions described above in the WTO have been 'best endeavour clauses' which have either not been implemented, or have been implemented in letter but not in spirit. There was a felt need among LDCs to tighten these provisions that lie scattered all over the Uruguay Round Agreements and to give them teeth.

### What next?

This spirit was captured in the Doha Development Round and reflected in the strong mandate on S&DT in the Doha Ministerial Declaration that 'reaffirmed that provisions for S&DT are an integral part of the WTO Agreements'<sup>2</sup>. Based on this mandate, in July 2002 the LDCs submitted a comprehensive proposal to the Committee on Trade and Development (CTD). It encompasses several S&DT provisions that need to be revisited and made more 'effective and operational' for the LDCs. Their limited usefulness is rightly seen by the LDCs to contribute towards the increasing inequity between rights and obligations within the WTO.

Despite several rounds of meetings by CTD, the review processes have not produced any tangible results, nor is it close to fulfilling the mandate. The Chairman of the General Council undertook consultations in coordination with the chairman of the CTD and circulated "A Proposal on an Approach for

Special and Differential Treatment" in April 2003. The chairman categorised the entire provisions into 3 parts based on the likelihood of agreement being reached among members. According to the proposal, on 35 provisions agreement is very likely, whereas it is unlikely on 15 of them. The areas covered in the other 40 are under negotiations in the current Round. This fragmentation itself aggravates the LDCs concerns of their inability to do justice to all three categories due to limited capacity for following up parallel meetings.

The effectiveness of the S&DT provisions would critically depend on the predictability, operationability and developmental value of the provision on the one hand, and the national capacities of the LDCs to make use of these provisions on the other. However, the commitment (including financial and technical assistance) of the developed country members to enabling the LDCs to make good use of these provisions would get reflected in the nature and mandatory character of the final agreement on the S&DT provisions itself. And if the nature of discussions on

this critical area for LDCs is any indication, this important 'development' component of the Doha Development Round is under serious threat.

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*Views reflected are strictly personal*

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UNCTAD (2003) *Developments on Key Issues in the Doha Work Programme. A Background Note*, LDC-II/2003/2, 20 May 2003.

WTO (2001) *Annual Report*.

WTO (2001) *International Trade Statistics 2001*.

#### Notes:

1. Angola, Yemen, Sudan and Equatorial Guinea.

2. Paragraph 44 of Doha Ministerial Declaration.

## **TRIPS: What is at stake for LDCs in Cancun?**

The TRIPS Agreement has become one of the most controversial pieces in the WTO system. Though the Agreement permitted a number of flexibilities and provided for special measures to foster technology transfer to LDCs, these countries have faced problems to use such flexibilities while technology transfer is still an unfulfilled promise. The effects of patents on access to medicines and the protection of life forms and traditional knowledge have also been issues of particular concern to LDCs. The Dhaka Declaration adopted by the Second LDCs Trade Ministers' meeting (Dhaka, Bangladesh, 31 May - 2 June 2003) reflects all these concerns.

At the Doha WTO Ministerial Conference (9-14 November 2001), a special Declaration on the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and Public Health (hereinafter "the Doha Declaration") was adopted<sup>1</sup>. The Declaration confirmed the flexibilities that the Agreement provides for in certain areas (compulsory licensing and parallel imports) and extended the transitional period for granting pharmaceutical patents in LDCs until 2016. However, most LDCs already grant such patents but have no capacity to locally manufacture medicines. Therefore, if they would need to get access to medicines at a price lower than that charged by the patent owner, or to address a public health emergency, they could not use compulsory licenses as Brazil did, for instance, in 2001 in order to get access to cheaper anti-retrovirals.

The problem of countries without or with insufficient manufacturing capacity in pharmaceuticals was addressed in paragraph 6 of the Doha Declaration. It instructed the Council for TRIPS "to find an expeditious solution to this problem and to report to the General Council before the end of 2002". The work undertaken by the Council for TRIPS was unable to reach a consensus on the solution to be adopted under that paragraph. The Chair of the Council developed a proposal based on a waiver and a later amendment of the TRIPS Agreement<sup>2</sup>. It requires the granting of compulsory licenses both in the exporting and importing country, and establishes a number of conditions for allowing exports of patented medicines. However, the opposition by the USA to apply this proposed solution to all diseases, as agreed in

Doha, has frustrated the approval of the Chairman's proposal so far.

The Dhaka Declaration notes that "it is regrettable that, to this date, no solution could be agreed upon", recalls - in line with paragraph 4 of the Doha Declaration - that the "TRIPS Agreement shall be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all at affordable prices", and proposes that "Members shall reaffirm that the declaration of public health problems and the terms for granting compulsory licenses are the prerogatives of the members". It also states that "the 16 December 2002 draft decision on implementation of paragraph 6 of the Doha Declaration on the TRIPS and Public Health remains the most acceptable solution. Members shall adopt this decision as soon as possible, before Cancun".

### The LDCs perspective

The indication that the December 16 text is "the most acceptable solution" suggests that other solutions were available but disregarded. In fact, a simpler and more effective approach would have been to recognize - under article 30 of the TRIPS Agreement - that Members could consider exports to countries with public health needs outside the scope of the exclusive rights of patent owners. The LDCs Declaration also notes that a solution to the paragraph 6 should be found *before* the Cancun Ministerial Conference. This is the correct approach, since developing countries should not be expected to pay any price - in terms of concessions in other sectors - for the mere implementation of an agreement already reached at the Doha Ministerial Conference. The Declaration also stresses that the solution to be adopted should be "without restricting coverage of diseases", thereby making clear the LDCs' rejection of the attempt by the US to limit such a solution to medicines related to HIV/AIDS, malaria and tuberculosis.

In relation to biological materials and traditional knowledge, LDCs call for "establishing an international mechanism to protect the genetic resources, traditional knowledge and farmers' rights and ensure non-patentability for all life-forms". This statement is essentially supportive of the position that the African Group has held on these issues<sup>3</sup>. The Dhaka Declaration specifies that the review process of article 27.3 (b) - which is practically blocked by divergences between developed and developing countries on what "review" means - "should clarify that plants, animals and parts of plants and animals, including gene sequences and biological processes for the production of plants, animals and their parts must not be granted patents. Members shall select their own *sui*

*generis* system for plant variety protection, including recognising traditional knowledge and the rights of farmers to use, save, re-sow, exchange, or sell seeds".

In line with the position of developing countries at the Council for TRIPS, the Declaration also notes that "Members shall ensure that the TRIPS Agreement is fully compatible with the provisions of the Convention on Biological Diversity (CDB)". LDCs have, interestingly, added that such compatibility should also be ensured with the recently adopted (but still not in force) International Treaty on Plant Genetic Resources for Food and Agriculture. It is unlikely, however, that Cancun could make any progress on these issues with the exception, perhaps, of an eventual agreement to negotiate the introduction of an obligation to disclose, in patent applications, the geographical origin of claimed biological resources.

"All LDCs", the Declaration notes, are in a "very early stage of their scientific and technical development, and require full flexibility in implementing TRIPS Agreement". It insists that "developed countries shall undertake, as required, specific legislative, policy, and regulatory measures for their enterprises and institutions to give effect to Article 66.2 of the TRIPS Agreement" and calls Members to "fully adhere to the Decision of the Council for TRIPS of 19 February 2003" which established a monitoring mechanism for the implementation of the obligations in Article 66.2 of the TRIPS Agreement. Moreover, the Declaration postulates that the "transition period under Article 66.1 shall be extended so long as they retain the LDC status", thereby indicating that the 2006 general and the 2016 specific deadlines for pharmaceutical products (indeed, both defined arbitrarily) are not justified.

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#### Notes:

1. Doha Ministerial Declaration on the TRIPS Agreement and Public Health", WT/MIN(01)/DEC/W/2, 14 November 2001.
2. JOB(02)/217, 16 December 2002.
3. See, in particular, document IP/C/W/404, 26 June 2003.

## Acceding LDCs Need Fair Treatment

On 21 July 2003, the World Trade Organisation (WTO) General Council finalised the Draft Protocol of Accession of Cambodia paving the way for its entry into the global trade body during its fifth Ministerial Conference to be held from 10 to 14 September 2003. This decision is considered historical in that Cambodia is going to be the first LDC to enter the WTO after its inception in 1995. So far, 22 developing countries have become members of the WTO by virtue of accession, but none of them are LDC.

The major reason for the inability of LDCs to enter into the system is the protracted negotiation process leading to accession - which results in exhaustion of human, administrative and political capital of LDCs. What follows attempts to enumerate the challenges faced by LDCs attempting to accede to the WTO.

### Problems with WTO Rules

The major fallacy lies in the WTO rules governing accession, which is covered by Article XII of the Marrakesh Agreement Establishing the World Trade Organisation. As per this provision, "Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations or for the other matters provided for in this Agreement and the Multilateral Trade Agreement may accede to this Agreement, on terms to be agreed between it and the WTO".

Since the WTO is an inter-governmental organisation, which does not have any power to negotiate accession agreement with the aspirants, it is the member states that dictate the terms and conditions for such entry. The provision of the above-mentioned article is being interpreted by the developed member countries as providing them *Carte Blanche* to impose unreasonable conditions (often known as "WTO plus" conditions) on the acceding countries.

During the accession negotiations the objective of the existing members is to extract as much concessions as possible from an applicant. This is done for two reasons. Firstly, this will help the existing members set precedence for obtaining increasingly higher amount of concessions from other future applicants. Secondly, it provides them benefits without them having to give anything in return.

Countries desirous to accede to the WTO have to follow two tracks of negotiations - multilateral and bilateral. While multilateral negotiations, which deal with WTO rules and systemic issues, are relatively straightforward, bilateral negotiations that deal with market access tend to be extremely cumbersome. It is during the bilateral negotiations that countries are

asked to undertake "WTO-plus" commitments, some of which are discussed below.

### Spine-chilling experience

The accession bid of Vanuatu, an LDC with a population of merely 190,000 and its subsequent withdrawal from the WTO membership represent a spine-chilling experience of WTO-plus conditions imposed by the developed member countries. Vanuatu applied for the membership of the WTO in 1995. After fulfilling numerous formalities, the Draft Protocol of Accession was prepared in September 1999 and it was decided that Vanuatu would be granted membership in November-December 1999 at the Seattle Ministerial. However, much to the dismay of the WTO, Vanuatu refused to accede under the terms and conditions that were imposed on it. When the country was asked if it wanted to join the WTO in November 2001 during the Doha Ministerial, it refused once again due to the harsh conditions being imposed.

Vanuatu was asked by the United States to join the Agreement on Government Procurement, a plurilateral agreement (as opposed to multilateral agreement which does not need to be signed by all the WTO members) despite the fact that it is not required to sign on to this agreement as per the existing provisions of the WTO. Similarly, being an LDC, Vanuatu is not required to comply with the requirements of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement before 2006 as per the Article 66.1 of the Agreement. However, the United States demanded that it made a commitment to have TRIPS compliant legislation in place "from the date of its accession". Likewise, in the services offer, Vanuatu was asked to make offer in 18 areas, which is more than four times the average for existing LDC members of the WTO.

The story of Cambodia is not much different. Despite the fact that no WTO Agreement binds any acceding country to make any such commitment, Cambodia was asked to ensure transparency, keep the WTO members informed and provide periodic

reports on issues related to its economic reform and privatisation programmes as relevant to its obligations under the WTO.

Similarly, Article II:1 (b) of the General Agreement on Tariffs and Trade (GATT) allows the member countries to maintain other duties and charges (ODCs) provided they agree to bind them at the prevailing level. However, in practice all the acceding countries have been forced to bind ODCs at zero. Cambodia, being an LDC, was hoping it would be provided with a transition period to phase them out rather than being asked to eliminate them entirely. However, such a hope has been shattered, with Cambodia too asked to bind ODCs at zero from the date of accession. Likewise, in the areas of services, Cambodia was asked to undertake commitments on audio-visual and distribution services - on which none of the exiting members have undertaken any commitment. And Cambodia did succumb to the pressure of developed countries.

Another important "WTO plus" condition imposed on Cambodia is that it would have to obtain the membership of the International Union for the Protection of New Varieties of Plant (UPOV). It is also required to enact a legislation for the protection of plant varieties according to the model prescribed by UPOV as part of its obligation under the Article 27.3 (b) of the TRIPS Agreement, which requires member countries to provide protection to plant varieties either through patent, or an effective *sui generis* system or any combination thereof. Developed countries argue that UPOV model is the only effective *sui generis* system and are trying to impose this requirement on every acceding country, despite the fact that TRIPS does not mention anything about UPOV. Eventually, Cambodia had to give in.

Similar is the plight of Nepal, a LDC, which is aspiring to become a member of the WTO by the Cancun Ministerial. Nepal faces major problems in the area of tariff binding, particularly concerning agricultural commodities. At present, Nepal's applied tariffs on agricultural products are very low (0 to 10 percent), but it has been proven beyond doubt that such a tariff structure has resulted in a flooding of imports triggering displacement of farming communities. Therefore, Nepal would like to create a policy space for protecting the agricultural sector, should the need arise, by binding tariffs on agricultural products at an average of 30 percent. However, developed member countries, notably the United States, are opposed to such a proposal.

A closer look at the accession document also reveals that the developed countries would provide a transition period up to 1 January 2007 for the implementation of the TRIPS Agreement. However, they would

like Nepal to implement the non-discrimination provisions (most favoured nations and national treatment) contained in the TRIPS Agreement right from the date of accession. Moreover, the developed countries are not willing to make any reference to the Declaration on TRIPS and Public Health adopted by the trade ministers at Doha in November 2001 in the Draft Working Party Report being prepared for Nepal. Similarly, in the areas of services Nepal is being asked, like Cambodia, to undertake commitments on audio-visual and distribution services.

### **Situation gets murkier**

These examples reinforce the notion that developed member countries of the WTO are keen on imposing "WTO-plus" conditions. One can conclude, therefore, that the WTO accession process is inherently power based. Moreover, the system of accession is unlikely to be reformed. The main reason is that the acceding countries have no role to play in setting the rules relating to accession since they are by definition outside the system. This situation only serves to undermine the credibility of the WTO as a system based on clear rules.

Other LDCs, which are in the process of accession, are also facing similar problems despite the fact that paragraph 9 of the Doha Ministerial Declaration, signed by 142 member countries of the WTO at Doha, Qatar, in November 2001 commits themselves "to accelerating the accession of LDCs". Moreover, in paragraph 42 of the Declaration they agreed "to work to facilitate and accelerate negotiations with acceding LDCs". Furthermore, the General Council too decided on 10 December 2002 to streamline the process of LDCs' accession. Despite the resounding rhetoric, the LDCs' accession process continues to be politically demanding and patently frustrating.

Acceding LDCs had pinned hope on the LDC Ministers Conference that took place in Dhaka in June 2003 to come out with some path-breaking recommendations, which could then be pushed as part of a common position of the LDCs during the Cancun Ministerial. However, their hope has been shattered as only the following words were included in paragraph 15:X of the Declaration: "Expeditious and full implementation of the guidelines for accession of LDCs adopted by the General Council".

These wordings represent a much lighter tone because they do not drive home the real message that acceding LDCs should not be required to undertake a higher level of commitments than their member counterparts have made at the WTO. The Ministers have failed to recognise the fallacy of the above-mentioned guidelines, especially their non-binding character.

The Draft Cancun Ministerial Text prepared and circulated by the General Council Chair on 18 July 2003 also fails to address this issue. The Text contains the following statement: "We continue to attach great importance to concluding accession proceedings as quickly as possible and, in particular, to accelerating the accession of least-developed countries. In this regard, we reaffirm the guidelines to facilitate the accession of LDCs adopted by the General Council on 10 December 2002". However, there is hardly anyone in the trade circle who feels that the above-mentioned decision was helpful, even to the slightest possible extent, in facilitating the fast track accession of the LDCs to the WTO.

### **Fair treatment needed**

Given such a scenario, the acceding LDCs have nothing significant to expect from the Cancun Ministerial, but they are helpless because they cannot change the system. This is what happens when LDCs themselves as a group are not fully convinced of the need to provide speedy accession to their fellow members. The question that hangs over the issue is: Whom should the acceding LDCs turn to in order to ensure that they receive the treatment they deserve?

#### **Ratnakar Adhikari**

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Experience since the creation of the WTO in 1995 shows that unhindered market access for both agricultural and non-agricultural products remains an illusion as many developed countries have not opened their markets to competition, especially in sectors that are strategic to their domestic economic performance. Unfortunately, it is in some of these strategic sectors that most least-developed and developing countries have comparative advantage.

Most of the least-developed countries are located in Africa where the majority of people live on less than one USD a day. Needless to say, being denied access to rich countries' markets can only worsen their poverty. Worse still is the fact that these countries are made to open their markets in compliance with trading rules which impose heavy costs due to indiscriminate exports from rich countries.

Expanding market access for non-agricultural products can help developing and least-developed countries to accelerate their economic growth, and create new opportunities for the poor. This is especially so for labour-intensive goods such as manufactured textiles and garments, a sector in which so many people living below the poverty line depend on. The EU, Japan, Canada and the United States have made their markets difficult to access for poorer countries by applying tariff escalation, by awarding subsidies to their farmers and by using indiscriminately Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Standards (SPS). According to Oxfam (2002), "poor countries seeking access to Northern markets for manufactured goods face trade barriers four times higher on average than rich-country competitors". This partly explains why countries of sub-Saharan Africa have not benefited as expected under the new trading system.

The current proposals under review by Africa concern such issues as the pace and timing of liberalisation, the erosion of preferences, sectoral tariff elimination, the revenue implications of further tariff and the multiplicity of negotiations.

### **Major constraints to market accessibility**

The constraints facing African countries are both external and internal. Externally, some aspects of trade agreements are at variance with the development needs of most African countries. Furthermore, during the Uruguay Rounds negotiation that led to the establishment of the WTO, most African countries were poorly represented as they lacked the capacity to effectively negotiate in their best interest and were often ill equipped to fully understand the implications of the agreements. For instance, while market access is, at least in theory, an issue that may appear of great relevance for African countries, in practice the indiscriminate use of all sorts of technical measures by developed countries has prevented African countries from gaining access to these markets.

Internally, even if market access for non-agricultural products is guaranteed today through the reduction of tariff and non tariff barriers, it will not automati-

cally increase the African share of the market because of supply problems caused by lack of infrastructure, lack of skills, lack of access to productive land, poor credit availability, high transport costs, inadequate market information, and poor capacity to take advantage of market opportunities. What this implies is that African governments have the crucial task of designing and implementing programs aimed at removing all these constraints.

### Options for Africa

Almost all African countries are members of the WTO. Thus, through concerted efforts and given their numerical strength, they can exert a strong influence to reverse the potential losses and maximize the benefits of being part of the organisation. In practice, the following options are available to Africa to redress the current imbalance in the implementation of the agreements. Specifically in the area of market accessibility, the efforts of African countries should focus on five pivotal issues:

1. Implement the agreed technical assistance by developed countries to developing countries in order to enhance their capacity to better negotiate and reduce the costs of compliance and implementation of WTO rules and regulations. In addition, trade-related technical assistance to African countries should join forces with existing African institutions that have the mandate of supporting capacity building initiatives across the continent. In this regard, the African Capacity Building Foundation (ACBF), in recognition of the importance of capacity for trade negotiation, supports the efforts of sub-Saharan African countries and provides technical support to the process of upgrading institutional and human capacity in trade-related issues for organisations such as ECOWAS, CEMAC, COMESA, the AU and their member countries. At the ECOWAS Secretariat, the Foundation supports the Trade Negotiation Capacity Building (ECOWAS-TNCB) project; at CEMAC, it provides support to the Capacity Building for Greater Involvement in Multilateral Trade (RE-CEMAC) project; at COMESA, it supports the Common Market for Eastern and Southern Africa (COMESA) project and the Policy Analysis Support Unit of the African Union (PASU/AU) for strengthening Regional Economic Communities.

2. Considering the development needs of African countries, Africa should insist on the operationalisation of Special and Differential Treatment as a condition for further negotiation.

3. African countries should establish appropriate mechanisms for detecting dumping and invoke anti-dumping actions under GATT (Article 6).

4. Where a particular import threatens or negatively affects competing domestic industries either as a result of subsidies from exporting countries or dumping, African countries should invoke safeguard measures under GATT (Article 19), particularly when developed countries adopt measures such as tariff peaks and tariff escalation, and non-tariff measures like SPS and TBT.

5. Any decision to launch a new round on industrial tariffs should be agreed by all parties. In this regard, African countries should be part of the agreement only after having carefully assessed the implications of tariff cuts, particularly on revenue and domestic enterprises' competitiveness, and should agree to further tariff cuts only if this is in line with their industrial development plans.

### The way forward

The current international trading system is unfair to most African countries as they are unable to participate effectively, under the same set of rules, with developed countries. Moreover, it should be emphasised that developed countries do not observe the rules of the game when they are seen to run counter to their strategic interests. In 2002, a former World Bank chief economist shed light on this phenomenon by arguing that "it is hypocritical to preach the advantages of trade and markets and then erect obstacles in precisely those markets in which developing countries have a competitive advantage". What this calls for is a radical change of attitude on the part of developed countries.

To complement this, developed countries should give substance to their pledges under the Integrated Framework for Trade-related Technical Assistance to LDCs in order to enable African governments to strengthen their capacity to participate fully in the discussions and decision-making processes within the WTO system. At present, African countries' capacity to participate effectively is limited due to lack of financial and human resources.

During the launch of the Doha Development Agenda in Qatar in 2001, the Ministers of Trade and Industries from developed countries agreed to negotiate the reduction or elimination of tariff peaks. African countries should remind them of their commitments and make tariff rates on manufactured exports binding, soften the rule of origin, and emphasise the need for special treatment in the implementation of the Custom Valuation Agreement.

On the part of African governments, there is a need to give higher priority to WTO issues and allocate more resources to facilitate effective and informed participation in the negotiation process. The WTO is a multilateral institution that has in-built mechanisms

through its Dispute Settlement Procedure to protect the interest of its members by sanctioning those countries that violate trade rules. Also, there is a framework for the continuous review of agreements. Last but not least, African governments should design appropriate policy measures to remove all bottlenecks concerning domestic supply.

### **Soumana Sako**

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## **LDCs interests in agriculture and Cancun Ministerial: Yet another disappointing wait?**

The Doha Ministerial Meeting Declaration recognised "the particular vulnerability of the LDCs and the difficulties they face in the global economy" and argued that "the integration of the LDCs into the trading system requires combined and inter related action at three levels namely: market access, trade related technical assistance and capacity building, and supporting domestic measures to mainstream trade priority areas of actions into plans for economic development and strategies for poverty reduction". It added that negotiations in agriculture would take into account the development needs of developing countries, including food security and rural development.

The Doha ministerial provided a new work program for negotiations in agricultural trade by making the objectives more explicit, building on the work carried out up to the Doha meeting, and setting agreed deadlines. The negotiations were expected to be completed by 1 January 2005 when it would be accepted by WTO members as part of the *single undertaking*.

As far as the ongoing negotiations in agriculture are concerned, the 31 March 2003 deadline for agreeing on the 'modalities' for commitment has already been missed. Though the issue of agriculture topped the agenda at the informal meeting of trade ministers of 25 countries held in Montreal during 28-30 July 2003, no agreement could be reached. Major differences are related to the reduction in import tariffs, domestic farm subsidies and export subsidies. Although EU farm commissioner Franz Fischler feels that the proposed farm policy reform in Europe would cut trade-distorting subsidies by 60 percent and that export subsidies on some products could be removed, agro-exporting countries such as Australia, Canada, Brazil, and the US called for deeper cuts in import duties by the EU and as well as Japan. Domestic and export support provided by the US are also of major concern.

The idea that the EU and the US should jointly draft a new proposal on liberalising global agricultural trade received support and a joint EU-US initiative was launched at the conclusion of the aforementio-

ned mini-ministerial meeting. The new draft plan was presented on 11 August in Geneva when WTO members met in preparation for the Cancun meeting.

### **Developments after Doha, before Montreal**

Stuart Harbinson, Chairperson of the Committee on Agriculture (CoA), in his personal capacity prepared and circulated an Overview Paper on 18 December 2002, a first draft on "modalities" on 17 February 2003 and a revised draft on "modalities" on 18 March 2003. Although this was discussed during the negotiation meeting held on 25-31 March 2003 there was no agreement on "modalities". From April to July both informal and formal meetings were held on a wide range of issues. Some member countries are not yet ready to accept the revised first draft of the modalities paper as a reference material for discussion. An overview of the revised first draft on modalities is provided below:

*Market Access:* Harbinson suggested different levels of commitments by developed and developing countries for market access. He suggested that developed countries should reduce tariffs (i) by 60 percent on average, with a minimum cut of 45 percent for commodities having tariffs higher than 90 percent; (ii) by 50 percent on average, but at least by 35 percent per tariff line for commodities having tariffs between 90 and 15 percent; (iii) by 40 percent on average and 25



percent minimum cut per tariff line for commodities having tariffs from 15 percent downwards. He added that all tariffs in developed countries would be reduced in equal instalments within a five-year term and the safeguard mechanism would be eliminated for developed countries. For developing countries Harbinson proposed ten-year implementation period. In case of reduction of tariffs by developing countries, he came up with a formula that would require progressively higher cuts for higher existing tariffs with specific minimum requirements per tariff lines. Harbinson's proposal allowed developing countries to denominate a number of special products (SP) with respect to food security, rural development and/or livelihood security concerns. He also suggested the elimination of special safeguards (Article 5 of the Uruguay Round AoA) for the developed countries.

*Domestic Support:* Harbinson's proposal suggested that Green Box<sup>1</sup> would be maintained in its existing format under strengthened discipline. He suggested that further flexibilities would be provided to the developing countries for the pursuit of food security and rural development objectives. According to the Harbinson's proposal, developing countries could also take recourse to an expanded AoA Article 6.2 Box (S&D Box), allowing them to provide unlimited trade-distorting subsidies to promote rural development. Harbinson suggested that Blue Box<sup>2</sup> would be maintained, but the relevant expenditures be capped and reduced by 50 percent over five years. Developing countries would be given S&D treatment for Blue Box subsidies. For Amber Box<sup>3</sup>, the aggregate measurement of support (AMS) would decrease by 60 percent in five years for developed countries and 40 percent in 10 years for developing countries.

*Export Competition:* Harbinson suggested that developed countries would have to phase out at least 50 percent of export subsidies within 5 years, and the rest would be reduced to zero in 9 years. Developing countries would have to phase out at least 50 percent of the subsidies in 10 years and the rest would be reduced to zero in 12 years. It is proposed in Attachment 5 that food aid be exclusively in grant form and not tied to commercial exports to the recipient countries. Regarding state trading enterprises (STEs), it is proposed that STEs should not be operated in a manner either to circumvent export subsidy commitments or to undermine competition in world markets.

*Commitment by the LDCs:* Harbinson's proposal suggested that LDCs would not be required to undertake any reduction commitments, but they could be "encouraged to consider making commitments commensurate with their development needs on a voluntary basis". The Draft also proposed duty- and quota-free access for all imports from LDCs.

Key WTO Members, farmers associations and NGOs have reacted strongly to Harbinson's proposal. The US and the Cairn Group were disappointed because they thought it lacks ambition regarding the proposed cuts in tariffs and trade-distorting support. The EU regarded it as biased towards agricultural exporting countries and felt that the text would not sufficiently take into account agricultural non-trade concerns (NTCs) such as environment and food safety. Developing countries such as India, Kenya and Nigeria welcomed Harbinson's proposal and felt that it would provide the necessary flexibilities to poorer countries to address their developmental needs.

### Issues of interest and concern for LDCs

The outcome of the Montreal mini-ministerial indicates that developed countries, particularly the US, the EU and Japan, are primarily concerned with the safeguard of their own interests and benefits. For example, rice farmers in the US receive USD 75,000 per household from the government in the form of direct payments. The farm bill signed in May 2002 includes over USD 135 billion in new subsidies over the next 10 years. The OECD countries already provide a support of USD 311 billion a year to the agriculture sector. Japan's subsidies to its farmers are greater than the entire contribution made by agriculture to the nation's economy. Civil society groups and LDCs governments will need to pursue a more proactive policy if their interests are to be safeguarded.

The Civil Society Forum that took place in Dhaka on May 29-30 2003 asked for zero reduction commitments for LDCs, strong disciplines on domestic support, elimination of all forms of export subsidies and the peace clause, and supported the concept of special/strategic products. The Forum also demanded technical and financial assistance for LDCs to improve agricultural productivity and infrastructure, and called for the development of facilities and systems for compliance with SPS requirement. The Forum urged the LDCs ministers to follow-up these issues during the preparatory process of the Cancun Ministerial as well as in the Ministerial itself.

Agriculture also featured prominently during the Second LDCs Trade Ministers Meeting. The Dhaka Declaration which was issued following the meeting laid stress on ten key issues regarding the Agreement on Agriculture. These are in line with the demands of the civil society declaration and also included a call for the establishment of compensatory and other appropriate mechanisms to fully address the impact of erosion of preferences, including measures that promote exports of LDCs.

The outcome of the Montreal mini-ministerial indicates that the draft of the AoA will be mainly prepared by the EU-US joint partnership. Though the draft was discussed at Geneva on 11 August, LDCs hardly had any chance to participate effectively. This is due to both lack of negotiating expertise and opportunities and is the reason why, inevitably, the agenda tends to reflect the opinions and interests of the dominant players.

So far, the ongoing negotiations suggest that developed countries have very little or no empathy for the LDCs. As a result, the LDCs are sceptical about the joint proposal. Even if zero reduction commitments on the part of LDCs and duty- and quota-free market access for all products are agreed, LDCs are unlikely to be able to take full advantage in the absence of technical and financial support. The Draft text of the Cancun ministerial states: "We instruct the WTO bodies concerned to redouble their efforts to resolve these issues, and instruct the General Council to report on progress at our next [i.e. the 6th Ministerial] Session", indicating that the WTO is yet to discard the legacy of lack of firm commitment. Therefore, a concerted effort backed by clear commitments on the part of developed countries will be required if the outcome of Cancun in the area of agriculture is to advance the interests of the LDCs.

On their part, the governments and the civil societies in the LDCs will need to pursue their interests more aggressively if they are to change the current stance of the developed countries.

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*The author gratefully acknowledges the helpful comments and suggestions provided by Professor Mustafizur Rahman and Dr. Debapriya Bhattacharya on the draft of this paper. However, the author alone is responsible for the opinions expressed.*

#### Notes:

1. Green Box measures should not have distorting effects in agricultural markets; at the very worst, their effects must be minimally trade-distorting. They include funds for research, direct payments to producers that are decoupled from current prices or production levels, structural adjustment assistance, safety-net programmes, environmental programmes and regional assistance programmes. These measures, which tend not to be aimed at particular products, must be funded from government revenue, and must not involve price support.
2. Blue Box measures are an exemption from the general rule that all subsidies linked to production must be reduced or kept within defined minimal (*de minimis*) levels. The measures typically include production-limiting programmes, i.e. payments made according to acreage or animal numbers on condition that milk/meat production quotas are not exceeded.
3. The Amber Box includes most domestic support measures that are considered to distort production and trade.

## **Trade and environment: The missing agenda of LDCs**

With a view to undertaking a review of developments following the Fourth WTO Ministerial Meeting at Doha and to promote a common position at the Fifth Ministerial Meeting in Cancun in September 2003, LDCs Trade Ministers met in Dhaka on 31 May - 2 June 2003. At the end of the meeting the Dhaka Declaration was adopted identifying and emphasising issues and concerns to be addressed in Cancun. The issue of Trade and Environment was not included in the Dhaka Ministerial Declaration. However, the International Civil Society Forum held in Dhaka on 29 -30 May 2003, prior to the Dhaka LDCs Ministerial, did call upon the Trade Ministers to address the issue.

Environmental issues made their way on to the WTO negotiating agenda for the first time at the Doha Ministerial Meeting in November 2001 as a result of a sustained effort by various environmental lobbies and notwithstanding strong opposition from both the developed and developing countries. Environmental concerns are reflected in paragraph 6 of the Preamble of the Doha Ministerial Declaration. Negotiations on items described in paragraph 31 form part of the "single undertaking" package and hence are to be concluded on 1 January 2005. The non-negotiating agenda in paragraph 32 must be exa-

mined before the Cancun Ministerial to find out what future actions can be taken on these issues and whether they can be placed on the table for negotiations. A report on technical assistance (TA) and capacity building (CB) on trade and environment as described in paragraph 33 is to be presented in Cancun.

### **Post-Doha developments**

*The relationship between WTO rules and MEAs (Para 31 (i)): Some of the members argued that there is a*

need to define the concept of MEAs (Multilateral Environmental Agreements) and STOs (Specific Trade Obligations) and to identify and categorise the STOs under the MEAs according to their specificity. The members of the WTO must make it clear when it is permissible or not for governments to impose trade-restrictive measures intended to meet their obligations under the MEAs. Others suggested that the WTO should first discuss principles and parameters to govern the WTO-MEA relations. There were suggestions for three phases of negotiations: (1) identification of the most specific trade obligations in the relevant MEAs to be addressed and the appropriate WTO rules, (2) discuss these provisions with the relevant MEA secretariats and (3) move to a negotiating phase. Some members suggested that the definition of a STO in a MEA should be limited to one that is mandatory and specific in character. However, others were not in favour of limiting the discussion to any particular MEA.

*Reduction of Tariff and Non-tariff Barriers to Environmental Goods and Services (Para 31 (ii)):* There has not been any progress on defining environmental goods or on recommendations for future actions for the forthcoming Cancun meeting. The members are divided basically into two groups over the definition and identification of environmental goods: (1) those who consider the APEC and OECD lists of environmental goods as adequate and (2) those who think that there should be a WTO list of environmental goods in light of the Doha mandate. According to developing countries, product coverage of environmental goods should include more products of export interest to them such as jute and natural gas. Others are in favour of no particular definition of environmental goods as such. They argue that whether a good is an environmental one or not will depend on the requests and offers made by the countries during the negotiations.

There is no clear idea of which services to include in 'Environmental Goods and Services'. In the Services Sectoral Classification list of GATS, environmental services are included as one of the twelve sectors. Under environmental services four categories of services are classified: sewage, refuse disposal, sanitation and other. Members believe that the list needs to be updated. In the CTE (Committee on Trade and Environment) the proposal on environmental services was driven mainly by the developed countries that have a number of environmental services. The absence of any specific definition has encouraged countries to use various categories of environmental services in their bilateral negotiation requests.

*Effect of Environmental Measures on Market Access (Para 32 (i)):* Developing countries made a number of proposals in order to minimise the adverse effects of environmental measures on their market access.

However, developed countries have opposed some of them.

*Trade-Related Intellectual Property Rights (TRIPS) (Para 32(ii)):* There are tensions between developed and developing countries on the relationship between the TRIPS Agreement and the CBD (Convention on Biodiversity). Developing countries prefer to discuss the relationship between TRIPS and the CBD and traditional knowledge in the TRIPS Council. In addition, they want to modify the TRIPS Agreement. However, developed countries see TRIPS and the CBD as mutually supportive and are against any modification.

*Labeling Requirements for Environmental Purposes (Para 32 (iii)):* Developing countries fear that eco-labeling could stand as a barrier to their market access. If a label is developed only on the basis of local environmental conditions, there is a risk that other goods may be excluded. Products from developing countries are unlikely to qualify for eco-labeling schemes in developed countries because of the lack of environmentally sound technologies. Also some of the developed countries are wary of eco-labeling requirements as this may be equivalent to a ban on their products.

### **LDCs interests and concerns**

With the increased economic interdependence between different countries, environmental issues have emerged as an important area of concern for all countries including LDCs. Trade is considered to be beneficial since trade liberalisation-induced accelerated growth potentially makes more resources available for the protection of the environment. At the same time, trade may be responsible for environmental degradation. There is also a growing concern that a number of environmental policies may act as trade barriers.

In this regard, the challenges faced by LDCs are twofold: (i) how to get market access without degrading the environment, and (ii) how to protect the environment without adversely affecting economic growth and progress in the trade liberalisation process. The Civil Society Forum identified the following as key issues that should be addressed by LDCs:

*Relationship between WTO and MEAs:* Ensuring compliance and enforcement of the MEAs is a key concern for LDCs. Before moving to a negotiating phase on MEAs, the specific trade obligations in the relevant MEAs and the appropriate WTO rules should be identified. Also, it should be made clear by the WTO members when trade restrictive measures should be imposed to meet their obligations under the MEAs.

*Liberalisation of Environmental Goods and Services:* Currently the negotiation on environmental goods and services is too heavily focused on goods of interest to the developed countries. LDCs should participate actively in identifying a list of environmental goods and services that promote their trade and development interests.

*Subsidies in Fisheries Sector:* Subsidies affect access to resources and may have negative environmental consequences. The Forum urges redistribution of global resources through the withdrawal of developed countries' huge subsidies.

*Market Access:* LDCs need access to the global market for their own environment-friendly products. Concerns are also expressed with regard to the production process methods (PPM) requirement. LDCs should be given technical and financial assistance at concessional and preferential terms for compliance when environmental measures affect their market access opportunities. The Forum opposes the protectionist measures applied against their products by the developed countries.

*Trade-related Intellectual Property Rights:* LDCs should oppose the patentability of plants and animals under Article 27.3(b) as farmers' rights and food security are threatened by this clause.

*Eco-labelling:* LDCs should be involved in the standard setting bodies apart from evolving their own national and voluntary codes to access niche markets. They need technical assistance in this area, as their products are unlikely to qualify for eco-labelling schemes in developed countries due to lack of "green technologies".

*Technical Assistance and Capacity Building:* The Forum urges TA and CB particularly for the development of national standardisation bodies, conformity assessment services and accreditation agencies. LDCs representation in the deliberation of standard setting bodies must be supported with appropriate technical assistance.

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# Call for Papers

## EU-LDC Network Annual Conference MULTILATERALISM AT RISK

**Brussels, 27 and 28 November 2003\***

Recent developments in international relations unequivocally show that multilateralism is under threat, menaced by diverse yet converging forces. Given that the current state of affairs is likely to persist in the near future, the investigation and analysis of different scenarios and alternative options appears particularly appropriate. Considering the overall objectives of the EU-LDC Network and its focus on trade, investment and aid relations between the EU and developing countries, the EU-LDC Conference 2003 seeks to:

1. Explore the possibilities and threats for developing countries in a post-multilateral world;
2. Identify possibilities to improve the relationship between the EU member states and developing countries, as an alternative to the diminishing powers of multilateral organisations.

Papers submitted should address one of the following themes:

- \* the causes and consequences of multilateralism failure
- \* LDCs and the multilateral trading system
- \* the future trade relationship between the EU and LDCs within the context of multilateralism failure
- \* EU and LDCs perspectives on the reform of the International Financial Architecture
- \* EU and LDCs perspectives on multilateral aid

Submission process: Please email your abstract as a Word file [.doc] to Ms. Mar Tuells [Mar.Tuells@Ecorys.com]. It should be no more than 2 pages in length. The closing date for all submissions is 22 September 2003. Authors will be notified of the outcome of their submission by 29 September 2003.

\* Exact location and date are still pending

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