

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

SADC Ministers' Agreed Negotiating Objectives for the
Third WTO Ministerial Conference

Communication from South Africa

The following communication, from the Southern African Development Community, was received from the Permanent Mission of South Africa with the request that it be circulated to Members.

1. Ministers of Trade, representing the Member States of the Southern African Development Community (SADC)¹, met in Cape Town South Africa, 3 September 1999, and agreed on common negotiating objectives for the third WTO Ministerial Conference to be held in Seattle in November 1999. These objectives were brought to the attention of the African Trade Ministers, in their meeting in Algiers, 24 September 1999.
2. SADC Ministers strongly expressed the view that a key challenge confronting the multilateral trading system is to ensure that issues of development are addressed decisively. A strategic objective for SADC, therefore, is that developed countries should also undergo far reaching structural adjustment in their economies. Such restructuring requires reducing a range of protective and support measures to inefficient "grandfather" industries and sectors in industrial economies and thereby allow the relocation of production and investment to developing countries, including to the SADC region, which possess comparative advantages in these areas. Such structural adjustment would boost production and trade in SADC and other developing countries, promote their industrialisation and development, enhance South-South trade, and provide an impetus to a new round of global economic growth. The Ministers, therefore, called for a fundamental re-thinking of the structure and challenges facing the world economy as we launch new multilateral negotiations. The specific proposals of SADC should be seen in this context.
3. SADC Ministers of Trade view the third WTO Conference, and the new multilateral trade negotiations which are expected to be launched at Seattle, as a significant opportunity to pursue this common objective as well as of integrating the Southern African regional economy into the global trading system in a more sustainable and beneficial manner. SADC Ministers also reaffirm their commitment to conclude a SADC free trade agreement, which will deepen processes of regional economic integration and promote regional development. It is recognized that regional economic integration in Southern Africa would establish the necessary prerequisites to reverse marginalization and promote the region's integration into the globalizing world economy.

¹ Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

4. In considering the formulation of a common SADC approach, Ministers agree that the new negotiations must be based on a balanced agenda accommodating the concerns and interests of SADC Member States. SADC countries, therefore, consider that a broad-based round, which would permit trade-offs among issues, would be more consistent with its concerns and interests. SADC Member States are at varying stages of development, and include developing, least-developed, small economies as well as landlocked and small island states. It was agreed that the new negotiations should aim to strengthen the rules-based trading system and promote international trade, and that sufficient attention should be devoted to ensuring degrees of flexibility to accommodate constraints faced by the developing countries.

5. Agreements, rules and disciplines that emerge from the negotiations should: (i) support efforts for strengthening supply capacities; (ii) provide flexibility in the use of appropriate policy instruments to enhance the process of structural transformation of their economies; (iii) improve market access for products of export interest to them; and (iv) advance their regional integration objectives.

6. The meeting took into account technical inputs emanating from: (i) SADC Geneva-based delegations; (ii) the Ad Hoc Preparatory Meeting of Trade Negotiations for Seattle WTO Ministerial Conference (Addis Ababa, Ethiopia); (iii) the Workshop on Developing a Proactive and Coherent Trade Agenda for African Countries in Support of their Participation in International Trade Negotiations (Pretoria, South Africa); and (iv) the Coordinating Workshop for Senior Advisers to Ministers of Trade in LDCs in Preparation for the Third WTO Ministerial Conference (Sun City, South Africa).

Special and differential treatment

7. In the view of SADC, Special and Differential Treatment (S&D) should be firmly established in the Seattle Ministerial Declaration. The objective of S&D is to assist developing countries and, in particular, least-developed and small economies to overcome inherent handicaps which prevent them from deriving meaningful benefits from their participation in the multilateral trading system (MTS) and to correct imbalances in the rights and obligations contained in the Agreements. Best endeavour provisions in WTO Agreements should be defined to insert greater clarity and specificity so that their implementation could be made contractual, and permit verification of their implementation. Additional elements could be introduced relating to the continuation of non-reciprocal preferences; transfer of technology; use of economic indicators to replace arbitrary time periods; cultural integrity; and technical and financial assistance for capacity building.

8. The effective implementation of WTO commitments by SADC countries continues to be hampered by the lack of adequate financial, institutional and technical capacities, and these difficulties would be exacerbated by the need to divert resources to participate in multilateral trade negotiations. The transitional periods in the multilateral trade agreements (MTAs) should be extended. Due restraint should be exercised by developed countries in initiating disputes against developing countries while the negotiations are underway. In addition, developed countries should maintain current access conditions, including preferential access, for the duration of the negotiations (standstill).

9. There is a need to highlight the importance of technical cooperation. In this regard, SADC countries emphasize the need to renew the commitment to technical cooperation, increase the regular budget, increase dedicated human resources for technical assistance, and improve the coordination in the delivery of technical cooperation.

Agriculture

10. The development of the agricultural sector in SADC countries is crucial to their trade growth, employment, social cohesion and environmental protection. The continuation of the reform process must lead to improved access to world markets for all SADC agricultural exports (primary and processed products), which can be achieved through an elimination of tariff escalation and reduction of tariff peaks; increases in tariff rate quotas which preserve and enhance the access rights of SADC countries including under the commodity protocols of, or appended to, the Lomé Convention; reductions in domestic support in the developed countries; and the elimination of export subsidies which displace agricultural exports of SADC countries or impact negatively on their domestic production.

11. The obligation to formulate disciplines on export credits, as stipulated in Article 10 of the Agreement on Agriculture is unfulfilled. Members should agree in Seattle to fulfill this commitment.

12. The specificities of small economies, including small and land-locked and island states, should be given due attention and accommodated in new negotiations in agriculture.

13. SADC notes the wide diversity of agricultural systems obtaining in the Member states and recognizes the importance of addressing those issues which are vital for developing countries, especially LDCs, small developing economies and small island developing countries which encompass, *inter alia*, food security and the development of rural areas taking into account inherent difficulties and constraints to diversification.

14. The existing imbalances in the Agriculture Agreement should be corrected by allowing developing countries greater flexibility in domestic support commitments to increase production so as to ensure food security, and to introduce targeted measures to protect the livelihood of small farmers. This could be achieved through, *inter alia*, the possibility of producer funded schemes being covered by Annex II; flexibility in the use and extent of de minimus provisions; and broadening of the scope of Annex II.

Fisheries

15. Fisheries products are exhaustible natural resources which can be depleted without proper management. There is also a need to address the negative impact on SADC countries of subsidies, sanitary and phytosanitary standards and other technical barriers to trade raised by the developed countries in the fishery sector. The sustainable utilisation of marine resources should be carried out, in the main, by those developing countries in their waters.

SPS and TBT

16. Sanitary and phytosanitary standards (SPS) are becoming increasingly significant barriers to the agricultural exports of SADC countries. Exports from developing countries should not be required to meet standards more stringent than international standards. The technical assistance and S&D provisions of Article 9 and 10 of the SPS agreement should be made fully operational and given contractual status. A decision to this effect should be taken at the Seattle Ministerial Conference.

LDC issues

17. SADC countries remain deeply concerned over the marginalization of LDCs and certain small economies, compounded by chronic foreign debt. SADC countries seek to highlight these concerns as they shape the context within which forthcoming multilateral trade negotiations take place.

18. Developed countries should extend bound, duty free treatment to all products originating from LDCs. Applicable rules of origin under these arrangements should be simplified and tailored to the industrial capacity of LDCs. A Decision to this effect should be taken at the Seattle Conference. Developed countries should also make the necessary financial commitments for the Roundtables to effectively implement the integrated initiative for LDCs, including promotion of foreign investment in LDCs.

19. Developing countries in a position to grant market access to LDCs should state their intention to do so at the Seattle Conference.

20. A further decision should be taken at the Seattle Conference to translate the Ministerial Decision concerning the possible negative effects of the reform programme on LDCs and net food importing developing countries (NFIDCs) into concrete measures. A mechanism should be established to ensure that whenever food prices exceed a particular ceiling or whenever domestic food production drops below a certain threshold, the required food imports are made available at concessional prices. WTO Members, particularly major agricultural exporters, should make technical and financial assistance available to NFIDCs to improve agricultural productivity. Improved market access for exports from NFIDCs should be given priority in future trade liberalization.

Small developing economies

21. The SADC region consists a number of small developing economies which are either islands or land-locked states.

22. The WTO should recognize the specificity of small developing economies and the difficulties encountered by them in integrating into the world economy. The WTO should adopt positive measures to address the special need of small economies. As a matter of priority, the WTO should elaborate a vulnerability index (drawing from the work already done in this context by the Commonwealth, World Bank, UNCTAD and other international institutions) to determine the eligibility criteria for classification of small and vulnerable developing economies.

Services

23. The negotiations aimed at progressive liberalization of trade in services should respect both the existing architecture of GATS and the flexibility provided to developing countries under Article XIX, including the principle for granting credit for autonomous liberalization since previous negotiations as provided for in this Article.

24. Article IV of GATS should be strengthened and made fully operational. The commitment to provide liberalization of market access in sectors and modes of supply of export interest for developing countries should be respected, notably by improving the commitments on the movement of natural persons. SADC Members would seek greater access to technology, distribution channels and information networks to promote their service sector development and would seek the establishment of an emergency safeguard mechanism before the end of the next round of services negotiations.

25. There is also a need to address the problem of anti-competitive practices which affect the services trade of SADC countries, either through strengthening Article IX of GATS or through specific sectoral disciplines.

26. Electronic commerce, which should be seen as largely a GATS issue, has greatly enhanced the relevance of the cross-border mode of supply of services, and its impact on the existing commitments should be examined. The rise of electronic commerce has made the implementation of

the commitment under Article IV to provide developing countries with improved access to technology and information networks vital to their increased participation in world trade in services.

27. SADC countries support the continuation of the work programme on electronic commerce as defined in the Geneva Ministerial Declaration. They call for technical assistance for the building of telecommunication infrastructure and training in order to enable SADC countries to participate and benefit from electronic commerce. Possible extension of the standstill on the non-imposition of customs duties on electronic transmissions should be accompanied by the availability of technical assistance. Any such extension should be without prejudice to the outcome of the work programme on e-commerce.

Anti-dumping

28. SADC countries support proposals aimed at strengthening the Agreement on Anti-Dumping to prevent abuse and harassment. The commitments to take account of the special situation of developing countries and explore constructive remedies before applying anti-dumping duties should be framed as specific contractual obligations.

29. Aspects of particular interest to SADC countries include improving the methodology of calculation of dumping margins, standing, sufficiency of evidence to initiate investigations and cumulation of injury, and exemption of imports from LDCs from anti-dumping measures. Simplified procedures for taking anti-dumping action should be devised for the use of LDCs. When anti-dumping margin is calculated, the lesser duty rule should be applied in the case of developing countries.

Subsidies

30. The imbalance in the agreement on subsidies and countervailing measures (SCM) should be redressed to take into account the important role subsidies could play in the development process of SADC countries.

31. Non-actionable categories of subsidies should be expanded to include subsidies for development, diversification and upgrading of industries (development box). Guidelines contained in Annex II and Annex III should also be revised to take into account business realities in SADC countries. The definition of inputs consumed in the production process (footnote 61) needs to be expanded to include all inputs.

32. SADC countries support the proposal that the list of countries in Annex VII of the SCM Agreement should be expanded to include the low and medium income countries as defined by the World Bank. More flexibility would be required in Article 27 of the Agreement to enable developing countries to embark on programmes of economic diversification and industrial development (Article 27.1 and 27.2) to allow them to apply freight rebate schemes and measures to reduce costs of marketing exports of industrial products.

TRIPs

33. The review of the TRIPs as foreseen in Article 71.1 should take into account the implementation experience gained by developing countries and address imbalances in the rights and obligations of the users and IPR holders with a view to accommodating technological and public policy objectives. However, the review envisaged under Article 71.1 of the TRIPs Agreement will be taking place before the implementation of TRIPs by developing countries and the LDCs which will commence in 2000 and 2006, respectively. The review will also coincide with the broader round of multilateral trade negotiation in 2000 in which TRIPs issues are likely to form part of the built-in agenda. Under these circumstances, the review should be delayed.

34. In order for developing countries to fully implement the TRIPS Agreement, the technical and financial assistance foreseen in Article 67 should be provided. The transitional period should therefore be extended and its duration linked to the adequacy of the resources required to meet the challenge.

35. The review of Article 27.3(b) should retain the flexibility and option available to member countries for the protection of plant varieties including through a sui generis system. The review process should seek to harmonize Article 27.3(b) with the provisions of the Convention on Biological Diversity and the International Undertaking in which the conservation and sustainable use of biological diversity. African countries thus could propose that the exclusion of patentability of essentially biological processes should be extended to microbiological processes.

36. The additional protection for geographical indications should be extended under Article 22 and 23 to include products of interest to SADC countries. In this regard, the TNF mandate should be extended to make an inventory to enable SADC countries to make full use of the provision of Article 22, and 23.

37. SADC countries agree that Ministers should take a decision at Seattle to extend the moratorium on the application of the non-violation provision, under Article 64.3 of the TRIPS Agreement, which expires 1 January 2000, until members agree by consensus that sufficient experience has been gained with the application of the Agreement. The provisions for incentives by developed countries for the transfer of technology to LDCs contained in Article 66.2 are mandatory and therefore should be implemented. Developed countries should indicate how they intend to fulfil the provisions of this Article.

38. SADC countries agreed that there is a need to remove restrictions on the products listed by WHO as essential drugs so as to realise the objectives of affordable and adequate health care. There is a need for the relaxation in exclusive rights of the patent holders in respect of the drugs listed as essential by the WHO.

Rules of origin

39. Non-preferential product specific rules of origin in products of export interest to SADC countries currently being negotiated in the context of the WTO Agreement on Rules of Origin should be tailored to promote the SADC participation in global production chains and the marketing of their products.

Industrial tariffs

40. It is the assessment of SADC countries that industrial tariffs will form part of the new multilateral negotiations. Therefore, SADC countries should identify those tariffs which particularly restrict their exports of industrial products so as to formulate requests which would also cover product specific NTMs. Agreement to engage in industrial tariffs negotiations should be conditional on a clear demonstration at Seattle of commitment of developed countries to provide meaningful market access for exports from developing countries and particularly to eliminate protection for industries for which SADC countries possess comparative advantage

Trade facilitation

41. SADC countries recognise the overall benefits of trade facilitation and would seek to improve customs procedures and administration to reduce transaction costs. They also acknowledge that the procedural and administrative problems they confront could not be solved by establishing multilateral

disciplines. A vast effort in technical assistance and capacity building was needed to support national reform efforts, including institutional, infrastructure and human resource development.

Transparency in government procurement

42. SADC countries support the principle of transparency in government procurement. Commitments to transparency should not add to the already heavy financial, institutional and administrative burdens borne by developing countries. Measures to improve transparency should in no way compromise the balance of rights and obligations in GATT as a disguised effort to achieve market access goals. Any multilateral arrangement in this area should be in the form of non-binding guidelines that are not subject to the dispute settlement mechanism. Domestic or regional review mechanisms should be employed for any dispute which may arise. On transparency in government procurement, any decision should not impinge on the freedom of SADC countries to use government procurement practices to address domestic development concerns nor erode their rights under GATT Article III:8(a).

Investment and competition policy

43. SADC countries can support the proposals of other developing countries to extend the transitional period of the phase-out of prohibited TRIMs and the need to preserve policy space for developing countries in future negotiations. The Working Group on Trade and Investment should continue to carry out its mandate with greater focus on the development implications, taking into account the proposals which have been submitted in the preparatory process, and the four elements of a starting point as adopted by the OAU/AEC Conference of Africa Trade Ministers, in Harare in 1997. These include the development dimension, exclusion of portfolio investment, use of WTO mechanisms such as positive list of GATS, explicit linkage to a similar framework on competition policy, as provided in Article 9 of the TRIMs Agreement.

44. SADC countries have an interest in disciplining the activities of TNCs and mitigate the damaging effect of mergers. The Working Group on Trade and Competition Policy should continue its work to examine such matters as the development dimension and the relationship between TRIPS and Competition Policy. SADC countries should give priority to the establishment of legislation and institutions to enforce competition law and policy.

Trade and environment

45. SADC countries attach importance to the ongoing discussions in the Committee on Trade and Environment with a view to resolving the issues related to interface between trade and environment policies. They are of the view that it is premature to include the issue of trade and environment in the forthcoming negotiations. They invite Geneva-based SADC representatives to work on the issues in this area and advise the SADC member States at Seattle accordingly.
