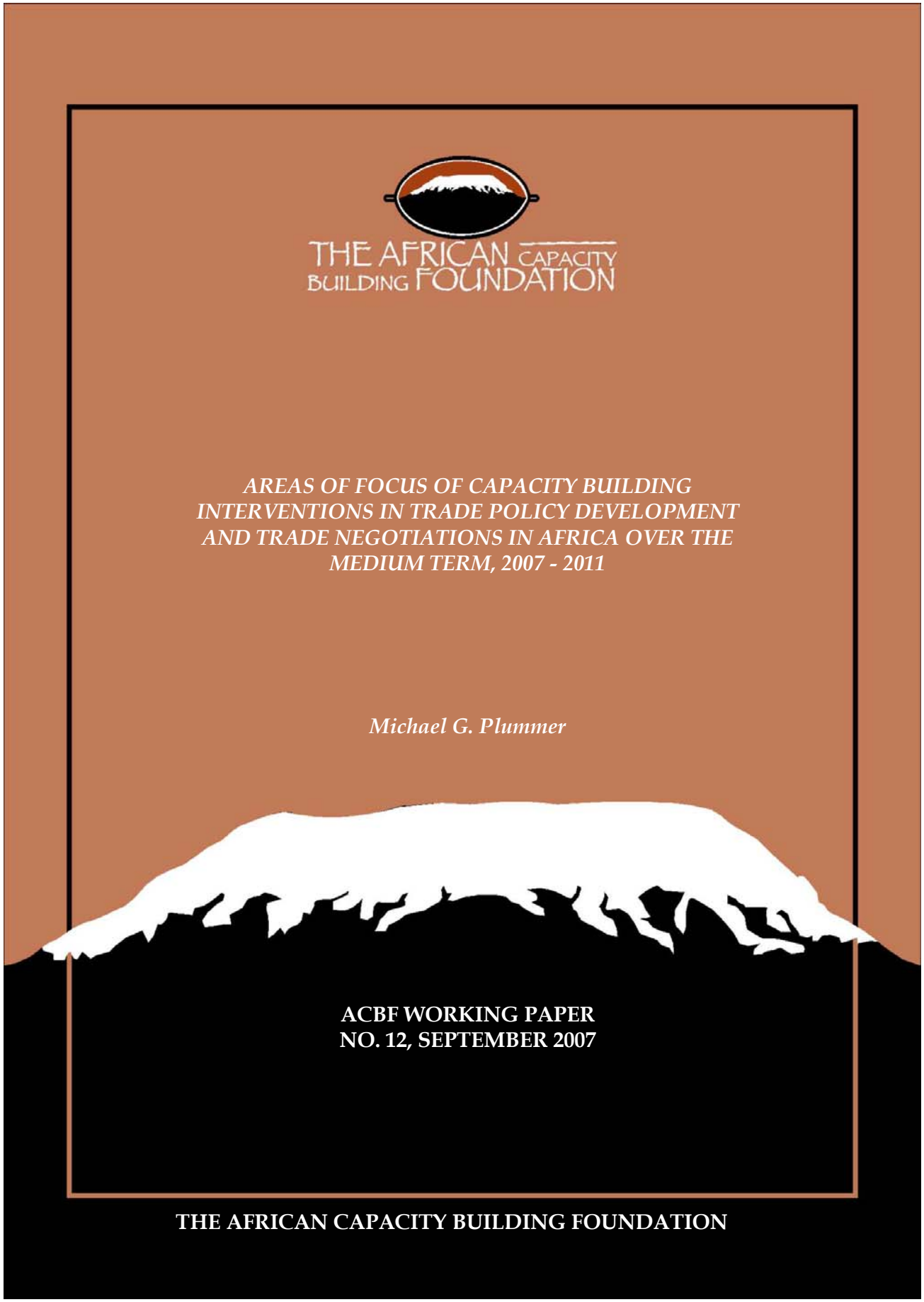

AREAS OF FOCUS OF CAPACITY BUILDING INTERVENTIONS IN TRADE POLICY DEVELOPMENT AND TRADE NEGOTIATIONS IN AFRICA OVER THE MEDIUM TERM, 2007 - 2011

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Areas of Focus of Capacity Building Interventions in Trade Policy Development and Trade Negotiations in Africa over the Medium Term, 2007-2011

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I. Challenges facing Trade Policy and Trade Negotiations in Africa

The global marketplace in general and international trade in particular have never been more important to Africa than at present. Success in the region is being increasingly defined by a given country's ability to exploit the potential benefits offered by the world economy. However, the comparative advantage of many of the region's economies tends to be in sectors that are the most restricted at the global level. Subsidies to certain sectors by developed countries have also been problematic to the region's potential for success. At the national level, infrastructural and related supply problems impede the region's competitiveness and limit opportunities.

Opening markets and building capacity to profit from them are essential to the economic future of Africa. But doing this is much easier said than done: as markets are liberalized and trade-distorting subsidies are reformed, well-trained policy negotiators supported by efficient technical staff and thoughtful policy stances that articulate the needs of the country and think through strategies to advance national objectives are necessary to maximize the benefits of economic reform. Capacity constraints in terms of human resources, as well as infrastructures, in the past have also tended to disadvantage Africa.

In addition, as globalization has deepened, trade negotiations and policies have become more complicated. Obviously the most important institution of international trade governance is the World Trade Organization (WTO). In the past, the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), considered a relatively limited set of sectors—mainly in the area of manufactures—and generally focused on tariffs (hence the name). However, as success in liberalizing the "usual" manufacturing sectors (i.e., commodities that were not sensitive, such as labor-intensive textiles) rendered marginal gains from negotiation less important, the GATT has to go beyond the "low-lying fruit" to focus on sensitive areas, including agriculture, and embrace a large vector of other policies of which tariffs only form a part. While this trend offers considerable

potential for Africa, it also underscores the need to deepen the capacity of negotiators and to improve the technical abilities of associated staff. More than ever, a strong negotiating team is of the essence.

Finally, the vast increase in the number of preferential trading arrangements, particularly free-trade areas (FTAs), at the global level has put even greater pressure on negotiators. Article I of the WTO guarantees most-favored nation (MFN) status, but Article XXIV provides a derogation in the form of discrimination in favor of partner countries under certain (mild) conditions. This trend presents opportunities to African countries in the form of potential market access but also threats in terms of preference erosion and potential trade diversion. Moreover, as "new age" FTAs span well beyond trade in goods to include services and many other "beyond-the-border" areas (e.g., investment, competition policy, and the like). Negotiations between African countries and developed countries also pose key challenges in that they involve salient power asymmetries in negotiations. Developing countries may project significant clout if they act as a group in WTO negotiations (which they have, indeed, done in recent years) but in bilateral negotiations, the power relationship is clearly in favor of the developed countries. Again, the complicated nature of FTAs and the less-than-level negotiating table suggest the need for well-trained officials with good back-up.

The objective of this working paper is to delineate and explore the trade-policy issues facing Africa in the second half of the 2000s and suggest means to help support the process of successful negotiations in international and regional forums. After a review of the wide set of issues currently included in trade negotiations (e.g., the WTO and typical modern FTAs), we consider in Section II "best practices" in regional trading arrangements. These types of policies would be designed to render FTAs more consistent with multilateral approaches to trade liberalization and are currently being discussed in various trade forums. Finally, Section III proposes means to enhance the trade negotiating capacity of African officials through the types of training programs that have been used successfully in developing countries.

The Complicated Nature of Contemporary Trade Policy

The economics literature, as well as the GATT/WTO Rounds themselves, have placed far too much emphasis on tariffs alone at a time when they have become increasingly less relevant. According to the World Bank (2005, p. 66), the average tariff of the EU and NAFTA countries comes to approximately 3 percent; obviously, the net effects of merely freeing up tariffs will not have a

significant impact on the global economy. Rather, non-tariff barriers to trade, export subsidies, and various "behind-the-border" measures are far more important.

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To underscore this point, we note that Rose (2004) tests the hypothesis of whether or not the WTO has really made a difference in stimulating world trade. Using a gravity model of international trade, he rejects this hypothesis. In other words, over the 1948-2000 period, being a member of the WTO had no statistically-significant effect on bilateral trade, when one controls for other relatively standard variables. Regional trading agreements, however, had very strong effects. Now, while few would doubt the analytical robustness of the article (the *American Economic Review* has arguably the most rigorous academic review process in the United States), the piece has been criticized from a variety of angles, including the fact that it focuses on overall bilateral trade, rather than trade by sectors. One certainly wouldn't expect a significant WTO effect in agriculture, textiles and clothing, and other protected sectors that have basically remained outside of the GATT/WTO liberalization process. Still, that is his point: the GATT/WTO has not done enough.

The Doha Development Agenda set out to change this. We might summarize its over-riding objectives as being two-fold: (1) deep integration; and (2) the creation of a more favourable trade environment for developing countries. In the negotiations, which we summarize below, both figured prominently but disagreements as to how to integrate the two have arguably been behind the lack of progress: developed countries have insisted on extensive "behind-the-border" liberalization in developing countries, which the developing countries have resisted; and developing countries have been adamant that developed countries put more on the table in terms of market access in sensitive areas (especially agriculture), limit export subsidies, and treat emigrant labor ("mode four" services) much better. Support has been in evidence for the first time at the GATT/WTO for technical assistance to help developing countries, particularly in Africa, build infrastructural capacity in order to take advantage of global liberalization ("aid for trade"). This is an important, forward-looking area that, while currently not moving forward at the stalled Doha talks, is being taken up in other forums. Moreover, the recent wave of FTAs, which involve deep integration at levels that are generally far more complicated that what is being contemplated—or would even be feasible—at Doha, accentuate the need for such support and capacity building.

Key Issues in the Doha Development Agenda

The Hong Kong Ministerial WTO Meeting in December 2005 succeeded in creating a framework for negotiations under the Doha Development Agenda. The negotiators were given until April 2006 to come up with a trade pact, but this deadline came and went. The Doha Development Agenda appeared to be at an impasse. A year later in April 2007, countries went back to the negotiating table to try to break the impasse (in particular before the US Trade Promotion Authority expired) but as of the time of this writing no concrete progress has been made. Still, there is a clear incentive on the part of both developed and developing countries to make Doha a success, and while a successful agreement in the immediate term is unlikely, it is still possible, particularly over a longer time frame.

In what follows, we review the basic components of the Doha Development Agenda based on the most recent framework agreement (i.e., from the Hong Kong Ministerial Meeting). This will give some idea as to the complicated issues at stake in these negotiations.[1]

A. Non-Agricultural Market Access (NAMA).

As noted above, trade in manufactures has been the traditional area of focus at previous multilateral rounds, with considerable success: developed country tariffs tend to be quite low on average in this area. However, tariffs levels in developing countries continue to be quite high (though they also have come down considerably over the past 10 years); hence, there is considerable asymmetry in tariff levels across countries, as well as across sectors within countries.

An important facilitating format established at the Hong Kong Ministerial was the agreement to use the "Swiss formula" as the main vehicle of liberalization and harmonization under NAMA. The beauty of the Swiss formula lies in its simplicity: negotiators need only to agree on one element of the formula (the reduction factor); the rest of the process is automatic and completely transparent. And there is no need to have a common reduction factor for all economies; several reduction factors could be used, with such indicators as *per capita* GDP determining which reduction factor could be applied to which country group. From an economic point of view, the Swiss formula cuts higher tariffs by more than the smaller tariffs. By doing so, it enhances economic benefits from trade liberalization in two ways: it delivers higher welfare gains than in the case of, say, a linear

[1] This summary draws in part from some analysis undertake in ADB (2006), to which the author contributed significantly.

approach,[2] and it may improve tariff revenues[3]. Moreover, from a political point of view, the Swiss formula tends to reduce domestic bickering regarding post-liberalization tariffs between domestic vested interests because it does not change the *ranking* of the domestic protection by industry, though it does reduce differentials.

In the 2004 July Package, which set the stage for the Hong Kong Ministerial Meeting, negotiators agreed on "flexibility" provisions, with the intent to take into account the "special needs and interests of developing countries". A first provision refers to longer implementation periods; this approach is traditional in GATT/WTO negotiations and so is not particularly controversial. The two other provisions are much more complicated, that is: (a) the possibility of excluding a certain percentage of total import value from the formula cuts; and (b) the possibility of excluding a certain percentage of tariff lines from the formula cuts. Critics stress that these two flexibility provisions could undermine the negotiating, economic, and political advantages of the Swiss formula.

B. Agriculture

As noted above, agriculture has traditionally been one of the most difficult sectors to liberalize, for reasons familiar to both developed and developing countries. In the main this is due to various political and political-economy related issues. Politicians will often resist liberalization under the pretense of, *inter alia*, "food security," "national security," cultural preservation, the need to maintain a beautiful countryside (the "multifunctionality" of agriculture), and health-related issues. While some of these arguments may be legitimate in theory, in practice they tend not to be. Instead, they are often merely finely-wrapped excuses hiding old-fashioned protectionism.

The Uruguay Round was not particularly successful in liberalizing farm trade. Today, the level of agricultural protection in the OECD countries is still close to its level in 1986-1988, the two reference years used by the Uruguay Round negotiators. Nevertheless, the Uruguay Round was instrumental in introducing the minimal level of transparency necessary to prepare for profound future changes in OECD agricultural markets. In particular, it helped to place farm liberalization at the forefront of the Doha negotiations and reinforced the steady decline of OECD public support for a highly-subsidized farm sector. Agriculture accounts for 40 percent of GDP, 35 percent of exports,

[2] As the welfare costs of tariffs increase disproportionately as the tariff level rises, larger reductions in the highest tariffs have a more than proportional positive effect on efficiency and welfare.
[3] In general, moderate tariffs provide larger revenues than high tariffs. This is in large part due to the decrease in import volume associated with high import prices generated by steep protection.

and 50-70 percent of total employment in the poorest developing countries. Three-quarters of the world's poorest people live in rural areas, with the proportion in the poorest countries being as high as 90 percent. This being the Doha *Development* Agenda, agriculture must be part of a final package.

Farm negotiations under Doha Round are taking place under three pillars: (1) rules on export subsidies; (2) rules on domestic support; and (3) tariff cuts. This structure is a source of difficulty in negotiation because the use of these instruments is asymmetrical. Most OECD countries use all three instruments, while developing countries protect their farm sector only behind tariffs. Negotiating on the combined effects of these instruments would be ideal, but is not technically possible.

C. Trade in Services

Globally, services represent more than 50 percent of the GDP of any country, and more than 70 percent of many developed economies. Although data on barriers to trade in services are notoriously rare and often incomplete, in-depth studies on specific services sectors suggest that protection in this sector is much higher than is the case for trade in goods, implying that trade liberalization in services has significant potential for all WTO member states.

Nevertheless, negotiations under services have hitherto produced very little at Doha. As of July 2005, less than half of the WTO Member Countries had tabled proposals of *any kind*. Moreover, the content of these offers seems thin, especially in "mode three" (commercial establishment), which is of special interest to the advanced economies, and in "mode four" (that is, trade in labor services), which is of special interest to some developing countries.

Unlike NAMA and agriculture, services liberalization is probably not a *sine qua non* at Doha; while there could be some breakthroughs in the less controversial sectors, the paucity of proposals thus far does not bode well for a breakthrough in this area. Nevertheless, it is an increasingly important sector with great potential. A successful conclusion to the Doha negotiations would probably also produce a strong commitment to focus on services in future rounds of multilateral negotiations.

D. Rules

The Doha discussions on "rules" focus on several issues; contingent protection (antidumping and countervailing duties) and regional trading arrangements, especially FTAs, are of the greatest relevance to Africa. "Aid for Trade," including trade facilitation, is handled in the next subsection.

During the last decade, the WTO has been unable to monitor effectively the use of NTBs. The success of the Uruguay Round to eradicate "gray measures" (such as quotas and voluntary export restraints) has been somewhat diminished by the increased use of contingent protection, especially anti-dumping measures. The NTB problem continues to be important inhibitors to international trade.

As noted above, the FTA trend has become increasingly important in driving international commercial policy over the past 10 years. By their very nature, these agreements discriminate in favor of partner countries, to the disadvantage of non-partners. In GATT's early years, FTAs were relatively few in number. Today, however, almost 300 such agreements have been reported to the WTO, double that of just a decade ago.

Recognizing that this trend poses an important challenge to non-discrimination, members of the WTO have been discussing the need to revamp the organization's policies toward regionalism. The 1994 Understanding on the Interpretation of Article XXIV of GATT was an attempt to enhance the compatibility of regionalism with multilateralism at a time when the trend was beginning to grow, but it did little to clarify the issues. Under the Doha Development Agenda, further revisions of interpretations of Article XXIV were to be part of its "single undertaking." But little was accomplished at the Hong Kong Ministerial in this regard, except for a commitment to improve the transparency of free-trade areas and encouragement to negotiators to arrive at "appropriate outcomes" but the end of 2006.

Because the global trend toward bilateralism and regionalism is new and just about all WTO Member Countries are involved, it is unlikely that substantial progress will be made in this area at Doha, outside of some minor points on definitions and transparency. However, the problems that are being created by this trend (e.g., inevitable trade and investment diversion, "spaghetti bowl" issues, the clear threat to the multilateral system) will become evident in time, and the threat to the multilateral system will be taken more seriously.

E. Special and Differential Treatment (SDT) and "Aid for Trade"

The six years between the Seattle and Hong Kong Ministerial Meetings witnessed an intense debate on whether and how developing countries should be granted SDT. Importantly, at the Hong Kong Ministerial Meeting developed countries agreed to end tariffs and quotas on 97 percent of the tariff lines exported by the Least Developed Countries (LDCs) by 2008. This was hailed as an important success, particularly for African countries. However, it has been criticized as not being extensive enough.

To begin, it should be noted that the pursuit of SDT has often been counterproductive for developing countries. As noted above, countries tend to gain most from their own liberalization, and the quest for exclusions, drawn-out timetables for the implementation of reform, and lack of active participation in global trade talks (meaning that protection remains relatively high in LDCs) have postponed or even stifled liberalization. The possibility of a "Round for Free" was discussed earlier in the Doha discussions, ostensibly suggested that LDCs should be exempt from everything at Doha. This approach, though well-meaning, would have been detrimental to LDC development, as it would have precluded the need for domestic reform and restructuring. Since the 1970s, SDT has been mostly delivered through preferential (low or zero) tariffs granted to a limited number of developing countries defined on an *ad hoc* basis by developed countries (on an individual basis). However, the value of SDT preferences has been falling over time. For example, beneficiaries are currently suffering from "preference erosion" and associated adjustment costs. During the last decade, the differences between the MFN tariff rates and the preferential tariff rates have been reduced by a long series of trade agreements, under the GATT/WTO and in regional trading agreements.

"Aid for trade" has become a buzzword in the Doha negotiations, and as a result, deserves to be defined with some precision. The preference erosion issue, for example, is often included under the aid for trade heading. What follows limits aid for trade to issues increasingly related to governance in general (and not necessarily to trade directly).

First, aid for trade can be linked to "trade facilitation", that is, to the activities undertaken by customs and logistics procedures, e.g., improving the movement, release, and clearance of goods, including goods in transit. The Doha Development Agenda has a program of negotiations on trade

facilitation intended to buttress developing-country capacity to implement trade liberalization and structural change in general. A particularly important aspect of this program relates to transit conditions (for example, fees, delays, and transparency), which is of prime importance to land-locked countries.

Second, as the above definition of trade facilitation is quite narrow (it covers only public governance at the borders), this approach could potentially be extended to all activities involved in the international movement of goods and services, such as building the corresponding infrastructure (ports, roads and other transport facilities), or operating trade-related services (mail and parcels, telecom, specialized legal and insurance services, storage, and the like). This "trade facilitation plus" concept is very close to services negotiations since *de facto* it relies on a cluster of services that developing countries need to focus on in order to reap effectively gains from trade liberalization.

The WTO and the Regionalism Trend

The challenges of regionalism to the WTO are many, but two in particular stand out. First, the GATT/WTO was created with most-favored nation (MFN) treatment as its over-riding principle, and Article XXIV was to be a conditional exception to this rule. With 300 or so accords in place and every major economy participating in at least one FTA (and most, many), what happens when the exception becomes the rule? How valid is the coveted MFN, a birthright of WTO membership, when regional trading arrangements erode it and, in essence, force countries into regional trading arrangement in order to *get back* MFN status? Second, as we will argue below, regionalism is not necessarily in conflict with multilateralism, subject to the principle of openness and minimization of the inefficiencies and potential discrimination inherent in regional agreements. But if regionalism *is* taking the lead, the fundamental role of the WTO in the global economy would have to change, if it is not to be become redundant.

Recognizing these challenges, members of the WTO have been discussing the need to revamp the organization's policies toward regionalism. The 1994 Understanding on the Interpretation of Article XXIV of GATT was an attempt to enhance the compatibility of regionalism with multilateralism at a time when the regionalism trend was beginning to grow. It had several functions, including agreement to: (1) reaffirm the requirement that regional groupings should not raise barriers to trade on non-members; (2) define a "reasonable length of time" within which a

regional agreement should be completed to be greater than 10 years "only in exceptional cases"; (3) note that especially in the cases of difficult-to-quantify measures the GATT may find it necessary to consider "individual measures, regulations, products covered, and trade flows affected"; and (4) underscore that the WTO dispute settlement provisions are relevant to any matters related to regionalism under Article XXIV ((Herzstein and Whitlock 2005, pp. 225-226).

Two important issues are especially worthy of note here. First is the recognition that the current state of WTO provisions relative to regionalism are inadequate. Further, the Regional Trade Agreements Committee has not been able to accept (or reject) the proposition that current trade agreements conform with WTO provisions, no doubt due to the subjective nature of any such assessment (and political resistence against criticism by some of the contracting parties). Second, there is a clear emphasis on assessing the implications of these regional trade agreements for developing countries, which would only seem natural under the Doha *Development* Agenda.

Summary of Challenges

From the above it is clear that the combination of more ambitious WTO negotiations and the increase in number and "deep" aspects to FTAs in the global economy have complicated significant international trade negotiations and have increased the premium that African countries will need to place on its trade-negotiation resources. Later in the paper we discuss examples of existing training programs that have been developed to improve trade-policy negotiations capacity in developing countries and provide a template for possible training sessions. First, however, we consider the issue of "best practices" in trade agreements, that is, we ask the question as to how FTAs and other preferential trading arrangements could be as economically advantageous for the member-states (and, ultimately, the global economy) as possible.

II. "Best Practices" in Trade Agreements

The desirability of preferential trading agreements in general and "stumbling bloc versus building bloc" considerations in particular constitute the most divisive debate among mainstream international trade economists.[4] But while there is no consensus, essentially all would agree that the relationship between regionalism and overall policy reform is of the essence.

[4] This section draws from Plummer (2006).

Even though a great deal has been written on this and related issues, little has been done focusing on specific components of regional trade groupings themselves and how they influence the debate. True, there are many anecdotes, with rules of origin being a favorite example as to how FTAs embody a good deal of hidden protectionism. However, we would argue that focusing on such anecdotes may not be productive; what matters is the entire picture and how it compares to the *status quo*. In this section, we endeavor to highlight some of these component policies and suggest how they might be developed in order to minimize distortions.

We delineate ten such best practices below[5]. They give direction as to how FTAs might support multilateral negotiations while at the same time trying to reduce domestic distortions. The list is obviously theoretical; some of the areas are politically sensitive and would be difficult in practice to implement. In this sense, what we outline below is more of a "wish list". Still, it is important for trade negotiators to have a sense as to what makes sense from an efficiency point of view, regardless of what the ultimate choice that is made. Moreover, the scope and coverage of these issues underscore just how complicated FTA negotiations are and how they interact with WTO negotiations. They are certainly issues in which every trade negotiating team needs to be fluent and well-trained. This practical aspect is covered in the next section.

1. **Product coverage: Goods**. *Comprehensive coverage is best, to be included within a reasonable period of time (defined as 10 years by the GATT/WTO).* Article XXIV of the GATT/WTO stipulates that, in an FTA or customs, product coverage should include "substantially all goods." However, few FTAs cover all goods. Even NAFTA, which is comprehensive by most measures, does not effectively include all goods; tomatoes, for example, remain *de facto* outside of the FTA. The EU-EFTA FTA in the 1970s excluded agricultural goods, and, actually, the US-Canada Auto Pact of 1965 only included *one* sector, i.e., the automotive sector. Clearly, the rigors of Article XXIV have not been very binding in this regard.

Exclusions of individual products can be problematic on efficiency grounds, particularly when they involve products that are used as inputs in the productive chain. For example, duty free inputs on steel will cause exaggerated protection of value added (the "effective rate of protection") in the automotive sector. Exclusion of tariffs on imported lumber will do the same in the furniture industry if the latter is excluded from liberalization. "Positive list" approaches tend to be the worse possible mechanisms in this regard, as items that would generate trade creation are excluded and

[5] Plummer (forthcoming, 2007).

those that would generate trade diversion (i.e., promote intra-regional trade at the expense of non-partners) would be included.

Thus, to the greatest political extent possible, the FTA should include all goods. Some will no doubt be excluded either temporarily or permanently, but such exemptions should be as few as possible and should take into account the important effects that they might have on the effective rate of protection, as well as on trade diversion.

2. **Product coverage: Services**. Again, *comprehensive coverage and a reasonable time period for implementation are best* from an economic perspective, and transparency is important in some areas. Services present some special and important challenges. Certain services are fairly easy to liberalize, e.g., in terms of allowing for the movement of professional persons, tourist-related services, and even high-tech/knowledge-based services. Others are extremely difficult. Educational services tend to be highly protected. Financial services are often the most difficult to include in any liberalization package. Even the EU, which has been a regional trading organization for almost a half-century and technically completed its "Single Market" over 10 years ago, has a long way to go before incorporating financial services at the EU level, despite commitments to do so.[6] The same is true about postal services, which continue to be protected within the EU based on their "universal service obligations" but in reality due to heavy unionization of the sector. Within the framework of GATS, some financial services will be included but education and postal services will be excluded due to their politically-sensitive nature.

Hence, if such opposition to full inclusion of services exists in advanced developed-country agreements, it is obvious that certain sectors will be controversial in developed-developing country accords. Nevertheless, they should be included as much as possible.

3. **Rules of Origin**. *Rules of origin should be as low as possible as well as symmetrical.* "Abuses" of rules of origin in FTAs is the most common criticism of regional agreements by economists and, arguably, could be the most detrimental to the potential growth of African exports. Research as to how much compliance with rules of origin taxes efficiency is difficult to find. One estimate

[6] Foreign control of especially retail banking is *tabu* in many European countries. Foreign competition in retail banking essentially do not exist in the biggest continental European countries, i.e., France, Germany, and Italy. Recently (2005), a scandal broke out in Italy when the Bank of Italy seemly used illegal means to thwart the take-over of an Italian bank (Antonveneta) by a Dutch bank (ABN Ambro). Fazio, the Italian central bank governor, was eventually forced to resign.

(Estevadeordal and Suominen 2003) calculates the cost to be in the range of 3-5 percent of the f.o.b. value of the exported goods.

Table 1 generalizes the various approaches to determining rules of origin and their advantages and disadvantages (Brenton and Imagawa 2005). In contrast to developing-country accords which tend to have simple rules of origin (usually at about 40 percent), the developed-country accords tend to be extremely complicated and often very high. The United States and, often the EU, especially insist on generally product-specific rules of origin, yielding highly-divergent rates. These can be used to protect domestic industry inappropriately, rather than merely making sure that a product is mainly produced within the region. There is, for example, the famous (and strange) case of EU imports of fish: one would think that rules of origin of fish, which obviously do not have component imports, would be simple. But to receive access to the EU's GSP, a developing country must satisfy the following conditions: the vessel has to be registered in the beneficiary country or any EU member-state and must sail under the flag of a beneficiary/EU member; the vessel must be at least 60 percent owned by nations of the beneficiary or EU country, or by companies with a head office in the beneficiary of EU country, of which the chairperson and a majority of the board members are nationals; and the master and officers of the ship must be nationals of the beneficiary or EU member country, and 70 percent the crew must be nationals of the beneficiary country or the EU (Brenton and Imagawa 2005).

4**. Customs Procedures**. *To the greatest extent possible, customs procedures should follow global best practices and GATT/WTO-consistent protocols*. Customs and related procedures are at the heart of "trade facilitation," a key priority in the Doha Development Agenda. They are obviously closely related to rules of origin, as one of the key challenges of customs officials is to clear countries-of-origin of imports. The extent of globalization of production combines with the need for rules of origin in the context of FTAs (and, sometimes, customs unions, if the issue relates to non-reciprocal agreements such as the General System of Preferences or the EU's "everything but arms" initiative for Least Developed Countries) to ensure that customs procedures and related regulations form an essential component of any regional accord. A key issue in the customs negotiations pertains to transparency and "risk management".[7] "Best practices" under the WTO relate to the Agreement on Customs Valuation, which provides private-sector access to a review and appeal mechanism.

[7] That is, "a systematic framework to assess the risk on goods imported which target limited resources on high risk goods and high risk traders while facilitating the clearance of legitimate cargoes through the checkpoints" (Chia 2005).

Table 1
Various Approaches to Rules of Origin

Rule	Advantages	Disadvantages	Key Issues
Change of tariff classification in the Harmonized System	- Consistent with nonpreferential rules of origin - Once defined, unambiguous and easy to learn - Relatively straightforward to implement	- Harmonized System not designed for conferring origin: there are often many individual product-specific rules, which can be influenced by domestic industries - Documentary requirements may be difficult to comply with - Conflicts over classification of goods can introduce uncertainty over market areas	- Level of classification at which change required: the higher the level, the more restrictive - Can be positive (which imported inputs allowed) or negative (cases in which change of classification won't confer origin) test[8]: negative test more restrictive
Value-added	- Simple to specify and unambiguous - Allows for general rather than product-specific rules	- Complex to apply: requires firms to have sophisticated accounting systems - Uncertainty due to sensitivity to changes in exchange rates, wages, commodity prices, etc.	- The level of value-added required to confer origin - The valuation method for imported materials: methods that assign a higher value (e.g. CIF) will be more restrictive on the use of imported imputs
Specific manufacturing process	- Once defined, unambiguous - Provides for certainty if rules can be complied with	- Documentary requirements can be burdensome and difficult to comply with - Leads to product-specific rules - Can quickly become obsolete due to technological progress and require frequent modification	- The formulation of the specific processes required: the more procedures required, the more restrictive - Should test be negative (processes or inputs that can't be used) or positive (what can be used)?

Brenton, Paul and Hiroshi Imagawa, "Rules of Origin, Trade and Customs," Chapter 9 in De Wulf, Luc and José B. Sokol, *Customs Modernization Handbook* (Washington, DC: The World Bank, 2005), Annex 9.A.

Regional trading agreements can be used as instruments to modernize customs laws, regulations, administrative guidelines, and procedures. The most basic questions being asked are (McLinden 2005, pp. 76-77)): (1) has a process of continuous review been created?; (2) has an official process of the review and rationalization of exemptions and concessions been developed?; (3) Is there in place an efficient cross-agency process in applying regulatory requirements?; (4) have internationally-accepted conventions and standards, including those found under the WTO Valuation Agreement, been implemented? (5) Do regional trading groups adopt internationally accepted standards and work toward regionalization of best practices?; and (6) are the laws, regulations, procedures, and administrative guidelines transparent?

If "best practices" are developed, progress in this area could be an important advantage of FTAs, especially if, as part of the agreement, developed countries help modernize these procedures, build capacity, transfer related technology, and train administrators.

5. **Intellectual Property Protection**: *IPR guidelines should be non-discriminatory and consistent with TRIPS, TRIPS Plus, and related international conventions*. The protection of intellectual property is one of the most sensitive issues in negotiating FTAs. Developed countries, having a strong comparative advantage in IPR-intensive products, want to make sure that IPR is taken seriously both *de facto* and *de jury*. Developing countries often criticize the IPR stance of developed countries as being too severe and too favourable to innovators, e.g., granting patent monopolies for an exaggerated amount of time, or being too insensitive in areas such as pharmaceuticals. On the other hand, it may be that stronger, more serious IPR protection can actually be positive for the development of a country's own innovative and artistic sectors. Moreover, a new literature in the international investment area gives credence to the view that FDI is not only a function of IPR protection but also influences the sectoral distribution of FDI and the degree of technology transfer. Countries with stronger IPR protection tend to receive more FDI in sectors in which technology transfer is more likely.

In any event, the extent to which IPR-related clauses within an FTA reinforce international conventions, the more likely the accord will support multilateralism, provided, of course, that the clauses are non-discriminatory across countries.

6. Foreign direct investment. *Investment-related provisions should embrace national treatment, non-discrimination, shun performance requirements, and have a highly-inclusive negative list, as well as provide the usual protection necessary for foreign investors.* Most African countries have come to see the usefulness of foreign direct investment (FDI) as a source of additional capital, long-term risk sharing, ready-made international markets, and technology transfer. While FDI has been flowing substantially to natural-resource sectors in African countries, the region's performance in terms of attractive FDI to the manufacturing sector, which employs far more people, has been disappointing. One positive aspect of FTAs is that they tend to draw in more FD. Moreover, modern FTAs with developed countries almost always carry FDI provisions. Best practices in such accords would require non-discrimination as a way of allowing "factor flows" (i.e., capital) to complement trade flows.

7. **Anti-dumping**. *Anti-dumping procedures and dispute resolution need to be transparent and fair, and the process needs to be well specified and effective.* Anti-dumping and countervailing duties, also known as "administrative actions," have been condemned as an important weapon in the arsenal of the "new protectionism." Anti-dumping measures may or may not be stipulated directly in an agreement; sometimes, the references may be exclusively directed to the WTO dispute resolution. Anti-dumping clauses in an FTA might be used as a means to tighten anti-dumping evaluations procedures, promote transparency, and expedite any processes. But it also important that dispute settlement procedures be clearly identified and respected. Otherwise, confusion can follow and such confusion tends to favor the stronger party in the negotiations (i.e., developed countries).

8. **Government procurement**. *Government procurement should be open and as non-discriminatory as possible, and procedures should be clear and as open as possible.*

9. **Competition**. *Policies related to competition should create a "level playing field" for both locals and partners, and they should not put non-partner competition at a disadvantage.*

10. **Technical Barriers to Trade**. *These should be kept to a minimum, with clear and transparent mechanisms for determination of standards.* The WTO Agreement on Technical Barriers to Trade (TBT) attempts to "ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade." TBT takes on particular significance at the global level, as many of its aspects, including harmonizing standards, "mutual

recognition," defining what are legitimate means of protecting, e.g., animal and plant life and the environment, etc., should have global rules of conduct. International standards, however, are bound to be general; FTAs, as they only involve a few or several countries, can potentially achieve far deeper means of integration and progress in this area. What would be critical for efficiency and outward-orientation, therefore, would be that any TBT clauses in FTAs should be based on international standards, have high levels of transparency, embrace best practices, and eschew discrimination against outsiders as much as possible. The Uruguay Round created a "Code of Good Practice for the Preparation, Adoption and Application of Standards" by standardizing bodies; FTAs should build on these, or at least not contradict them.

In sum, by adopting best-practices, FTAs negotatied by African countries could generate significant gains in terms of economic efficiency, well-beyond the effects of traditional FTAs (which can potentially be welfare-inhibiting) and, arguably, beyond what any realistic multilateral approach could possibly hope to generate. Nevertheless, negotiations in modern trade accords, be they related to the WTO or FTAs, have become increasingly complicated. Clearly, the parties with more experience and more technical capacity will have an important advantage. In the rest of this study, we seek to consider one way that African countries can close the "capacity gap": Training courses for trade policy officials.

III. Creating Effective Training Courses in Africa

There exist many models of training courses for developing countries. Many of these have elements that would be useful to African policymakers. In particular, it is important to note that African policymakers know their countries better than anyone else, but they often lack training in the legal and economic analysis required in negotiations of modern FTAs. Also, officials aren't always familiar with the countries they are negotiating with, and knowing one's potential partner (e.g., what the partner really wants, which sectors are most sensitive to that country, how to develop compromises that would be in the best interest of the country) is essential to the successful negotiation of a good deal. Moreover, particularly in accords with developed countries, it is important to have close links to the private sector and NGOs in putting together an effective, realistic negotiating position.

Clearly, the bigger, more developed the country, the greater the advantages in negotiations, *ceteris paribus*. In order to close this gap, help is needed. Training programs, in particular, can help complement other initiatives that a country may embrace in strengthening its abilities in trade negotiations. In this sense, international assistance can be useful particularly in light of understanding WTO rules, analysing positions of potential partners, and organizing one's own negotiation strategy. It is important to note, however, that there is no substitute for local initiatives and training: each country is different and each country needs to draw effectively on its own resources, its own trade negotiation experience, its own NGOs, its own private sector, etc.

Currently there exist many models for trade negotiation training. Many international organizations and NGOs offer their own programs. For example, the WTO provides its own Trade Policy Courses for developing-country trade officials[9]. These last 12 weeks each and essentially give a comprehensive overview of the historical, legal, and functional aspects of the WTO. The Center for Trade Policy and Law offers a Certificate Program in Trade Law and Commercial Diplomacy also designed to strengthen the negotiating capacity of developing countries.[10] In addition, there are also regional initiatives outside Africa to train policy officials, e.g., in Asia, the Economic and Social Committee for the Asia-Pacific (ESCAP) and the Asian Development Bank both offer training programs which elements that are pertinent to African countries.

It is more difficult to find examples of such programs specifically designed for Africa. While there are certain international visitors programs sponsored by various donor countries, these are not designed to address the issues that we would suggest are critical to developing an effective negotiating stance in this paper. Recently (May 2003), the African Trade Policy Centre was created in cooperation with the Economic Commission for Africa and with financial support of the government of Canada, and would seem to have a great deal of potential.[11] It currently sponsors interesting research pertinent to the topics addressed above. Nevertheless, we would suggest that a training course explicitly designed to improve the negotiating preparation and policy execution for regional and multilateral negotiations would add a good deal of value to existing resources in Africa. Given its mandate, the Africa Capacity Building Foundation (ACBF) would be a natural candidate to undertake such a training course, perhaps in cooperation with like-mandated institutions in the region.

[9] See: http://www.wto.org/english/tratop_e/devel_e/train_e/tradepolicycourse_e.htm.
[10] See: http://www.carleton.ca/ctpl/training/index.html
[11] See: http://www.uneca.org/atpc/addresses_ministries_trade.asp

Design of Template of a Trade Negotiations Capacity Building Course

What would an ACBF Trade Negotiations Capacity Building (TNCB) course look like? Below, we give a general skeletal outline of the content and topics that would be useful to include in such a course. We include these areas as a means of stimulating discussion rather than an iron-clad proposal; certainly, the process of putting the flesh on these bones will require many iterations.

1. *Who would be trained*?

We would envision that junior and mid-level trade officials that will be eventual (or are existing) trade negotiators would be the most likely candidates.

2. How large would the TNCB course be?

We would anticipate inviting two trade policy officials from each African country to participate, though we would suggest making such a policy sufficiently flexible for LDCs wishing to send more. But it is important not to make the group too large, as there would be clear diseconomies of scale. Hence, we would suggest two options: (1) Two TNCB courses per year with up to 50 participants each; or (2) Three TNCB courses per year with up to 35 participants each. For logistical reasons (especially in the first few years of the project), the former approach would probably be the best option.

3. How long would it last?

We would suggest that, while participants would be expected to come well prepared (with readings provided in advance), the TNCB course itself would last three weeks. This is because less than three weeks would be too little to cover the myriad topics necessary to such a course, and more than three weeks would probably be too much time for active trade officials to devote, given their busy schedules. The WTO course, for example, which lasts 12 weeks comes at a high opportunity cost and would preclude participation of some key target officials.

The course would optimally also be sustained through the use of the internet and network facilities. This would require staffing that could not only organize and manage information and interaction but also respond to on-going questions that participants would have.

4. Who would be the instructors?

Given the complicated nature of trade accords and their comprehensive effects on the economy and society, the TNCB course would clearly require a diverse, multidisciplinary group of economists, legal specialists, and former trade negotiating officials from the region and the international community. It would also invite presentations from concerned NGOs and the private sector. As the course is designed, it would be useful to study the approach taken by the Trade Law Center for Southern Africa (http://www.tralac.org/), which has experience in related areas.

5. Miscelleanous

We would recommend that some sort of credential, either in the form of a Diploma or Certificate or a Certificate of Attendance, would be issued after successful participation in the course. We would also suggest that the credential be issued by the ACBF.

6. The TNCB course topics

Based on existing training courses throughout the world and the special needs of African trade policy officials, we would suggest that the following topics should be included in the course:

I. Overview of Key Issues Facing Trade Negotiators:

a. Historical Overview of International Trade Agreements: Pre-WWII to the WTO
b. Review of Post-WTO Agreements and Initiatives
c. Trade Policy Analysis:
    i. Theoretical overview of gains from trade, neoclassical theory, and subsequent models
    ii. Political economy approach to trade: economics of protectionism, winners and losers, sequencing issues
    iii. Empirical approaches to trade policy
    iv. Role of government in directing industrial development through trade policy
    v. Compensating the losers from the process of structural adjustment
d. Analysis of Regional Trading Agreements:
    i. Review of evolution of FTAs to become dominant in the global system

ii. Theoretical review of the Economics of FTAs
iii. Political economy analysis of FTA formation
iv. Empirical models of FTAs
v. Lessons from Extra-regional Groupings
vi. Designing and implementing best practices in FTAs

e. Africa in the Global Trading System
i. Trade and investment performance of individual African countries and regions
ii. Analysis of trade and investment policies in Africa
iii. Role to date of Africa in the global trading systems
iv. Evolution of intra-regional African trade and investment accords, and preferential relationships with developed countries.
v. African physical and human capital constraints to exploiting global markets

II. Sector Specific Areas:

a. Trade in manufactured goods
b. Trade in agricultural goods
c. Export subsidies
d. Trade in services
e. Contingent protection
f. Foreign direct investment
g. Rules of Origin
h. Competition Policy
i. Dispute Settelment
j. Trade and Investment Facilitation
k. Technical Barriers to Trade
l. Social issues

III. Preparing and Implementing Negotiations:

a. Putting Together a Negotiating Team
b. Building Bridges with Civil Society, especially the Private Sector
c. Developing Effective Negotiating Strategies
d. Coalition Building

Additional elements:

a. Participants would do group projects and simulations in trade negotiations for various items being studies.

b. Instructors would employ a combination of lectures, applications, and case-study/discussion based exercises.

c. As strengthening the ability of trade officials to understand the implications of various trade policy initiatives is a salient goal of the course, emphasis will be placed on technical analysis, including reading and working with statistics.

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